

INSANE PERSONS: Probate Court of County wherein a State Hospital is located does not have jurisdiction to pass upon the sanity of pay patient within such hospital unless they are residents of that county.

November 10, 1948

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Honorable L. M. Bywaters
Prosecuting Attorney
Liberty, Missouri



Dear Sir:

We have your letter of recent date which reads as follows:

"I should like to have an official opinion from your department on the following matter:

In the early part of 1948, a resident of Clay County, Missouri, was accepted at State Hospital Number Two, St. Joseph, Missouri, as an insane pay patient. Such person was not adjudicated to be insane by any court. It is now impossible for said patient to continue as a pay patient and it is now necessary and expedient that proceedings be instituted to have her declared to be of unsound mind and to be indigent. Our Probate Court advised the father of this party that proceedings could be instituted in reference to such in Buchanan County but the Judge of the Probate Court of Buchanan County has declined to accept jurisdiction on the theory that State Hospital Number Two is not a public, charitable institution as provided in Section 9344 of the Missouri Revised Statutes annotated.

This situation is likely to occur many times in the future and for that reason our Probate Judge would like to know as to whether or not Section 9344 of the 1947 cumulative annual pocket parts of Missouri Revised Statutes annotated applies to the above set of facts."

Evidently the patient mentioned in your letter was admitted to the State Hospital under authority of Section 9322, R.S.Mo. 1939, 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 article and the by-laws of the hospital prescribed and regulated."

Sections 9323 to 9327 of the statutes set forth the terms upon which such paypatients may be admitted.

A pay patient would not lose his residence by reason of being temporarily in a State Hospital for treatment, but he would continue to be a resident of the county where he resided when taken to the hospital. Section 9328, P. 905, L. 1945, provides in part as follows:

"The probate courts of the several counties shall have power to send to a state hospital such of the insane poor of their respective counties as may be entitled to admission thereto."

If, therefore, a pay patient while being treated at private expense at a state hospital becomes indigent and unable to pay for further treatment, he would be a proper subject to be sent as an insane poor person by the county of his residence. Section 9335, P. 905, L. 1945, provides how proceedings to have an insane poor person sent to a state hospital shall be commenced. It reads in part as follows:

"For the admission of insane poor persons the following proceedings shall be had:
Some citizen residing within the county, of which the alleged insane person is a resident, shall file with the Judge or Clerk of the Probate court of such county a verified statement in writing which shall be substantially as follows: * * * "

It is clear, therefore, that if a pay patient in a state hospital becomes indigent he is a proper subject to be brought before the Probate Court of the county of his residence on a hearing to determine whether he is insane and whether he should be confined.

Section 9344, P. 905, L. 1945, deals with an entirely different class of insane persons. It deals with persons who become insane while being cared for in private or public charitable institutions. It provides as follows:

"Whenever an inmate of a private or public charitable institution for the maintenance and care of indigent persons shall become insane, any citizen may file in the probate court of the county where such institution is located, a statement in writing substantially complying with the form set forth in Section 9335 of this act, and shall in addition thereto allege in said statement the county in this state of which said insane person was a resident immediately prior to his admission to said charitable institution. The clerk of the probate court in which such statement is filed shall proceed therewith as provided in Section 9336 of this act, and shall forward to the clerk of the county court of the county of which said insane person is alleged to have been a resident immediately prior to his admission to said charitable institution, a copy of such statement and a notice of the place and time when said statement will be presented to the court, which shall not be less than twelve days after the notice is deposited in the mail as hereinafter provided. The copy of said statement and said notice shall be placed in a well-secured envelope, directed and addressed to the clerk of the county court of the county to whom the same is herein required to be forwarded, deposited in the postoffice, postage prepaid, and registered in accordance with the postal laws of the United States of America; the return of such service shall be indorsed on a copy of the notice so sent by the clerk or his deputy and shall be conclusive evidence of the matters therein contained, and shall confer complete jurisdiction upon the court in which the statement is filed to hear and determine the same. Provided, however, the alleged insane person shall be entitled to the notice provided for in Section 9336 of this act. Said probate court shall hear said matter on the

date mentioned in said notice or upon any day to which said court shall adjourn or continue the hearing thereof, in the manner now provided for resident insane persons. If the person charged shall be found by the court to be insane and indigent and to have been a resident of the county as alleged in said statement immediately prior to his admission to said charitable institution, its judgment shall entitle said person to admission to a state hospital upon the same terms as resident insane and indigent persons, and the county of which such insane person is found to have been a resident immediately prior to his admission to such charitable institution shall pay all costs and expenses and provide all things required by this article, the same as if said person had been sent to the state hospital as an indigent insane person by order of the court of the county of which he is found to have been a resident immediately prior to his admission to said charitable institution."

A state hospital is not a charitable institution. The state in caring for indigent insane persons is not doing charity but is discharging a duty to care for such of its citizens as are unable to care for themselves.

Conclusion

It is, therefore, the opinion of this office that the Probate Court of the county wherein a state hospital is located does not have jurisdiction to pass upon the sanity of a pay patient in such hospital, unless such patient is a resident of that county, but the Probate Court of the county of which such pay patient is a resident has such jurisdiction.

Yours very truly,

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR,
Attorney General