

ELEEMOSYNARY INSTITUTIONS:)
INSANE:)

Superintendent of State hospital
should not admit person when order
of commitment does not find that
the patient is insane.

February 13, 1942

216

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



Dear Sir:

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

"Enclosed is copy of a letter re-
ceived from State Hospital #3,
Nevada. Also, enclosed is certi-
fied copy of the order of commit-
ment for this patient.

"Will you please give us an opinion
on the admittance of cases of this
type?"

The enclosed letter from Dr. Ralf Hanks, Super-
intendent of State Hospital No. 3, at Nevada, Missouri,
reads in part as follows:

"I am in receipt of an order of com-
mitment from Greene County. The
commitment is the request of the
patient for treatment of Neurosyphilis.
Apparently, however, the patient does
not have a mental condition at the
present time, and the order of commit-
ment does not state that the patient
is insane."

The order of commitment of the County Court of Greene County is as follows:

"Now at this day comes on to be heard the petition and request of Belle Rutledge, 1603 N. Roberson, Springfield, Missouri, for an order admitting herself to State Hospital Number Three for treatment as a County patient, and

"It appearing to the Court that the said Belle Rutledge has filed a petition and request in which the filing of information, notice of hearing, or hearing before the County Court for admission to said State Hospital has been waived, and,

"It is, therefore, ordered by the Court that there is hereby made an order requesting the Superintendent of State Hospital Number Three to admit the said Belle Rutledge as a county patient for treatment.

"It is further ordered by the Court that a certified copy of this order be transmitted to the Superintendent of State Hospital Number Three with a Treasurer's check in the amount of \$36.00 for care of the said Belle Rutledge for the ensuing six months."

Your request deals entirely with the question of who may be admitted to a State hospital as a patient, and we are not concerned in this opinion with the right of the superintendent of a State hospital to discharge a person whom he, in his discretion, decides is not insane.

Section 9335, R. S. Mo. 1939, provides that in order for a county court patient to be admitted that some

citizens residing within the county must file with the clerk of the county court a verified statement in which it is stated that said proposed patient is insane and has not sufficient estate to support him at a State hospital. Section 9338, R. S. Mo., 1939, provides that the county court shall examine witnesses upon the question of the sanity of the alleged insane person.

Section 9339, provides as follows:

"If after such examination, the court, or the jury, if one shall have been employed, shall be satisfied of the truth of the facts set forth in the statement, the court shall cause a suitable order to be entered of record, upon their own decision, or, where the verdict of the jury has been rendered, upon the verdict. And such order shall further set forth that the person found to be insane is a fit subject to be sent to a state hospital (naming the particular hospital), to undergo treatment therein; and shall further require the medical witness forthwith to make out such a detailed history of the case as is required by section 9332; and, also, that the costs of this examination be paid out of the treasury of the county; and, also, that the clerk of the court forthwith forward a certified copy of said order of court to the superintendent of the hospital, accompanying the same with a request of admission of the person found to be insane to the hospital."

A reading of the order of the county court discloses that the court did not find that the person was insane. The effect of such an omission was considered in the case of *Ex parte McLaughlin*, 105 S. W. (2d) 1020, in

which the court said (l. c. 1022):

"Section 8647, R. S. 1929 (Mo. St. Ann. Sec. 8647, p. 7745), provides that if after the examination of an alleged insane person the court shall be satisfied of the truth of the facts set forth in the statement, the court shall cause a suitable order to be entered of record. 'And such order shall further set forth that the person found to be insane is a fit subject to be sent to a state hospital (naming the particular hospital), to undergo treatment therein; and shall further require the medical witness forthwith to make out such a detailed history of the case as is required by section 8640; and, also, that the costs of this examination be paid out of the treasury of the county; and, also, that the clerk of the court forthwith forward a certified copy of said order of court to the superintendent of the hospital.' The order or judgment of June 8 does not 'set forth' that the petitioner was 'a fit subject to be sent to a hospital'; nor does it order the clerk to 'forthwith forward' a certified copy thereof to the superintendent of the hospital at St. Joseph, Mo. It is plain, we think, the order does not 'follow strictly' nor substantially the mandatory provisions of the statute. * * *"

The holding of the above case was that since the county court had not followed the statute in making its order of confinement that such order did not comply with the statute and was of no effect. We believe this is authority in the instant case.

Mr. Ira A. Jones

-5-

Feb. 13, 1942

Conclusion

It is, therefore, the opinion of this Department that when a county court in committing an insane person to a State hospital, fails to set forth in its order that such person is insane, as required by Section 9339, R. S. Mo., 1939, that said order is of no effect and that the superintendent of the State hospital to which the order is directed, should refuse to admit the patient.

Respectfully submitted,

ARTHUR O'KEEFE
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

AO'K:EG