HABITUAL DRUNKARDS: There is no authority for the confining of an habitual drunkard, who does not have manifestation of insanity, in the state insane asylum.

PROBATE COURT:

FILED
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March 25, 1946

Honorable George A. Spencer
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Mr. Spencer:

This will acknowledge receipt of your letter of March 21, 1946, in which you request an opinion of this department, as follows:

> "I would appreciate an opinion from your department as to whether or not a habitual drunkard could be sent to the insane institutions and the county pay the expense of such care and keep."

A thorough examination of the statutes of Missouri reveals no section expressly authorizing the confinement of a person in a state hospital for the insane for habitual drunkenness. If such authority exists, it must be such as is implied from the terms of another statute. We think the question presented here is one of whether such implied authority exists under Section 509, R.S. Mo., 1939, referred to in your letter, since a careful examination of the statutes has convinced us that it exists nowhere if it does not exist by virtue of said section. Section 509 reads as follows:

> "If information, in writing, verified by the informant on his best information and belief, be given to the probate court of any county that any person in its county is so addicted to habitual drunkenness or to the habitual use of cocaine, chloral, opium or morphine as to be incapable of managing his affairs, and praying that an inquiry thereinto be had, the court shall proceed therein in all respects as herein provided in respect to an idiot, lunatic or person of unsound mind, and if a guardian is appointed on such proceedings, he shall have the same powers and be subject to the same control as the guardian mentioned in section 451, and shall publish the same notice mentioned in section 473;

> also, shall file an inventory and appraisement, made under the provisions mentioned in sections 461 to 468, both inclusive."

The paramount rule in construing a statute is to ascertain the intention of the Legislature. U.S. v. N.E. Rosenblum Truck Lines, 62 S.Ct. 445, 315 U.S. 50; Artophone Corp. v. Coale, 133 S.W.(2d) 343, 345 Mo. 344; Statutes in pari materia (i.e. those relating to the same subject matter,)must be considered together. Whaler v. Buchanan Co. 111 S.W.(2d) 177, 342 Mo. 33. With these rules of statutory construction in mind, we think the intention of the Legislature in enacting Section 509, supra, was restricted to authorizing the Probate Court of a county to appoint a guardian for a habitual drunkard. Section 509, supra, provides that the Probate Court shall proceed "therein in all respects as herein provided in respect to an idiot, lunatic or person of unsound mind". The section also refers to Sections 451, 461 to 468, and 473, R.S. Mo., 1939. Section 509, supra, therefore, refers to Art. 18, of Chap. 1, of the Revised Statutes of Missouri, which Article contains the sections immediately preceding Section 509, supra. Article 18 refers primarily to the appointment of guardians for insane persons and the duties of said guardians, and, in this respect, could, of course, be no authority for confinement of either an insane person or an habitual drunkard.

That part of Article 18, which deviates from the general subject of guardians, contains the following sections, which read as follows:

Section 497:

> "If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next sitting of the probate court for the county, who shall make such order for the restraint, support and safekeeping of such person as the circumstances of the case shall require."

> Section 498:
> "If any such person of unsound mind, as in the last preceding section is specified, shall not be confined by the person having charge of him, or there be no person having such charge, any judge of a court of record, or any two justices of the peace, may cause such insane person to be apprehended, and may employ any person to confine him or her in some suitable place, until the probate court shall make further orders therein, as in the preceding section specified."

Since Section 509 specificially refers back to Article 18, we think that the sections above quoted apply to habitual drunkards, as well as to all other persons, if the habitual drunkard falls within the terms of these sections. However, a reading of Sections 497 and 498 will show that, to come within these terms, a drunkard must be "feriously mad, or so far disordered in his mind as to endanger his own person, or the person or property of others". The latter is, or course, tantamount to insanity. These sections, therefore, are no authority for the confinement of habitual drunkards, as such, the latter being distinguished from drunkards who have a mental disorder dangerous to themselves or others.

The sections of the statutes pertaining to admission to the state hospitals for the insane, make no provision for the admission of habitual drunkards, as such. (Sections 9321 to 9359, R.S. Mo., 1939). Section 9321, R.S. Mo., 1939, provides, in part, as follows:

> "Persons afflicted with any form of insanity shall be admitted into the hospitals for the care and treatment of same. * * *"

Since these sections deal with the same general subject of admission of patients to the state hospitals for the insane, they must be read in connection with the sections referred to in the first part of this opinion. So read, they lend additional weight to the conclusion that Section 509, supra, was intended to provide merely for the appointment of guardians for habitual drunkards, since they specificially designate as entitled to admission to the state hospitals only those who have some form of insanity.

We find no cases with which to support any theory that habitual drunkards, without insane proclivities, may be confined to a state insane institution. On the contrary, we think the general trend of the cases indicates the opposite. In Darby v. Cabanne (1876) 1 Mo. App. 126, the court of appeals referred to what is now Section 509, supra, as a statute providing for the appointment of guardians. The court said: (l.c. 129)

> "* * * Our law provides for appointing a guardian for such persons, though they be not of unsound mind, or idiots, or lunatics. Wag. Stat. 178, sec. 52. * * *"

In ex parte Griggs (1923 Appeals) 248 S.W. 609, 214 Mo. App. 304, the Kansas City Court of Appeals held that a girl could not be committed to the State Home for the feeble-minded except by virtue of the statute relating to the admission of patients to that home. The court said: (l.c. 610)

> "* * * The institution at Marshall is not a state hospital, and the only way in which persons are admitted thereto is contained or provided for in section 12391, R.S. 1919. It follows, therefore, that the restraint and control over petitioner by the respondent, as superintendent of the colony for feeble-minded, is without authority of law, and she should be discharged therefrom. * * *"

While this case dealt with admission to a different state institution, it indicated that patients are to be admitted to state institutions only within the terms of the statutes relating to any such institution which set out the requirements for admission. Certainly this is true in the absence of other statutory provisions specifically authorizing certain people to be admitted. This rule must, therefore, be applied to the instant situation, and as pointed out above, there is no authorization for the admission of a habitual drunkard to the state hospitals for the insane in the sections dealing with said hospitals.

The courts have always been meticulous in protecting the rights of citizens to the due process of law in proceedings which result in the deprivation of their liberty. Thus, in ex parte Higgins v. Hoctor (1933) 62 S.W. (2d) 410, 332 Mo. 1022, the Supreme Court of Missouri held that, where a person had been confined in an insane hospital by a temporary restraining order of the Probate Court of St. Louis County,

acting under what are now Sections 497 and 498, R.S. Mo., 1939, the person must be given a final adjudication of the fact of insanity. The court in that case said: (l.c. 1038 & 1039)

> "* * * While the statutes covering the whole subject of insanity are constitutional and amply safeguard the rights of persons whose sanity is inquired into, the probate courts should observe the spirit as well as the letter of these laws. Acting under Sections 498, 499, Revised Statutes 1929, it was proper for the court to order the temporary restraint and confinement of Mary E. Moynihan if it had reasonable grounds to believe that she was 'so far disordered in her mind as to endanger her own person or the person or property of others.' 'As the inherent jurisdiction of the state over persons of unsound mind rests in part upon its duty to protect the community from the acts of those who are not under the guidance of reason, it follows, ... that if any person is so insane that his remaining at liberty would be dangerous to himself or the community, any other person may, without warrant, or other authority than the inherent necessity of the case, confine such dangerous insane person, but only during so long a time as may be necessary to institute and carry to a determination proper proceedings to inquire into the party's condition and provide for his legal custody.' (Buswell on Insanity, p. 33, sec. 23. See, also, notes, 10 A.L.R. 488 and 45 A.L.R. 1464.) But even in such circumstances, it should be remembered that the preliminary order authorized by Sections 498, 499, Revised Statutes 1929, is not a valid final adjudication of the fact of insanity. The hearing provided by Section 452, Revised Statutes 1929, must still be had and the person suspected of insanity still ' is entitled to be present at said hearing and to be assisted by counsel,' as stated in the notice required by Section 450, Revised Statutes 1929. * * *"

This case indicates the diligence of the courts in insisting upon all possible safeguards against the deprivation of individual liberty in such cases. The rule protecting the rights of one actually insane would, without question, be even more applicable to one who is not so greatly afflicted.

CONCLUSION.

It is, therefore, the opinion of this department that an habitual drunkard, without any manifestation of insanity, could not be sent to the state insane institution.

Respectfully submitted,

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APPROVED:

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