

INSANE: Costs of transportation to State Hospital charge-
able to county or patient's estate.
SHERIFF: Fees of Sheriff for transportation of insane
person to hospital.

February 14, 1940.

Honorable Paul J. Dillard
Prosecuting Attorney
Laclede County
Lebanon, Missouri



Dear Mr. Dillard:

This will acknowledge receipt of your letter of
February 10, 1940, in which you request an opinion from
this office as follows:

"I will appreciate it if you will give
me the answers to the two following
questions at your convenience.

1. One, M. H. Claiborn was charged in
Laclede County with having made and
executed a fraudulent chattel mortgage.
The jury's verdict was 'not guilty by
reason of insanity and that the defen-
dant is still insane'. Upon this ver-
dict the Circuit Judge committed M. H.
Claiborn to a state hospital for the
insane. The criminal costs of the
case were paid, but the sheriff has
not been paid for delivering Claiborn
to the state hospital. Claiborn, al-
though charged and tried in Laclede
County, was a resident of Pulaski
County. Following the case of Thomas,
Treas., v. Macon County, 74 S. W. 999,
175 Mo. 68, I directed the Sheriff to
submit his bill to Pulaski County, but
that County Court would not pay the
bill. It is my contention that the
County of Pulaski owes this bill be-
cause it was incurred on behalf of an

insane person and a resident of Pulaski County. I will appreciate it if you will advise me in this connection.

2. A number of the Special Road Districts in Laclede County, and Laclede County is not under township organization, have been submitting their itemized accounts of expenditures. These expenditures show that the Special Road Commissioners are working themselves and, of course, they expect pay for themselves, and are paying themselves from the allotted money for their district. I am familiar with that section that provides Special Road Commissioners shall serve without pay, but the QUESTION IS - does this section apply only to the administrative feature of the job or does it prohibit them from securing pay as day laborers on roads within their special road district, when they actually perform the labor?

"I will appreciate it if you will give me your opinion on these two questions."

In regard to your first question, the statement of facts in your letter is rather brief. There are several sections of the statutes pertaining to persons of unsound mind who have been tried on criminal charges and acquitted by reason of insanity and found to be still insane. In Article 11, Chapter 29, R. S. Mo. 1929, dealing with criminal procedure, are found Sections 3657 and 3660 inclusive, and in Article 2, Chapter 46 are found Sections 8655 to 8662 inclusive. These sections are not in conflict, but the ones contained in Article 2, Chapter 46, cover the matter more in detail and the ones touching your question are herein set out:

"When a person, tried upon indictment for any crime or misdemeanor, shall be acquitted on the sole ground that he was insane at the time of the commission of the offense charged, the fact shall be found by the jury in

their verdict, and by their verdict the jury shall further find whether such person has or has not entirely and permanently recovered from such insanity; and in case the jury shall find in their verdict that such person has so recovered from such sanity, he shall be discharged from custody; but in case the jury shall find such person has not entirely and permanently recovered from such insanity, the prisoner shall be dealt with as provided in the two following sections."

"SECTION 8656. If the prisoner is not a poor person, and the court is satisfied, from the nature of the offense or otherwise, that it would be unsafe to permit the prisoner to go at large, an order shall be entered of record that he be sent to a state hospital, designating it, and further requiring the sheriff or other ministerial officer of the court, with such assistance as may be specified in the order, to convey such prisoner to the hospital, after first ascertaining from the superintendent that such prisoner will be received into the hospital, and until the receipt of such information, to keep such prisoner in the county jail, poorhouse or other safe custody; and further, that the cost which may accrue in carrying into effect this order, and all expenses for the support and maintenance of such person whilst in the care and custody of the officer and at the hospital, shall be paid out of the proceeds of the estate of such person. And the court shall have power, at each succeeding term, to tax up, so long as

it may be necessary, such cost and expenses as may have accrued since the preceding term, and cause the same to be levied and collected by execution; and the officer collecting the same shall pay to the treasurer of the hospital, and to such other persons as may be entitled thereto, their respective amounts due. The clerk of the court shall furnish a copy of the order of the court, under his official seal, to be lodged with the superintendent, upon the admission of the prisoner into the hospital, and issue a warrant upon said order to the officer named in said order as near as may be of the form specified in Section 8649."

"SECTION 8657. If the prisoner be a poor person, the court shall make an order remanding him to the custody of the sheriff or other officer of court, requiring him to hold the prisoner in safe custody, at the expense of the proper county, until the county court shall cause him to be removed to a state hospital, as in the cases of insane poor persons: Provided, no examination into the insanity of the prisoner shall take place before the county court, as provided in sections 8643, 8644, 8646, and 8647; but the county court and clerk thereof shall proceed, and the prisoner be dealt with in like manner as other insane poor persons are required to be, after examination had by the county court. It shall be the duty of the clerk of the court trying the prisoner to make out a copy, under his official seal, of the judgment of acquittal of the prisoner, and the order required by

the first part of this section, to be delivered to the officer having custody of the prisoner for his authority for such custody."

"SECTION 8662. To the sheriff or other person, for taking a patient to a state hospital or removing one therefrom, upon the warrant of the clerk, mileage going and returning, at the rate of ten cents per mile, and seventy-five cents per day for the support of each patient on his way to or from the hospital shall be allowed; to each assistant allowed by the clerk and accompanying the sheriff, or other person acting under the warrant of the clerk, mileage at the rate of eight cents per mile for going and returning shall be allowed; the computation in both instances to be made from the place of arrest to the hospital, by the nearest route usually traveled. The costs specified in this section shall be paid out of the county treasury of the proper county."

Section 8656 provides for the maintenance at the State Hospital of the person committed out of the funds of the person. Section 8657 provides for the cases of insane poor persons. Neither of these sections provide for the committing of an insane poor person by the Circuit Judge.

Section 8656 provides for the order committing a person adjudged not guilty by reason of insanity, who has property, and the payment of the cost of transportation and maintenance out of his property.

Section 8657 directs the method of procedure in the case of insane poor persons who are found not guilty by reason of insanity and are further found to be still insane. And provides that such person shall be remanded to the custody of the sheriff or other officer of the court to be held in safe custody, at the expense of the proper county, until the

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county court shall cause him to be removed to a state hospital. And further directs the county court and clerk, thereof, to proceed in like manner as other insane poor persons are dealt with after examination.

Section 8649 authorizes the county clerk, after judgment of insanity, to make out warrant for the conveyance of such poor person to the state hospital.

Section 8662, as amended in the Laws of 1933, at page 408, provides for the compensation of a Sheriff for transporting this class of insane patients to the state hospital.

CONCLUSION

It is the conclusion of this department that, under your statement, either Pulaski County, if the said M. H. Claiborn is an insane poor person, should pay the expense of his transportation, or it should be borne by his own estate, but Pulaski County is not authorized to pay the fee of your Sheriff under the circumstances. The order, committing the said Claiborn and directing his transportation by the county court of the county of his residence, not having been made.

Relative to your second question, you will find enclosed an opinion written February 11, 1939 to the Honorable Herbert H. Douglas, Prosecuting Attorney of Newton County, by Harry H. Kay, Assistant Attorney General, covering that question.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

WOJ:LB
Encl.