ELEEMOSYNARY INSTITUTIONS: Superintendent and staff may in their discretion discharge or parole patients from state hospitals.

May 16, 1941

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Mr. Ira A. Jones
President, Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jones:

We are in receipt of your request for an opinion under date of May 15th, as follows:

> "Will you please give me some guidance on this matter? Under the law people are brought before the County Courts, as I understand it. On the certificate of one physician they are confined to our mental hospitals. After they have arrived at our hospitals and have been given a thorough examination, brought before our staff, the Superintendent finds that they are without psychosis. This means that they are not a fit inmate for a mental hospital. In the past it has been very hard to get them out of our hospitals. Can we legally send them back to the counties from which they came, even if they are senile and mental defectives and probably could not take care of themselves?
>
> "In reading of the law I notice a case, Higgins vs. Hoctor, 332 Missouri 122, 62 S. W. 410. Just what this case is and means, I do not know. I know that this thing is coming up next Monday in Kansas City and I would like to be posted."

Article 2, Chapter 51, Revised Statutes of Missouri, 1939, deals with the admission of patients into the respective state hospitals.

Section 9328, R. S. Mo. 1939, provides that the several county courts have the power to send to a state hospital such of their insane poor as may be entitled to admission thereto.

Section 9335, R. S. Mo. 1939, provides that a citizen residing in the county wherein the alleged insane person is a resident, may file a verified statement in writing that the person is insane, without sufficient estate to support him, and that it can be proved by at least two persons, one of them being a reputable physician.

Section 9338, R. S. Mo. 1939, provides that the county court can cause the witnesses to be examined.

Section 9339, R. S. Mo. 1939, provides that if after such examination the court is satisfied of the truth of the above statement, the court shall enter a suitable order of record, or where the verdict of a jury has been rendered, the verdict. Such order must set forth that the person found insane is a fit subject to be sent to a state hospital for treatment and must require the medical witness forthwith to make out a detailed history of the case. The county court must further require that the clerk of the court forthwith forward a certified copy of the order of the court to the superintendent of the hospital, accompanying the same with a request of admission of the person found to be insane.

Section 9341, R. S. Mo. 1939, provides that upon receipt of the application and the official copy of the order of the court, the superintendent must immediately advise the clerk whether the patient can be received, and, if so, at what time.

The question which you present is - Whether, upon arrival of said patients it be found that they are not fit inmates for a mental hospital, they may be legally sent back to the counties from which they came although senile and mentally defective so that they cannot take care of themselves.

Section 9321, R. S. Mo. 1939, provides how persons admitted to state hospitals may be discharged for parole:

> "Persons afflicted with any form of insanity shall be admitted into the hospitals for the care and treatment of same. Any patient so admitted may be discharged or paroled whenever in the judgment of the Superintendent and his staff such person should be discharged or paroled. The decision of the Superintendent and his staff on such matter shall be final and the respective counties of this State are hereby prohibited from removing any indigent insane person unless such insane person is discharged as herein provided."

The above section makes it mandatory that persons afflicted with any form of insanity be admitted to the state hospitals for care and treatment, but places the entire question of when a patient shall be discharged or paroled in the absolute discretion of the superintendent and his staff.

The case of Higgins v. Hoctor, to which you refer, is reported as In Re Moynihan in 332 Mo. 1022, 62 S. W. (2d) 410, 91 A. L. R. 74.

In the above case the Supreme Court of Missouri, in discussing the question as to whether an order for temporary restraint made by the probate court was binding upon the superintendent of a state hospital to keep the person confined until an order was made in that court for release, said (S. W. (2d), l. c. 419):

> "However, such an order for temporary restraint, as made by the probate court here, is not binding upon the superintendent of a state hospital to keep the person confined until an order is made in that court for release. It is in no sense like a commitment in a criminal case for a definite term in jail or in the penitentiary. The person may lawfully be either discharged or paroled

and set at liberty by the superintendent of his own motion at any time. Section 8629, R. S. 1929 (Mo. St. Ann. Sec. 8629)."

We find no limitation in the language of Section 9321, supra, that patients must be declared to be same or capable of taking care of themselves before the superintendent and his staff are authorized to discharge or parole them from state hospitals.

We are, therefore, of the opinion that patients admitted to state hospitals may, in the discretion of the superintendent and his staff, be discharged or paroled and set at liberty at any time by the superintendent on his own motion.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

ROBERT L. HYDER,
(Acting) Attorney-General

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