STATE HOSPITALS: Section 202.330, RSMo Cum. Supp. 1957, is applicable
PAY PATIENTS: to patients committed to state hospitals prior
CHARGES: to the effective date of the above statute; that the Division of Mental Diseases may charge pay patients in state hospitals the maximum amount fixed by the division for each institution or any amount below that maximum based upon the ability, or means of the patient, to pay. A husband is liable for the support of his wife unless she has abandoned him without good cause or has abandoned him with cause, and has contracted an adulterous relationship consequently; that a husband is liable for the support of his minor children; that in the absence of the husband or his inability to support minor children the same obligation devolves upon the wife. Persons who adopt a child and persons who stand in the position of in loco parentis have the same duty to support as do natural parents.

June 18, 1958

FILED
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Mrs. Ruth Nanson, Executive Secretary
Division of Mental Diseases
State Office Building
Jefferson City, Missouri

Dear Mrs. Nanson:

In a letter to me under date of March 27, 1958, you direct my attention to Section 202.330, RSMo Cumulative Supplement, 1957, and then ask three questions relating to the above section.

The first of these questions is: "Can the above named statute be applied to patients committed prior to the effective date of the statute, or is the statute applicable only to patients admitted after this law is effective?"

Section 202.330, supra, to which you refer, was enacted by the 69th General Assembly, became effective August 29, 1957, and reads:

> "In determining the amount necessasry to be charged for the support of pay patients, the director of the division of mental diseases is authorized to determine the maximum amount per month that may be charged in each of the five state hospitals, and the St. Louis training school and the Missouri state school. The maximum charge shall be related to the per capita cost of each institution which may vary from one locality to another. The director shall also determine a standard means test which will be applied to all institutions under the division."

Subsequent to writing the above letter, you have orally informed us that the situation which you contemplate is one in which, prior to August 29, 1957, a pay patient has been admitted to a Missouri state hospital upon the basis of $50 per month payment. Under the authority of Section 202.330, supra, the Director of the Division of Mental Diseases will determine, let us say for example, that the maximum which can be charged for a pay patient is $75 per month. Can the pay patient who was admitted prior to August 29, 1957, be required to pay this maximum or, at any rate, more than $50 per month? The only possible theory upon which it could be held that the pay patient could not be required to pay more than the amount which he had been paying prior to August 29, 1957, would be that when he was admitted to the hospital he entered into a contract with the hospital by which the hospital contracted to keep and maintain the patient for an indefinite time for a certain amount of money.

We do not believe that there is any indication that there was in any of the pay-patient cases any such contract.

There is nothing in the procedure set forth in regard to the admission of pay patients to a state hospital which would indicate the contractual relationship. Numbered paragraphs 1 and 2 of Section 202.863, RSMo Cumulative Supplement 1957, read:

> "1. Patients admitted to the state hospitals under the provisions of this law shall be classified as private patients or as county patients.
>
> "2. When admission is sought for any person as a private patient, payment for care and treatment shall be made to the business manager of the hospital for thirty days in advance and a bond executed in sufficient amount to secure the payment for such care and treatment. No part of the advance payment shall be refunded if the patient is taken away within such period uncured and against the advice of the superintendent."

Section 202.867, sets forth the form of the bond referred to in numbered paragraph 2 of Section 202.863, supra. Because of its length we shall not set this forth in full. The bond is to be signed by those persons who bind themselves as obligors for the care and treatment of the person admitted as a pay patient. We do not find anything in such bond that could possibly be construed as being a contract.

We do not believe that the statute providing for the admission of a pay patient is intended to, or does, set up a contract by the patient and the state. In the case of Dodge vs. Board of Education, 302 U.S. 74, at l.c. 78, the United States Supreme Court stated:

> "In determining whether a law tenders a contract to a citizen it is of first importance to examine the language of the statute. If it provides for the execution of a written contract on behalf of the state the case for an obligation binding upon the state is clear. Equally clear is the case where a statute confirms a settlement of disputed rights and defines its terms. On the other hand, an act merely fixing salaries of officers creates no contract in their favor and the compensation named may be altered at the will of the legislature. This is true also of an act fixing the term or tenure of a public officer or an employe of a state agency. The presumption is that such a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise. He who asserts the creation of a contract with the state in such a case has the burden of overcoming the presumption. If, upon a construction of the statute, it is found that the payments are gratuities, involving no agreement of the parties, the grant of them creates no vested right."

In the case of Wisconsin and Michigan Railway Co. v. Powers, 191 U.S. 379, at l.c. 387, the United States Supreme Court stated:

> "But this is a somewhat narrow and technical mode of discussion for the decision of an alleged constitutional right. The broad ground in a case like this is that, in view of the subject matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy and providing for carrying it out it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefore it makes no promise to them. It simply indicates a course of conduct to be pursued, until circumstances or its views of policy change. It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in and action on the faith of a statute, merely because their interest was obvious

> and their action likely, on the face of the law. What we have said is enough to show that in our opinion the plaintiff never had a contract, * * *"

We believe it to be clear that under the law as set forth in the two preceding cases, no contract was ever entered into in the instant situation. We agree with the language of the court in the Dodge case, particularly, when it states that statutory law simply declares a policy which is to be followed until the Legislature shall ordain otherwise.

In the case of the City of St. Louis vs. Cavanaugh, 207 S.W.2d 449, at l.c. 454-455, the Supreme Court of Missouri stated:

> "The power to repeal the ordinances providing for a free bridge was but an incident to the power to enact them. Kansas City v. White, 69 Mo. 26; 37 Am. Jur. 834, Municipal Corps., Sec. 197. The members of the Board of Aldermen could not bind their successors in office with reference to the matter of tolls or no tolls. 50 Am. Jur. 62, Statutes, Sec. 45. In addition, the respondent had no vested right to have the ordinances remain in force and effect. * * *" (Emphasis ours.)

Your second question is: "Whether under Section 202.330, supra, after the maximum amount is established for each institution in accordance with the per capita cost, can the Division of Mental Diseases charge an amount less than the maximum amount based upon the patient's ability to pay?" Thus, one might be charged $75 a month; another $60; another $50; and other amounts below this.

A determination of this question, of course, involves a construction of Section 202.330, supra, quoted above. We believe that some light is thrown on that construction by reference to the section which it repealed, which was Section 202.330 RSMo 1949. That section reads:

> "In determining the amount necessary to be charged for the support of pay patients, the five state hospitals shall be considered as a unit in determining the cost for the support of insane patients, and each of the other institutions managed by the division of mental diseases shall be considered separately in determining the amount to be charged for the support of patients in such institutions."

We note that the above section does not use the word "maximum" as does the present section but refers only to the "amount necessary to be charged for the support of pay patients." Some meaning therefore must be given to the word "maximum." It would seem clear that it was the intent that no more than a certain amount should be charged any pay patient, but that a lesser amount could be charged. This thought is furthered by the final sentence in the section which is that: "The director shall also determine a standard means test which will be applied to all institutions under the division." The use of the word "means" can, we believe, have only one meaning and that is, ability to pay. Such is the meaning of the word given in the case of Moore v. State Social Security Commission, 122 S.W. 2d 391. At l.c. 394, the Kansas City Court of Appeals stated:

> "Though claimant is incapacitated from earning a livelihood the question remains, has he income or resources sufficient to maintain him in decency and health? If the answer is yes, then he has adequate means of support. If the answer is no, then he does not have adequate means of support.
>
> "The word 'resources' has thus been defined: 'Money or any property that can be converted into supplies; means of raising money or supplies; available means or capability of any kind.' 54 C.J. 723.
>
> "The word 'means', when used in reference to property, signifies 'Estate; income; money; property; resources.' 40 C.J. 18. The New Century Dictionary defines 'Means' as 'disposable resources.'
>
> "The words resources, income and means refer to property or capabilities of producing property and do not include gifts which may or may not be made at some future time.
>
> "No court or law writer, so far as our research has disclosed, has ever said that an indigent person whose only support is contributions made by one who is not under

> legal duty to make them, has resources, means or means of support. The law recognizes and enforces rights which are legal and none other."

Other cases of similar import could be cited. However, since the above is the only possible construction which could be placed upon the word "means" as it is used in Section 202.330, supra, it follows that the word must have reference to the ability to pay of each individual pay patient because if it does not mean this then the last sentence of the section means absolutely nothing and it is a standard rule of statutory construction that meaning must be given, if possible, to all parts of a statute.

That such was the intent of the legislature is, we believe, demonstrated by the fact that prior to the re-enactment of Section 202.330 by House Bill No. 446 in the 1957 General Assembly, a bill which was introduced by Representative Simcoe of Callaway County, the legislature received recommended legislative changes from the superintendents of the five state hospitals. We here quote from that recommendation as supplied to us by the Legislative Research Committee:

> "202.330
>
> The Problem
>
> "At present the following situation has developed in the handling of charges in the five state hospitals. The St. Louis State Hospital arranges for charges for private care in terms of the patient's ability to pay, thus charges may vary from $10 to $120 per month. In the other four hospitals private care patients pay a fixed fee of $50 per month. This fee is fixed whether a person can afford either more or less. It is conceivable that some patients may be able to afford some sum less than the $50 a month, thus additional revenue to the state is lost. Also the fact that one hospital functions according to one policy and the other four hospitals according to another appears to be not in keeping with 202.330.

Recommendation

"202.330

"In determining the amount necessary to be charged for the support of pay patients, the director of the division of mental diseases, is authorized to determine the maximum amount per month that may be charged in each of the five state hospitals, and the St. Louis Training School and the Missouri State School. The maximum charge shall be related to the per capita cost of each institution which may vary from one locality to another. The director shall also determine a standard means test which will be applied to all institutions under the division."

It will be noted that it was the obvious intention of the superintendents who drew the proposed bill, which was adopted by the legislature, that the director be given the power to fix the amount that each pay patient should pay, based on his ability to pay, in whatever amount that ability might be up to a previously determined maximum.

Since this was the obvious intention of the persons who drew the bill which was adopted by the legislature, it can reasonably be inferred that this was also the legislative intent.

We believe, therefore, that the Director of the Division of Mental Diseases may charge an amount less than the maximum amount set for each state institution based upon the ability of each individual pay patient in that institution to pay.

Your final question is: "What relatives would be legally responsible to pay for a patient's care?"

In response to this question, we would point out that it is the duty of a husband to support his wife and minor children. In the case of Greer vs. McCrory, 192 S.W. 2d 431, at l.c. 442, the Missouri Supreme Court stated:

" * * * The home and family form such a vital part of society itself and is so essential to public welfare that the law of the land imposes upon the husband the

> duty, in so far as he is reasonably able to do so, to provide a home for and to support his wife and family. * * *"

In the case of Broaddus vs. Broaddus, 221 S.W. 804, at l.c. 804, the Kansas City Court of Appeals stated:

> " * * * Under the common law as well as by statute the husband is bound to furnish reasonable support for his wife and minor children. Youngs v. Youngs, 78 Mo. App. 225. * * *"

In the case of Bitzenburg v. Bitzenburg, 226 S.W. 2d 1017, at l.c. 1023, the Missouri Supreme Court stated:

> " * * * The obligation of a husband to support his wife becomes complete at the time of their marriage, and the obligations of a father to support his child is complete when the child is born. Pickel v. Pickel, 243 Mo. 641, 662, 147 S.W. 1059."

Numerous other cases making the same holding could be adduced. This duty upon the father to support the child is until the child attains its majority.

In the case of Thomas v. Thomas, 238 S.W. 2d 454, at l.c. 455, the Kansas City Court of Appeals stated:

> "The defendant appealed, and urges that the court erred in sustaining plaintiff's motion because it is the primary duty of a father to furnish support for a child until said child attains his majority, 'absent a change of condition.' That is a correct statement of a general principle of law, * * *."

In the case of Thompson vs. Perr, 238 S.W. 2d 22, at l.c. 25, the Missouri Supreme Court stated:

> "A father's liability to a third person for necessaries furnished his minor child is not affected by the fact that the custody of the child has been awarded to the mother. But in any event his liability is founded upon the

> theory of authorization; and in the absence of an express promise to pay, there must be a showing of circumstances from which a promise may be implied.
>
> "[4-6] Except for an emergency which renders a third person's immediate interference both reasonable and proper, an implied promise to pay for necessaries must depend upon the father's failure or refusal to supply them; and where he is ready and willing to make suitable provision for his child, there can be no recovery by a third person who has furnished the necessaries without his express authority. In other words, the basis of the father's liability is his omission to fulfill his obligation of supporting his child; and a stranger who furnishes articles or renders services to the child does so at the peril of being able to show that they were furnished under such circumstances as to have imposed a duty on the father to pay for them. * * *"

In the case of Schwieler vs. Heathman's Estate, 264 S.W. 2d 932, at l.c. 933, the St. Louis Court of Appeals stated:

> " * * * The appellant asserts that the natural father has the primary obligation to support his minor child and that others furnishing the child with necessaries may recover from the father. This, as a general proposition, is the well-established law. Winner v. Schucart, 202 Mo. App. 176, 215 S.W. 905; McCloskey v. St. Louis Union Trust Co., 202 Mo. App. 28, 213 S.W. 538; Kelly v. Kelly, 329 Mo. 992, 47 S.W. 2d 762, 81 A.L.R. 875. * * *"

As to the obligation of the husband to support the wife, discussed above, there are exceptions. In the case of Hess v. Hess, 113 S.W. 2d 139, l.c. 142, the Missouri Supreme Court stated:

> "Moreover, by the decree in the former suit, the plaintiff herein stands convicted of having abandoned and left her husband and of having absented herself from him without any reasonable

> cause for so doing; and it follows that he was under no obligation to support her so long as she did not return to him."

In the case of Webster vs. Boyle-Pryor Const. Co., 144 S.W. 2d 828, at l.c. 829, the Kansas City Court of Appeals held:

> "While the evidence tends to show that deceased was guilty of such conduct as to justify claimant in leaving him, in that he cursed, struck and abused her, yet it is well established that where a wife leaves her husband, even for a justifiable cause, and subsequently lives in open adultery, she thereby forfeits her right to support from him. 30 C. J. pp. 519, 597; 27 A.J.P. pp. 17, 18; 26 A.J.P. pp. 939, 962, 963. * * *"

Thus, it will be seen that when a wife leaves her husband without cause she is not entitled to support from him and that when she leaves her husband with cause and later enters into an adulterous relationship she is not entitled to receive support.

The cases above have stated that it is the primary duty of the father to support the child. When the father is not available to do this and cannot be made to do it, then the duty devolves upon the mother. In the case of State vs. Hall, 257 S.W. 1047, at l.c. 1055, the Missouri Supreme Court stated:

> " * * * It is the duty of the father in the first instance to care for and support his children, and if for any reason that duty of his is abrogated, then it becomes the duty of the mother to care for and support them. * * *"

In the case of Girls' Industrial Home vs. Fritchey, 10 Mo. App. 344, at l.c. 347, the St. Louis Court of Appeals held:

> " * * * The mother is the head of the family when the father is dead. She has the same control over the minor children as he had, and we see no reason why her duties to them should not be the same. The English policy on the subject is declared by the statute of 43 Eliz., c. 2, which provides that the father and mother of poor persons shall maintain them

> at their own charges, if of sufficient ability. Nor do we know any reason or authority for the position assumed by counsel for defendant, that the position of a widowed mother towards her children is not in all respects that of a father, as to every obligation towards them."

In the case of Mauerman v. The St. Louis, I.M. & S. Ry. Co., 41 Mo. App. 348, l.c. 359, the St. Louis Court of Appeals stated:

> " * * * Under the decisions of this court in Girls' Industrial Home v. Fritchey, 10 Mo. App. 344, and Matthews v. Railroad, 26 Mo. App. 75, the mother on the death of the father succeeds to the duties and obligations of her husband touching minor children. * * *"

We nowhere find any obligation imposed upon a wife for the support of her husband.

It, of course, goes without saying that persons who adopt a child stand in the same relation to the child from the standpoint of being liable for its support as do the natural parents.

The same principle of law applies to those relatives who stand in a position of in loco parentis to a child.

In the case of Dix vs. Martin, 171 Mo. App. 266, at l.c. 272, the Kansas City Court of Appeals stated:

> " * * * We recognize the rule that where a person assumes towards a child not his own a parental character, holds the child out to the world as a member of his family towards whom he owes the discharge of parental duties, he stands <u>in loco parentis</u> to the child and his liability is measured by that of the relationship he thus chooses to assume. [Academy v. Bobb, 52 Mo. 357; Eickhoff v. Railway, 106 Mo. App. 541, 19 Am. & Eng. Ency. of Law, 518]."

In the case of State vs. Macon, 186 S.W. 1157, at l.c. 1159, the Springfield Court of Appeals stated:

> "[1] As before stated, the relator was the stepdaughter of the guardian at the time of his appointment and was then living with him and her mother as a member of his family. This we think admits of no doubt whatever under the undisputed facts. While the question of whether a particular person is or is not a member of a family is at times a mixed question of law and fact, yet on the conceded facts here the law so pronounces. While the law does not require that a stepfather take into his family as members thereof his stepchildren and stand in loco parentis with reference to them, yet when he does so receive them and holds them out to the world as members of his family, he incurs the same liability as to his own children, and, the relationship being established, the reciprocal rights and duties attach. State v. Kavanaugh, 133 Mo. 452, 460, 33 S.W. 842; St. Ferdinand Loretto Academy v. Bobb, 52 Mo. 357, 360; Dix v. Martin, 171 Mo. App. 266, 272, 157 S.W. 133."

In the case of In re Tucker, 74 Mo. App. 331, at l.c. 337, the St. Louis Court of Appeals stated:

> " * * * It is well settled by the decisions in this state that if the claimant for an allowance for the support of a minor stands in the position of loco parentis and the minor has been reared as a member of the family, the allowance will not be made unless there was an intention or purpose formed at the time to make such a charge. State ex rel. v. Slevin, 93 Mo. 253; State ex rel. v. Miller, 44 Mo. App. 118; Folger v. Heidel, 60 Mo. 287; Guion v. Guion, 16 Mo. 48; Gillett v. Camp, 27 Mo. 541; Otte v. Becton, 55 Mo. 99. * * *"

In the case of Horsman vs. U. S., 68 Fed. Supp. 522, the District Court for the Western District of Missouri stated:

> " * * * The plaintiffs actually assumed the obligations incident to the parental relations without at the same time going through the formalities necessary to a legal adoption. This is precisely what is meant by in loco

parentis. 32 Words & Phrases Permanent Edition, p. 415; 46 C.J. §174, p. 1334; Miller v. United States, 8 Cir., 123 F. 2d 715, loc. cit. 717."

In the case of Meisner vs. U. S., 295 Fed. 866, at l.c. 868, the United States District Court for Western Missouri stated:

"[2,3] Plaintiff claims that under all the facts agreed upon Mr. and Mrs. Grafke stood in loco parentis to Robert R. Parks, and that she was a sister under the definition set forth in section 5a. The government contests this interpretation of the act. The deceased soldier, having no known relatives of the blood, out of affection designated the plaintiff as the beneficiary in his policy of insurance. It is the policy of the courts, if possible, to effectuate the expressed wishes of a deceased soldier. Practically the sole question presented is whether Mr. and Mrs. Henry Grafke, under the agreed facts, stood in loco parentis to the soldier. If they did, the plaintiff is a sister within the definition laid down in section 5a, and may recover. Our attention is invited to the established rule of construction that Congress, in the employment of terms, used them in their accepted legal sense and in accordance with common understanding. We are also reminded that courts at all times in interpretation seek to carry out the spirit and purpose of legislation.

"'A person standing in loco parentis to a child is one who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation, without going through the formalities necessary to a legal adoption. The assumption of the relation is a question of intention.' 29 Cyc. 1670.

"In Black's Law Dictionary, p. 604, the following definition is given:

> "'In the place of a parent; instead of a parent; charged, fictitiously, with a parent's rights, duties and responsibilities.'
>
> "In re Estate of David Moran, 151 Mo. 555, 52 S.W. 377, the Supreme Court of Missouri holds that:
>
> "'The law places no limit upon the age of the child to be adopted. So that where the child is 22 years of age at the time of his adoption, he is just as capable of taking by inheritance as one 19 years of age adopted by the same instrument.'"

From the above it will be seen, as we noted before, that those relatives who stand in a position of in loco parentis, in a manner, are under the same obligation to support as are natural parents. The answer given above is limited to the duty of relatives to support in the absence of contract to do so.

CONCLUSION

It is the opinion of this department that Section 202.330, RSMo Cumulative Supplement 1957, is applicable to patients committed to state hospitals prior to the effective date of the above statute; that the Division of Mental Diseases may charge pay patients in state hospitals the maximum amount fixed by the Division for each institution or any amount below that maximum based upon the ability, or means, of the patient to pay.

It is the further opinion of this department that a husband is liable for the support of his wife unless she has abandoned him without good cause or has abandoned him with cause, and has contracted an adulterous relationship consequently; that a husband is liable for the support of his minor children; that in the absence of the husband or his inability to support minor children the same obligation devolves upon the wife; and that persons who adopt a child and persons who stand in the position of in loco parentis have the same duty to support as do natural parents.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:mw;gMcK;ml