INDIGENT INSANE
INMATE OF COUNTY FARMS: County Court cannot recover for maintenance of such person as such inmate.

March 27, 1945

FILED
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Honorable W. V. Mayse
Prosecuting Attorney of Harrison County
Bethany, Missouri

Dear Mr. Mayse:

Your letter of March 16, 1945 to General Taylor requesting an opinion from this Department respecting a claim by Harrison County against the estate of an insane person, for the maintenance of such person at the Harrison County Home, has been received, and assigned to the writer to prepare the opinion.

Your letter states:

> "I would like to get an official opinion from the Attorney General's office on the question presented by the following statement of facts."
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> "In January of 1940 a resident of our County was admitted to our County Farm and this person in 1942 was adjudged of unsound mind by our Probate Court and on August 10, 1942 our Public Administrator of the County was appointed by the Probate Court as guardian of the person and estate of this person. Notice of this appointment was duly published in our County newspapers according to the statute. At the time a guardian was appointed it was discovered that she had a little over $700.00 in monies and bonds. This person of unsound mind continued to be cared for at our County

Farm at the County's expense. The County continued to pay this expense until July 1944. At that time my predecessor in office filed a demand against the estate for all the monies expended by the county for the care and keep of this person of unsound mind, from the time she first entered our County Farm in 1940 right straight through."

"I have been unable to find cases that construe clearly to me the application. Section 500 and 471 R. S. of 1939--the latter being of course a statute of limitation."

"Now with these facts in mind you can readily see the issues presented by failure of the County to file a demand against the estate of this person of unsound mind whithin one year after publication of notice of the appointment of guardian. Does it bar the county from successfully maintaining such demand, or is the estate of this poor person, in spite of the statute of limitation 471, liable in full for monies expended by the County for her support and care from 1940-1944. By the way of statement of additional facts, this person of unsound mind is still living."

It is said in the statement of facts in the request for this opinion that the insane person referred to was an inmate of the County Farm Home of Harrison County as a poor person until July, 1944.

Section 9593, Article 3, Chapter 55, R. S. Mo. 1939, under the subject of "County court to provide for the support of the poor." states:

"The county court of each county, on

> the knowledge of the judges of such tribunal, or any of them, or on the information of any justice of the peace of the county in which any person entitled to the benefit of the provisions of this article resides, shall from time to time, and as often and for as long a time as may be necessary, provide, at the expense of the county, for the relief, maintenance and support of such persons."

The statement of facts also states that this person was still maintained as a County poor person or pauper until July, 1944, notwithstanding she was so adjudged to be of unsound mind on August 10, 1942.

Section 500, Article 18, Chapter 1, R. S. Mo. 1939 under the title of "Administration" states:

> "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."

Said section 500 dealing solely with "insane persons," itself eliminates its terms and conditions from applying to the claim in this case prior to August 10, 1942. This person was not an "insane person," according to the facts as stated, until August 10, 1942.

Monies expended for the maintenance of its poor cannot be recovered by a County. This has been announced by the Supreme Court and the Courts of Appeals of Missouri in numerous cases. This was the holding in the case of

Chariton County v. Hartman, 190 Mo., page 71, l.c. 76 and 77, quoting Montgomery County v. Gupton, 139 Mo. l.c. 308 where it is said:

> "* * * It is well settled at common law that the provision made by law for the support of the poor is a charitable provision, from which no implication of a promise to repay arises, and moneys so expended cannot be recovered of the pauper, in the absence of fraud, without a special contract for repayment. (Citing cases.) A person so relieved, whether he had or had not property, never was liable to an action for such relief at common law. * * *."

The case of Montgomery County v. Gupton, supra, on this point is cited with approval in numerous cases both by the Supreme Court and other Courts of Appeals.

The case of St. Louis v. Hollrah et al. 175 Mo. page 79 was a case where the City of St. Louis sued the estate of an insane person for appropriations for necessities furnished for maintenance and support of such person in a hospital for insane persons. The Court held the City could recover.

It appears, upon reading the Hollrah case, that the claim might have been defeated had the defense been made that the person involved was an insane pauper. But such defense was not made. The Supreme Court in mentioning the case of Montgomery County v. Gupton, supra, in the Hollrah case, l. c. 85, said:

> "It is next contended that under the ruling in Montgomery County v. Gupton, 139 Mo. 303, no recovery can be had in this case if the necessaries were furnished to Mrs. Hollrah as an insane pauper, and that the petition fails to state a cause of action in that it

> does not negative that fact. This proposition answers itself. If such was the fact, it was matter of defense, and should have been so pleaded by the guardian."

The Court thereby, in effect, held that if it were a fact that the person was an insane pauper that that defense could have prevailed, had it been pleaded. It is apparent then that no recovery may be had by Harrison County against the estate of this person prior to the 10th day of August, 1942, the date of the establishment of her guardianship.

The question then is, may the County recover for support and maintenance of the County ward after that date and up to July, 1944, after which time the County has paid no expenses for her at the County Farm, as it appears.

According to the statement of facts here, this person was an inmate of the County Farm as a poor person from sometime in 1940 to July, 1944, and was maintained as such, at the County Farm as a mere incident to the County Court of Harrison County providing for the maintenance of the County Farm itself. Article 3, Chapter 55, R. S. Mo., 1939, in sections 9597 and 9601 thereof, contains provisions for the support of County Homes and Farms. Apparently the County Court of Harrison County had no intention of charging this person for her maintenance as an inmate of the County Farm even after she was declared to be of unsound mind, or until after July 1944, when it terminated such support. In order to recover any sum from the estate of this person, now in the hands of her guardian, Harrison County must bring itself within the terms of some statute permitting the County to so recover. As we have seen from the cases before cited the County has no common law right to collect from this person.

Section 9334, R. S. Mo., 1939 requiring counties to support indigent insane persons in State Hospitals for the insane is as follows:

> "The superintendent shall, under the direction of the managers, cause, once in every six months, to be made out and forwarded to any county

> court which may send to a state hospital an insane poor person, an exact account of the sum due and owing by such court on account of such insane person. Said court, at its first session thereafter, shall proceed to allow, and cause to be paid over to the treasurer of such state hospital, the amount of said account."

The Supreme Court of this State had this exact question before it in the case of Audrain County v. Muir 249 S. W. 383. This case distinguishes between the rights of a county and an individual with respect to recovery of necessities where the person was an indigent insane person. The Court, in construing as it then stood what is now Section 500, R. S. Mo. 1939, held that while an individual might recover for necessities furnished, a County could not do so unless it brought itself strictly within the terms of such statute. On this question, l. c. 385 and 386, the Court said:

> "The provision made by law for the support of poor or indigent insane is devolved by the statute upon the counties of which they are inhabitants. Cox v. Osage County, 103 Mo. 385, 15 S. W. 763; Montgomery County v. Gupton, 139 Mo. loc. cit. 308, 39 S. W. 447, 40 S. W. 1094; Chariton County v. Hartman, 190 Mo. loc. cit. 76,77, 88, S. W. 617. It is well settled at common law that the provision made by law for the support of the insane poor by the county is a charitable provision, 'from which no implication of a promise to pay arises,' in the absence of fraud, without a special contract for repayment. Chariton County v. Hartman, supra; Montgomery County v. Gupton, supra.
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> "So that, in order to recover in this case, the plaintiff must bring itself within the statutory provision and

> show that defendant was 'bound to provide' for his wife's support and maintenance, and was of 'sufficient ability to pay the same.'"
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> "There is no doubt that at common law 'food, clothing, shelter and medical attention and such things as every one must have,' are absolute necessities, which the husband, as long as he and his wife are living together as husband and wife, is bound and under legal obligations to supply to his wife, especially if she has no property or estate of her own, and is unable to supply such necessaries herself. * * *."

Prior to 1927 a County had no right to collect from the estate of an indigent insane person, the appropriations made for their maintenance in a State Hospital for the insane. The Legislature of this State in 1927 did amend what is now our Section 500, R. S. Mo. 1939, to permit such recovery against the estate of insane persons. It will be observed, by reading said section 500, that the amendment permitting a County to recover the amount of said appropriations from the estate of such insane persons refers to the actual formal appropriations out of the County Treasury for the support of such insane persons as is stated in the first clause of said section. Section 9334, supra, requires such appropriations to be calculated to the penny. Apparently there was no actual appropriations for maintenance of the subject of this controversy while she was an inmate of the County Farm of Harrison County. There is no intention of the Legislature expressed in the terms of said Section 500 to warrant recovery for maintenance of insane inmates of County Farms by the amendment of 1927. It only applies to persons who may be confined in State Hospitals for the insane. The provisions of Section 500 have been before the Supreme Court and Courts of Appeals for construction in many cases since the amendment of 1927. All of those cases were suits to recover definite appropriations for persons maintained at State Hospitals for the insane.

The case of Barry County v. Glass, 160 S.W. (2d) 808 is a fair example of those cases. That case holds that the estate of an insane person is liable for appropriations made for the maintenance of such person in a State Hospital and recognizes the rule that there must be express authority by statute before a County may recover for maintenance furnished an insane pauper. Our Springfield Court of Appeals, in pointing out the syllabi in paragraphs one and two in the Gupton case, so stating, l. c. 809 and 810 in the Glass case:

> "* * * The same provision is contained in Section 501, R. S. 1929, and that provision was in full force and effect when Glass was confined in the State Hospital at Nevada, Missouri, as a county indigent patient, and, under that section, the estate of Charles W. Glass, an insane person, was clearly liable for the money previously paid out by Barry County."
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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. * * *."

In the case of Jones v. Norton, 60 N. W. page 200, the precise question presented here, whether the estate of an insane pauper was liable for maintenance at a County Home or Farm as distinguished from the liability for "any sums paid by the County" for the maintenance of such person in a State Hospital for the insane, was before the Supreme

Court of Iowa. The statutes of the State of Iowa, respecting both the maintenance of insane poor persons in County Homes or Farms and in State Hospitals for the insane, are very similiar to our respective sections 9593 and 500, R. S. Mo. 1939. Our section 500, in defining the liability of the estate of such person to a County, says that it shall be for "the amount of said appropriations." The Iowa statute says the measure of recovery against the estate of an insane person, in distinguishing between liability under that statute and non-liability under the pauper statute, shall be for "any sums paid by the County in their behalf as herein provided." The case recites and gives the provisions of its said respective statutes, and in holding that the statute mentions "any sums paid" referred only to definite sums paid for insane persons in State Hospitals, just as our section 500 provides for the recovery of "said appropriations," and that recovery could be had for such "sums paid," for maintenance at a State Hospital for the insane, and in holding that no recovery under that section could be had against the estate of an insane poor person, the court in l.c. 201, N. W. 60, said:

> "* * * The further provisions do create a liability to the county, not for support furnished at the county poor-house, but for 'any sums paid by the county in their behalf as herein provided.' What follows shows that the sums 'herein provided' refer to sums paid for treatment and support in the state hospital. It is 'sums paid' that are recoverable, not the value of 'board and lodging, care, medicine, and medical attendance,' as claimed in this case. * * *."

It is held in several cases decided by our Supreme Court and Courts of Appeals that a common law liability to pay money exists against the estate of an insane person for necessities. These cases all, except the Hollrah case, supra, were cases where an individual furnished the necessities for an insane person. The Hollrah case itself, as above cited and discussed, holds

that had the defense been made that the maintenance was furnished to an insane poor person by the St. Louis Hospital, it would have been a valid and perhaps sufficient defense to defeat recovery. Cases so holding that there is an implied agreement under the common law to pay for such necessities by the estate of an insane person are, Took v. Took, 120 S. W. (2d) 168, Chariton County v. Hartman, 190 Mo., page 71, l. c. 76 and 77, Audrain County v. Muir, 249 S. W. 383, l.c. 385 and 386, and Reando v. Misplay, 90 Mo. 251. For the sake of brevity, the text of these cases will not be quoted except in the last case cited. The Reando v. Misplay case is typical of the rule stated and at l. c. 258 says:

> "* * * If necessaries are furnished a person in this condition, in good faith, and under circumstances justifying their being so furnished, the person furnishing may recover. If the law were not so, the insane might perish, if a guardian having means should neglect or refuse to furnish the supplies needed for their support. They stand in the same position as minors, and are liable for necessaries. * * * The estate of the insane is legally, as well as equitably, liable for necessaries furnished in good faith and under circumstances justifying their being furnished."

From the above authorities it appears to be conclusive that our section 500, R. S. Mo. 1939 does not furnish authority to recover for maintenance of a person who is an inmate of a County Home or County Farm; that said section applies only to the recovery for definite appropriations made as such, under section 9328, Article 2, Chapter 51, R. S. Mo. 1939, for the maintenance of indigent insane persons in State Hospitals; and that such means as were used by Harrison County for the maintenance of this person in the County Farm are not recoverable because they were charitable in their purpose and application and for

which Harrison County has no statutory or implied right to recover.

CONCLUSION

It is, therefore, the Opinion of this Department that under the facts stated in the letter requesting this Opinion, and under the authorities cited, the estate of the person referred to, as being of unsound mind, is not liable to Harrison County, Missouri for her maintenance at the County Farm at any of the times named.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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