

ELEEMOSYNARY INSTITUTIONS: ) Pay patient committed by probate court  
INSANE PERSONS: ) must post bond.

February 4, 1942

2-16

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

FILE.  
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Dear Mr. Jones:

This Department is in receipt of your request for an official opinion, which reads as follows:

"Will you please give me your official opinion upon the following question:

"Is a pay patient; committed to a state hospital for the insane by an order of the probate court, required to give a bond?"

Section 497, R. S. Mo. 1939, provides as follows:

"If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next sitting of the probate court for the county, who shall make such order for the restraint, support and safekeeping of

such person as the circumstances of the case shall require."

Section 498, R. S. Mo. 1939, provides:

"If any such person of unsound mind, as in the last preceding section is specified, shall not be confined by the person having charge of him, or there be no person having such charge, any judge of a court of record, or any two justices of the peace, may cause such insane person to be apprehended, and may employ any person to confine him or her in some suitable place, until the probate court shall make further orders therein, as in the preceding section specified."

Under the authority of the above sections it is well settled in Missouri that a judge of the probate court may order an insane person to be confined in some suitable place, which includes a state hospital. In re Moynihan, 62 S. W. (2d) 410, 332 Mo. 1022.

Section 501, R. S. Mo. 1939, which is in the same article as Sections 497 and 498, supra, provides as follows:

"If any insane person be admitted into the state lunatic asylum as a patient, the guardian shall pay for his support and expenses at such asylum, out of the estate of such ward; and if such insane person shall, at any time, come under the class of 'insane poor persons,' as specified in the law for the government of the state lunatic asylum and care of the insane, such person shall be supported and maintained at such asylum by the county in the manner provided by such law."

Chapter 51, Article 2, of the Revised Statutes of Missouri, 1939, deals with the admission of patients to the state hospitals. The statutes in this article, which will be noticed later, provide for the admission of two classes of persons, "pay patients" and "county patients." This distinction is recognized in Section 501, supra.

In 59 C. J., page 1047, it is said:

"The endeavor should be made by tracing the history of legislation on the subject to ascertain the uniform and consistent purposes of the Legislature."

A review of the history of the legislation relating to insane persons in Missouri, discloses that while even under the territorial laws provisions were made for the control of insane persons by the courts of this State (1 Mo. Territorial Laws, p. 507), still it was not until 1835 that a comprehensive law dealing with this matter was enacted in this State. In that year the General Assembly enacted what are now Sections 497 and 498, and other sections of what is now Article 18, of Chapter 1, which deals with "insane persons," (Revised Statutes of Missouri, 1835, page 155). It was not until 1855, however, that Section 501, providing for the expenses of insane persons, was passed (H. S. Mo. 1855, page 863). At the time what is now Section 501 was enacted, there were provisions providing under what conditions pay patients could be admitted to the "State Lunatic Asylum" and also providing for the admission of the indigent insane at the expense of the county. One of the provisions, before a pay patient could be admitted, was that a bond must be posted. This requirement is found in our present day law, in Section 9323, R. S. Mo. 1939, which is found in Article 2 of Chapter 51, and is as follows:

"\* \* \* Before any private patient shall be received into the hospital, there shall be produced \* \* \* a sufficient bond to said treasurer, conditioned that the obligor or obligors will secure the payment of charges incurred

in behalf and on account of said patient; said bond, with satisfactory securities, shall be of the form and contain the provisions as provided in section 9326. \* \* \* \* \*

Therefore, while the probate court may order an insane person confined in a suitable place, still, since 1855 our Legislature has recognized the requirement that if said person is confined in a state institution and able to pay for his care, that he must do so, and the State may, as said in Rice v. Gray, 34 S. W. (2d) 567 "prescribe the procedure for pay patients in asylums, subject to the citizen's constitutional rights."

Our General Assembly has provided that every pay patient must post a bond before being admitted, and we believe that this rule must be complied with, even though the patient is sent to the state institution under an order of the probate court. This is a logical and reasonable interpretation of these statutes, especially in view of that rule of statutory construction that all statutes relating to the same subject should be read in connection with each other, as together, constituting one law. State ex rel. Shartel v. Westhues, 9 S. W. (2d) 612, 320 Mo. 1093; Trust Company v. Elzea, 286 S. W. 371, 315 Mo. 485.

Conclusion

It is, therefore, the opinion of this Department that an insane person committed by order of the probate court to a state hospital as a pay patient, is required to post a "sufficient bond" required under Section 9323, R. S. Mo. 1939.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General