

ELEEMOSYNARY INSTITUTIONS: An idiot cannot be committed to the State Industrial Home For Girls.

February 7, 1940

2-10

Mrs. Kitty Shepherd Griesser
Superintendent
Industrial Home For Girls
Chillicothe, Missouri

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Dear Mrs. Griesser:

We are in receipt of your request for an opinion, under date of February 2, 1940, which reads as follows:

"Pursuant to my conversation with you this evening, I beg to submit the following:

"On January 24, 1940 the Judge of the circuit court in which Montgomery County is located, sentenced a girl to this institution for a period of six months and then to be transferred to the institution for feeble-minded at Marshall. I am sorry to state that I can not remember the girl's name, Nellie Heying, as near as I can remember. At any rate, I refused to accept this girl on the ground that the law specifically states that a girl can not be committed to this institution for less than one year. I felt this commitment was faulty and that I was within my province to refuse her.

"I also informed the sheriff that day

that in the event the commitment was changed, that I would oppose it on the ground that this girl would come under the heading of idiocy in the strictest sense of the word.

"Today, February 2, 1940, the sheriff of Montgomery County, Mr. Covington, by name, again called at the institution with this girl, with a commitment that stated she was to be committed to this institution until she is 21 years of age. I again refused to accept this girl on the basis that she would come under the heading of idiocy and was not a fit subject for this institution, since the first commitment implied most definitely that she would come under the heading of feeble-mindedness.

"We do not have a psychiatrist on our staff and of course we did not make any sort of test on this girl, because this girl's first commitment definitely implied feeble-mindedness. Am I correct in assuming that the burden of proof is upon the court who sentenced this girl?

"Upon questioning this girl, it was very evident that she is feeble-minded and it is my opinion that she is not a subject for this institution, but a subject for a feeble-minded institution. Since this is a correctional and educational institution, it is my opinion she could not negotiate academic work and I felt that she would be an impediment to the rest of my population.

"This evening I called Judge Hollingsworth and tried to state my side of the case. He seemed to feel that I had dealt his court an affront. For this I am terribly sorry.

"In view of the above stated facts I feel that before I proceed in this case I should have your advice and I am requesting your opinion in this matter. I base my refusal on the Revised Statutes of Missouri, 1929, page 2363, section 8367, wherein I quote the following:

"'Certain girls may not be sentenced. -No court or magistrate shall sentence any neglected or dependent girl to said institution, or any girl who is insane or idiotic, or afflicted with an incurable disease or enciente, or who is so incorrigible that, in the opinion of the officer sentencing her, there is not a fair possibility of her reformation.'

"May I again bring to your attention the specific statement on the first commitment, which stated she was to remain in this institution six months and I was then charged to transfer her to the State School at Marshall for feeble-minded. This I consider the court's admission that she is a fit subject for the feeble-minded institution."

Section 8364 R. S. Missouri, 1929, reads as follows:

"All commitments to the industrial

home for girls of girls, over the age of twelve and under the age of eighteen shall be made by the juvenile division of the circuit court. Every girl over the age of twelve years and under the age of twenty-one years, who shall be convicted of any offense not punishable with imprisonment for life, or whose associations are immoral or criminal, or bad and vicious, or who is incorrigible to such an extent that she can not be controlled by her parents or guardian in whose custody she may be, may be sentenced to said industrial home until she shall reach the age of twenty-one years, if the court or magistrate before whom such conviction shall be had deems the girl so convicted a fit subject to be committed to said home, and the age of the girl so committed to be indorsed on the commitment in case any such child is under twelve years of age the same to be placed under the control of the state board of charities and corrections, as provided by article 1, chapter 90, R. S. 1929."

The above section provides the manner and qualifications under which a girl may be admitted to the State Industrial Home for Girls. It will be noticed that under this section the girl can only be committed until she is twenty-one years of age.

Section 8367 R. S. Missouri, 1929, reads as follows:

"No court or magistrate shall sentence any neglected or dependent girl to said institution, or any girl who is insane or idiotic, or afflicted with

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an incurable disease or enciente, or who is so incorrigible that, in the opinion of the officer sentencing her, there is not a fair possibility of her reformation."

Under this section the court is prohibited from sending a girl to the State Industrial Home for Girls if she is insane or an idiot. The question of insanity or whether she is an idiot is a question of fact which must be passed upon by proper procedure hereinafter set out. It is impossible for this department to say under your statement of facts, whether or not the girl in question is insane or an idiot to such an extent as to prohibit the court from committing her to the Industrial Home for Girls.

According to your request the question seems to be the determination as to whether the girl should be committed to the State Industrial Home for Girls or be committed to the State School for Feeble Minded, at Marshall, Missouri.

Section 8368, Laws of Missouri, 1939, page 579, reads as follows:

"The officer in charge of the institution, by and with the written consent of the director of penal institutions, shall be authorized and empowered to return whence she came any girl who shall be found to be incorrigible or an improper subject for admission; and thereupon the court or magistrate by whom the said girl was committed, or his successor in office, shall have power to pass such sentence as would have been legal in the first instance if said girl had not been sent to said industrial home."

Under the above section, when a court commits a girl to the State Industrial Home for Girls, and if for any reason the home believes that the girl should not be committed under its custody, then the officer in charge of the institution may return the girl to the magistrate or court committing her to the institution, who shall in a way hold a rehearing on the committing of the girl and determine whether or not she has legally been committed to the Industrial Home for Girls. Upon the home complying with section 8368, it becomes a question of fact as to whether or not the girl should be committed to the Industrial Home for Girls or to the State School For Feeble Minded at Marshall.

Section 8696, Laws of 1931, page 218, reads as follows:

"There shall be received and gratuitously supported in the Missouri state schools, feeble-minded and epileptics residing in the state who, if of age, are unable, or if under age, whose parents or guardians are unable to provide for their support therein, and who shall be designated as state patients. Such additional number of feeble-minded and epileptics, whether of age or under age, as can be conveniently accommodated, shall be received into the school by the managers on such terms as shall be just; and shall be designated as private patients. Feeble-minded and epileptics shall be received into the school only upon the written request of the persons desiring to send them, stating the age, place of nativity, if known, christian and surname, the town, city or county in which such persons respectively reside, and the ability of the respective parents or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the de-

gree of relationship or other circumstances of connection between the patients and the persons requesting their admission; which statement, in all cases of state patients, must be verified by the affidavit of the petitioners and of two disinterested persons, and accompanied by the opinion of two qualified physicians, all residents of the same county with the patient, and acquainted with the facts and circumstances stated, and who must be certified to be credible by the county court of that county, or, in the case of the city of St. Louis, by the hospital commissioner or the assistant hospital commissioner of said city; and such county court, or, in the case of the city of St. Louis, the comptroller of said city, must also certify, in each case, that such patient is an eligible and proper candidate for admission to the colony. State patients, whether of age or under age, may also be received into the colony upon the official application of any judge of a court of record: Provided, that the county in which such state patients as are now inmates of said school, resided when they were admitted, and the county wherein such state patients hereinafter admitted may reside at the time of such admission, shall be liable for and shall pay into the treasury of said school the sum of five dollars per month for each of such state patients."

The above section specifically sets out the manner in which a patient may be sent to the State School for Feeble Minded at Marshall, and should be followed specifically. According to your request we do not know

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what procedure the court followed in committing the girl in question to your institution for six months and then to be committed to the State School for Feeble Minded; but unless she was examined, as set out in Section 8696, supra, she could not be committed by you or by the Governor to the State School for Feeble Minded, for the reason that the commitment to the Industrial Home for Girls can only commit her until she reaches the age of twenty-one years, while the commitment to the State School for Feeble Minded should read "until she is cured." It has been held that when a girl is committed to the State Home for Girls she cannot be re-committed to the State School for Feeble Minded upon any examination made by the physician or other people in authority at the State Home for Girls. It was so held in the case of Ex parte Griggs, 248 S. W. 609, 1.c. 610, where the court said:

"On March 27, 1917, the justice adjudged petitioner to be guilty as charged, and thereupon sentenced her to the state industrial home for girls at Chillicothe, Mo., 'until she reaches the age of 21 years'; she being found to be a fit subject to be committed to said institution. On February 15, 1923, the Governor of the state, upon the declaration of the physician of said industrial home that petitioner was feeble-minded, and proceeding to act under section 12302, R. S. 1919, issued his warrant, reciting the fact that petitioner had been sentenced to the industrial home and had been declared by the physician thereof to be feeble-minded, and directing the sheriff of Livingston county to convey to her to the colony for the feeble-minded and epileptic at Marshall, Mo., 'there to be detained until restored to reason.' In accordance therewith, pe-

petitioner was taken to the institution at Marshall, and has been confined there ever since. To test the legality of her confinement there, and to obtain her liberty and release therefrom, this application for a writ of habeas corpus is made. The writ was issued, and the superintendent of the colony for feeble-minded and epileptic has brought petitioner before us, stating in his return the facts and basis of her detention as hereinabove stated. * * * * *

"Section 12302, R. S. 1919, under which the Governor's warrant was issued, cannot, in our view, be made applicable to a case of this kind. It provides that 'if any person, after being convicted of any crime or misdemeanor,' shall become insane before the execution of the sentence imposed, the Governor may inquire into the facts and pardon such lunatic, or commute or suspend, for the time being, the execution of the sentence for such period as he may think proper, and may, by his warrant to the sheriff of the proper county or warden of the penitentiary, 'order such lunatic to be conveyed to a state hospital and there kept until restored to reason.' The section is in article 7, chapter 111, relating to state hospitals for the insane, and has no reference to the colony for the feeble-minded and epileptic provided for in article 13 of said chapter. 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. However, petitioner is still under sentence of commitment to the industrial home for girls at Chillicothe, Mo., until she is 21 years of age, and that institution is lawfully entitled to her custody. * * * * *

CONCLUSION

In view of the above authorities, it is the opinion of this department that under the facts set out in your request, if the officials at the Industrial Home for Girls believe that the girl committed to the Industrial Home for Girls is an idiot, then, under Section 8368, Laws of 1939, page 579, the home may return the girl to the court in which she was committed to the Industrial Home for Girls, and a procedure should be gone through with which is in the nature of a rehearing on whether or not the girl is an idiot. This is a question of fact which must be determined by the Judge committing her to the Industrial Home for Girls. After the girl has been returned to the county from which she was committed to the Industrial Home for Girls, the procedure as set out in Section 8696, Laws of Missouri, 1931, page 218, should be followed, in that some one should request the girl's admission to the State School for Feeble Minded, by an affidavit of the petitioners and two disinterested persons accompanied by the opinion of two qualified physicians, all residents of the same county with the patient who should certify that the patient is feeble minded or is an idiot, and is eligible and a proper candidate for admission to the State School

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for Feeble Minded.

It is further the opinion of this department that if the girl described in your request is an idiot no court can sentence her to the State Industrial Home for Girls.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

TYRE W. BURTON
(Acting) Attorney General

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