INSANE PERSONS: Insane persons discharged from state hospitals after having been found insane by a court of this state must be adjudged sane by a court of this state in order to have the right to vote and manage their affairs. Insane persons admitted to a state mental hospital on certification of two qualified physicians and discharged by the superintendent of said hospital have the right to vote and manage their affairs after their discharge by the superintendent.

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May 23, 1951

6-7-51

Honorable B. E. Ragland, Director
Division of Mental Diseases
Department of Public Health & Welfare
State Office Building
Jefferson City, Missouri

Dear Mr. Ragland:

This will acknowledge your letter of April 7, 1951, in which you request an opinion concerning the rights of a person adjudged non compos mentis by any court in this state; also the rights of a person admitted to a mental hospital on certification. Your letter reads as follows:

> "Will you please give me your official opinion on the following questions.
>
> "Does any person previously adjudged to be of unsound mind by any court in the State of Missouri and who has been discharged by the superintendent of the hospital to which he was committed have the right to vote and manage his affairs?
>
> "Also, if a person was admitted to a state mental hospital on the certification of two qualified physicians and was discharged by the superintendent of said hospital, would this person have the right to vote and manage his affairs?"

Methods are provided in our Revised Statutes of 1949 for various ways of handling insane persons, both by our courts and by the division of mental diseases of this state. Chapter 202, Mental Hygiene, Section 202.070 providing for the admission and discharge or parole of the insane has a provision for the discharge as well as for the admission of insane persons. It provides also for a release to be had by proceedings in the probate courts as provided in Section 458.530, RSMo 1949.

Chapter 202 also has a provision for the admission to state hospitals of the insane poor through an inquisition to be held by the probate court. There is another provision in the same chapter providing for the admission of private patients upon the affidavit of two physicians that a patient is insane, that is in Section 202.270, which reads as follows:

> "Pay patients, or those not sent to the hospital by order of the court, may be admitted on such terms as shall be by this chapter and the bylaws of the hospital prescribed and regulated."

Chapter 202 also provides for the transfer of inmates of charitable institutions to the state hospital in Section 202.340, and for the admission of drug addicts in Section 202.360.

Section 202.070, RSMo 1949, reads as follows:

> "Who may be admitted-how discharged, or paroled.- Persons afflicted with any form of insanity shall be admitted into the hospitals for the care and treatment of same. Any patient so admitted may be discharged or paroled whenever in the judgment of the superintendent and his staff such person should be discharged or paroled. The decision of the superintendent and his staff on such matter shall be final and the respective counties of this state are hereby prohibited from removing any indigent insane person unless such insane person is discharged as herein provided; provided, however, any person found to be restored to his right mind under proceedings had in the probate court as provided for in section 458.530, RSMo 1949, shall be forthwith discharged upon delivery to the superintendent of the hospital a certified copy of the record in the restoration proceedings; provided further, in any restoration proceedings under said section 458.530, RSMo 1949, if it is found that the patient is not represented by an attorney, the court shall appoint an attorney to represent him in such proceedings, and if it is further found that such patient is unable to pay an attorney's fee for services rendered in such proceedings,

> the court may in its discretion, allow a reasonable attorney's fee for such services, which fee shall be assessed as costs and paid by the county together with other costs in such proceedings."

Section 458.530, RSMo 1949, provides for the proceedings to be had in the probate court on recovery of sanity. Said section is as follows:

> "For and on behalf of any person previously adjudged to be of unsound mind by any court in the state of Missouri, there may be filed in the probate court of the county wherein he was adjudged insane, a petition in writing, verified by oath or affirmation, alleging that subsequent to his adjudication of insanity he has fully recovered his mental health and been restored to his right mind and is now capable of managing his affairs, and the probate court wherein any such petition is filed shall hold an inquiry as to the sanity of the person in whose behalf the petition is filed; provided, that if said court, upon such inquiry, shall find that such person is not restored to his right mind, and such person, or anyone for him, shall within ten days after such finding, file with the court an allegation in writing, verified by oath or affirmation that such person is of sound mind and is aggrieved by the action and finding of the court, the court shall then cause the facts to be inquired into by a jury."

It may be observed that this proceeding may be taken by the reservation contained in Section 202.070, quoted above, regardless of the attitude of the superintendent of the particular hospital toward the mental capacity of a particular patient.

There are various means prescribed for the handling of the criminal insane in this state and specific statutory proceedings have been set out in each of those. It is observed here that under Section 202.070, supra, that the superintendent may discharge or parole a patient. In accordance with an opinion previously rendered by this department, July 27, 1945, to

Honorable W. R. Painter, an indigent insane patient who had been discharged from an asylum could not be readmitted without being readjudicated as insane. In that opinion, it was also said that where a patient was paroled, conditionally, the parole could be revoked and the patient returned and confined for further treatment.

Section 458.530, supra, refers in its text to adjudication by "any court," whereas Section 202.070, supra, provides for a discharge by the superintendent.

Long before the present mid-twentieth century reformation and streamlining of our state statute law in regard to the affairs of our insane citizens in the matter of McWilliams, 254 Mo. 512, 513, Judge Faris for the Supreme Court, said:

> "The probate court had jurisdiction and plenary power to adjudge petitioner to be a person of unsound mind. Petitioner will continue to be regarded in law as non compos for all general and usual purposes till the probate court or a jury shall have found him to be sane. The legal machinery to re-examine petitioner's status, is ample, simple, convenient and summary.
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> * * * *
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> "The status of an insane person not charged with a crime is different from that of an insane person charged with a felony (and the rule must be the same whether the insanity be kleptomania or homicidal mania). If no charge of felony be pending the guardian appointed by the probate court has complete dominion under the orders of that court over his insane ward. But manifestly the guardian ought not to have such power in case his ward is charged with a felony, so that if he wish he can take his ward to Kansas or Kamschatka. The criminal court becomes interested in seeing that the insane accused is, and will be, within the jurisdiction of the court when he recovers, and that he be held at some accessible place within the court's jurisdiction, so that the fact as to whether he has recovered may be tested from time to time, if necessary."

At the time of the above opinion, the superintendent of the insane asylum had the power to discharge patients or to parole them, Sections 1392 and 1404, R. S. Mo. 1909. This matter was not considered in the above opinion since that opinion was written refusing a writ of habeas corpus to the petitioner who was held by the sheriff subsequent to the alleged commission of certain felonies and subsequent also to having had a guardian appointed by the probate court on the grounds that he was non compos mentis.

In the case of State ex rel. Moser v. Montgomery et al., 186 S.W. 2d 553, the Kansas City Court of Appeals considered the right of county courts to hold an inquisition in order to adjudge a person sane who had previously been adjudged of unsound mind. The court said, l.c. 554, 555:

> "The only statute which makes any provision for the release or discharge from a state hospital of an indigent patient so committed, is Sec. 9321. The pertinent part of that section is: '* * * Any patient so admitted may be discharged or paroled whenever in the judgment of the Superintendent and his staff such person should be discharged or paroled. The decision of the Superintendent and his staff on such matter shall be final and the respective counties of this State are hereby prohibited from removing any indigent insane person unless such insane person is discharged as herein provided.' It is clear that this section does not authorize the county court to conduct such a hearing as was desired in this case.
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> "For many years prior to the adoption of our present Constitution in 1875, the county court also had probate jurisdiction and, during that time, it was specifically authorized to conduct a hearing, if an application was made alleging that a person who had been declared of unsound mind by that court, had regained his mental faculties. Sec. 39, Chap. 40, R.S.1865. But the Constitution of 1875 authorized the establishment of probate courts, which was later done by legislative act, and they were given exclusive jurisdiction over matters pertaining

> to probate business, thereby relieving the county courts of any such jurisdiction. They were also given exclusive jurisdiction to conduct lunacy hearings when guardians and curators were to be appointed. At about the same time the Legislature transferred to the probate code what is now Sec. 492, supra, thus transferring to the probate courts specific authority to inquire whether a person who had been declared of unsound mind by that court had been restored, and left no similar statutory authority in the county courts."

The court held that the county court was without jurisdiction to determine whether such a person had recovered his sanity. The court made no comment regarding the sanity or insanity of Moser or in regard to his legal status. Moser had been discharged from State Hospital No. 2 by the acting superintendent thereof. No reason was given for his discharge. The action was brought in the county court to establish Moser's sanity so that he could collect an amount owed him by an insurance company. The Appellate Court made no pronouncement as to Moser's legal disability by reason of his initial adjudication in the county court. Since he was not adjudicated non compos mentis by the probate court and had no guardian appointed for him, absent some new found procedure by the order of the county court of Jackson County, June 2, 1927, unless his discharge by the superintendent can be determined to mean a legal record of his restoration to sanity, Moser is still insane.

In State v. Brockington, 162 S.W. 2d 860, Commissioner Bohling of our Supreme Court, in a motion to modify a death sentence from hanging to execution in the gas chamber, said l.c. 862:

> "(3) Brockington's commitment to State Hospital No. 2 was not had under proceedings by which individuals are ordinarily committed to such Institutions. Section 8629, R.S. 1929, Sec. 9321, R.S. 1939, Mo. R.S.A. Sec. 9321, as modified by Laws 1937, p. 513, in so far as it may authorize the discharge of an insane convict must be read in connection with applicable statutory provisions (quoted supra) relating to the commitment to State Hospitals of convicts becoming

> insane pending the execution of the sentence assessed against them. Consult Secs. 4190-4195, R.S. 1939, Mo. R.S.A. Secs. 4190-4195, as modified by Laws 1939, pp. 353, 354. It would do violence to the spirit and letter of said statutory provisions to hold that the officers of such Institutions, vested with authority to discharge persons committed thereto because of insanity, may blandly discharge therefrom convicts whose sentences stand unexecuted by reason of their insanity without affording due opportunity to other law enforcement officers of the State to carry into execution the judgments of our courts having criminal jurisdiction, thus tending to hinder the adminstration of the criminal laws in such instances. The statutes contemplate as did the warrant of the Governor committing Brockington to State Hospital No. 2 that those responsible for the receipt and restraint of Brockington at said Institution would give due notice of his restoration to reason to the Governor and otherwise comply with the laws and orders of the duly constituted State officials and tribunals to the end that the judgment and sentence of the court, temporarily suspended during Brockington's insanity, be carried into execution in accord with due process of law. This, from recitals in the State's motion, appears to have been not effected. It follows that Brockington has never been discharged from State Hospital No. 2 within the meaning of our statutory provisions relating to the confinement and treatment of convicts becoming insane pending the execution of a judgment assessing their punishment. Until the statutory provisions relating thereto are complied with, other matters need not be discussed.
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> "The motion to modify is overruled."

There is no question raised in regard to whether Brockington had sufficiently recovered his sanity or his legal status as being sane. The court considered only that the statutes had

not been followed, i.e., the Governor notified as to the recovery of Brockington at the proper time. The Court held that he had never been discharged from the hospital. The Court simply declined to discuss other matters until statutory proceedings were complied with. There is statutory procedure for restoration of insane criminals which it may be presumed from the text of this case must have strict compliance. We have been unable to find direct reference made to the legal sufficiency of discharge by hospital superintendents in this state to establish legal presumption of sanity. It is held in Pheiffer v. Pheiffer, 118 P. 2d 158, l.c. 163 (9):

> "The discharge of a ward from a hospital for the insane does not vacate the guardianship. 32 C.J. 665, Sec. 284. In 28 Am. Jr. 679, sec. 36, we find the following statement: 'The courts have largely relied upon the opinions of qualified physicians and alienists in testing the advisability of discharging those confined to insane asylums, but have, at the same time, recognized that the determinant factors in such situations are not necessarily the same as those which decide the discharge of a committee or guardian of an incompetent. In the latter instance, entirely different considerations are involved from those which arise in discharging the person of a lunatic from custody.'
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> "A discussion of the distinction last above mentioned will be found in the Oregon case of In re Sneddon, 76 Or. 470, 149 P. 527. A discussion of this question is also found in the case of Ex parte Streeper, 93 N.J. Eq. 102, 115 A. 582, 584, wherein it is stated: 'It would seem entirely clear that a man may be mentally afflicted in such nature or degree as to render him incapable of managing himself or his affairs, and hence to require the appointment of a guardian for his person and property, and still not be mentally afflicted in such nature or degree as to warrant or require his confinement in the state hospital.'"

It is held in Stoltze v. Stoltze, 66 N.E. 2d 424, (Ill.) l.c. 429:

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> "The legal presumption is that all persons of mature age are sane, but after they have been adjudged insane the presumption is reversed until it is rebutted by evidence that they have become sane. When the transaction complained of occurred before the inquest is had, the proof of insanity devolves upon the party alleging it. It is otherwise if it took place afterwards. The legal presumption of sanity continues until inquest is had. Then the presumption may be reversed until it is rebutted by evidence showing that sanity has returned. McGregor v. Keun, 330 Ill. 106, 161 N.E. 99."

CONCLUSION

It is therefore the opinion of this department that where a person is adjudged to be of unsound mind by a court in the State of Missouri, he must have an inquisition of sanity adjudging him sane before he has the right to vote and manage his affairs. If a person is admitted to a state mental hospital on the certification of two qualified physicians, a discharge by the superintendent of said hospital would restore to such person his right to vote and manage his affairs.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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