

SANITY HEARINGS: The prosecuting attorney of a county may represent the sheriff of the county at a sanity hearing in which the sheriff was the informant; SHERIFF: state is an interested party in a sanity hearing because the public at large may suffer in person or property from the dangerous vagaries of the individual alleged to be of unsound mind, and because such person by a dissipation of his property may become a charge upon the public purse.



March 11, 1954

Honorable Robert E. Crist
Prosecuting Attorney
Shelby County
Shelbyville, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"Reference is made to your letter of September 2, 1953, addressed to this office wherein it is stated that 'it is improper for a prosecuting attorney to represent, at a sanity hearing, held within his county, the person whose sanity is the subject of inquiry. Also that it is improper for a prosecuting attorney to represent, in his private capacity an informant in a sanity hearing but that it is the duty of the prosecuting attorney to represent the state at all sanity hearings held within his county'. This conclusion was based on Opinion No. 59-52 (Williamson) prepared for Roy W. McGee, Jr., Greenville, Missouri, January 7, 1952.

"In accordance therewith please advise if it is proper for a prosecuting attorney to represent, at a sanity hearing, held within his county, the informant when the informant is the sheriff of such county, and is acting in his official capacity as Sheriff? Also, I would like to know what interest the state and/or county has in a sanity case which is to be protected by the prosecuting attorney."

On page 2 of the opinion rendered by this department to Honorable Roy W. McGhee, on January 7, 1952, referred to by you above, we quoted Section 458.040 RSMo. 1949, which reads as follows:

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"Whenever any judge of the county court, magistrate, sheriff, coroner or constable shall discover any persons, resident of his county, to be of unsound mind, as in Section 458.020 mentioned, it shall be his duty to make application to the probate court for the exercise of its jurisdiction; and thereupon the like proceedings shall be had as in the case of information by unofficial persons."

It is our belief that when any of the county officers listed above, which includes the sheriff, files an information requesting a sanity hearing for some individual, that he does so as a representative of the state, and that in effect such action is the action of the state, in which case it is proper for him to be represented by the prosecuting attorney, who is charged by Section 56.060 RSMo. 1949 (quoted on page 3 of the opinion) with the duty of prosecuting and defending all civil actions in which the state may be concerned or interested.

In the McGhee opinion we held that the state is interested in a sanity proceeding for the reasons set forth on page 3 of the said opinion, which reasons are thus stated:

"In the case of State v. Skinker, 126 S.W. 2d 1156, l.c. 1161, the court stated:

'* * * But it is also true that in these lunacy proceedings, the state, as *parens patriae*,--the community,--society,--has an interest, both to protect the insane person and to protect the public from possible injury and to the end that such person may not, through mental incapacity, waste his estate and become a charge upon the public. See State ex rel. Paxton v. Guinotte, 257 Mo. 1, 165 S.W. 718, 51 L.R.A., N.S., 1191, Ann. Cas. 1915D, 658.* * *'

"In the case of State ex rel. v. Guinotte, 257 Mo. 1, l.c. 11, the court stated:

'* * * Who are the parties in interest in an inquest de lunatico under our

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statute? Manifestly, (a) the public at large, that it may not suffer in person or property from the dangerous vagaries or mania of the individual alleged to be of unsound mind, and for that such person by a dissipation of his property, may not become a charge upon the public purse, * * *!"

As we stated above, we believe that, when a sheriff files an information asking for a sanity hearing, his action is equivalent to an action by the state. That position is, we believe, supported by the case of *ex parte Witmer*, 247 S.W. 2d 547. At l.c. 550 of its opinion in that case, the Missouri Supreme Court stated:

"As stated, petitioner's other ground for saying that the probate court acquired no jurisdiction over him is because the complaining witness, Vernon Reynolds, sheriff of Cedar County, also served the notice of the sanity hearing. The basis for this contention is Sec. 58.190, R.S. 1949, V.A.M.S., which provides that when the sheriff whose duty it is to serve process, is a party or is interested in the suit, the coroner shall serve and execute all writs.

"Sec. 458.040 provides that 'Whenever any * * * sheriff * * * shall discover any persons, resident of his county, to be of unsound mind, * * * it shall be his duty to make application to the probate court for the exercise of its jurisdiction; * * *.'

"And under Sec. 458.090 the sheriff, acting officially, is protected against the payment of costs in the event the person alleged to be insane shall be discharged.

"Was Mr. Reynolds a party within the meaning of Sec. 58.190 and thus disqualified from serving the notice? There is no claim that he was personally interested in the outcome of the proceeding.

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"In State ex rel. Terry v. Holtkamp, 330 Mo. 608, 51 S.W. 2d 13 at loc. cit. 19, our Supreme Court said: 'A lunacy proceeding is a civil, as distinguished from a criminal, proceeding; yet it is a proceeding in personam by the state; the public is interested in the welfare of the person alleged to be insane.' Citing State ex rel. v. Guinotte, 257 Mo. 1, 165 S.W. 718, 51 L.R.A., N.S. 1191."

As we stated above, since the action of the sheriff in signing an information for a sanity hearing is an action by the state, and since it is incumbent upon the prosecuting attorney to represent the state, in all civil actions in which the state is interested, and since a sanity hearing is held to be a civil action, and since the state is interested in a sanity hearing, the prosecuting attorney may represent the sheriff in a sanity hearing held because of an information filed by the sheriff requesting such hearing.

CONCLUSION

It is the opinion of this department that the prosecuting attorney of a county may represent the sheriff of the county at a sanity hearing in which the sheriff was the informant.

It is the further opinion of this department that the state is an interested party in a sanity hearing, because the public at large may suffer in person or property from the dangerous vagaries of the individual alleged to be of unsound mind, and because such person by the dissipation of his property may become a charge upon the public purse.

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

Very truly yours,

John M. Dalton
Attorney General

HPW/vtl