**INSANE PATIENT:** County court may require estate of indigent insane patient to pay hospital fees, when by reason of an inheritance, the court changes status of patient from "county" to "private pay" patient.

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Mr. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Mr. Marr:

This will acknowledge receipt of your letter of recent date, in which you request an opinion concerning recovery by the county court from funds in the hands of a guardian of an insane county patient.

The details of your request, as set out in your letter, are as follows:

> "When Fred Adams was sent to Nevada, Mo., to the state hospital for the insane, as a county patient, he had no estate. After he had been there a while, he inherited some money from the estate of his grandfather, and for that estate a guardian was appointed for him, and that estate is still pending. For nearly eight years he has been in the state hospital for the insane as a county patient; and he has an estate here in the probate court, and it is slowly being consumed by court costs and some expenses of the guardian in making settlements, annually.
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> "After reading section 500 of the R. S. Mo. 1939, it seems to me that section was just made for that situation, but after reading the case of Audrain County v. Muir, 249 S. W., l. c. 385, it looks like those cases cited would hold that unless

> there is some special contract with the county, before a man is sent away, the county cannot recover; but I do notice that the statute cited in Chariton County vs. Hartman, 190 Mo. l.c. 76, 77-88 S. W. 617, is different in wording than section 500 supra.
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> "I want to know if section 500, will support an action by Morgan County against this estate of Fred Adams for the moneys we have been out for his keep in the state hospital for the last eight years?"

Before discussing the questions raised in your letter it will be necessary to make certain assumptions in connection with the facts as you state them. We assume, therefore, in this instance the following:

1. Adams was, and is "a person without a family",as classified under our statutes;

2. The estate, or property, in the hands of the guardian is still in the form of personal property (money inherited from grandfather's estate);

3. That the guardian has refused a demand against the estate on the part of the county for funds in his hands for the upkeep of his ward while the ward is in the State Hospital.

With respect to the indigent insane, and particularly with the situation you mentioned, your attention is directed to Section 9358 R. S. Mo., 1939, which defines and construes terms hereinafter used, as follows:

> "The words 'insane' and 'lunatic,' as used in this chapter, shall be con-

> strued as including every species of insanity or mental derangement. The terms 'insane poor' or 'indigent insane,' when applied to a person without a family, shall mean one whose property of all kinds does not exceed, after payment of his debts and liabilities, that which is exempted by the laws of this state from attachment and execution when owned by any person other than the head of a family; and the same words, when applied to a person having a family, shall mean one whose property of all kinds does not exceed, after payment of his debts and liabilities, that which is exempted by the laws of this state from attachment and execution when owned by the head of a family; * * * "

See Section 504 R. S. Mo., 1939, for it defines a "person of unsound mind" and "insane person" to mean either an idiot, lunatic or a person of unsound mind and incapable of managing his own affairs.

See also Sections 9590, 9591, 9593, and 9594 R. S. Mo., 1939. We do not quote these sections because of their length, but they concern themselves with the county's support of the poor. The leading decisions as they apply are Yarnell v. Cole County, 80 Mo., l. c. 84, and Scotland County v. McKee, 67 S. W. 559, 168 Mo. 282.

Section 501 R. S. Mo., 1939, relating to expenses, reads 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."

Section 500 R. S. Mo., 1939, provides that appropriations may be recovered:

> "In all cases of appropriation out of the county treasury for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same, and also the county may recover the amount of said appropriations from the estate of such insane person."

Under the decisions in cases arising under Section 500, supra, it seems that before the county can recover for sums expended in support of the indigent insane where the court has committed a patient upon a declaration of inability to pay for this support it, the court, must bring itself under the statutory provisions and show that the guardian was bound to provide for the ward's support and had apparently sufficient ability to pay.

When committed to the State Hospital at Nevada, Adams was declared to be an indigent insane person, and as such

a county patient to be supported by the county. As we have previously seen, under the decisions, the county, in order to recover from the guardian, must show that the guardian is bound to provide for the ward's support and has apparent ability to pay.

Does the fact that the patient receives an inheritance some time subsequent to his commitment change his status with respect to the payment of funds toward his "keep" while in the hospital? We believe it does. He is not now"indigent" within the meaning of the statute, in the sense that he lacks income, or funds. He is "indigent" only by reason of physical infirmity or disability.

Looking now to an authority on "guardianship", we find in Woerner's American Law of Guardianship, at page 468, the following:

> "But while an adult person of unsound mind cannot be held liable for any express contract entered into by him, it is clear on principle and authority that such person may become liable on an implied contract for necessaries suitable to his estate and condition in life, furnished before or after the appointment. The ancient maxim, that no one ought to be permitted to stultify himself, though denied in modern law, is clearly applicable in cases of lunatics, where the law implies, as it does in cases of minors, a promise to pay for necessary services, or supplying necessary articles, if not supplied by the guardian. Insane persons stand, in this respect, on the same footing with minors. The services rendered, or articles furnished,

> must be such as to prove beneficial to the lunatic; if they prove of no benefit, the party cannot recover, even though he in good faith supposed him to be sane, if the circumstances known to the other were such as to convince a reasonable and prudent man of his insanity, or put him on an inquiry by which, if reasonably prudent, he might have learned that fact. * * * * * * * * * * * * "

Turning now to the latest decision on the question involved, we find in Barry County v. Glass, 160 S. W. 2d 808, 809, 810, the following:

> "Section 471, R. S. 1939, provides that all demands against the estate of an insane person shall be presented to the probate court. Notice of such demand concededly was served upon the guardian and curator. The Probate Judge allowed the demand to Barry County as a fifth-class claim, which means that such demand was presented within six months after notice of the guardianship was published. The Statute says 'all demands' against the estate. The probate court certainly had original jurisdiction to allow and classify the claim of the county against the estate of any insane person, regardless of whether or not such estate was sufficient to pay such demand.
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> "Plaintiff in error cites Montgomery County v. Gupton, 139 Mo. 303, 39 S. W. 447. All we need to say of the case cited is that it was decided in

1897 and before the Statute was amended so as to give the county a demand or claim against the estate of the insane person. What the Supreme Court held in that case, is well shown in paragraphs 1 and 2 of the syllabi of the 39 S. W. at page 447. The 1927 amendment, Laws 1927, p. 98, R. S. 1939, Sec. 500, supplied the very defect pointed out in the Gupton case. The judgment must therefore, be affirmed."

CONCLUSION

From the examination of authorities touching upon the question involved and the facts as you give them, we conclude as follows: the county court may require the estate to pay for the upkeep of an insane indigent patient previously admitted to a state institution as a county patient and supported by the county.

Respectfully submitted,

L. I. MORRIS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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