

**INSANE PERSONS:**

County not liable for cost of commitment and maintenance of insane person unless said person was physically residing in county at time of commitment.

January 25, 1950

FILED 49

Honorable Robert G. Kirkland  
Prosecuting Attorney  
Clay County  
Liberty, Missouri



Dear Sir:

This office is in receipt of your recent request for an official opinion. This request poses two questions, the first of which is thus stated by you:

"A young man who was a legal resident of the state of Missouri and continued to maintain his legal residence in the state of Missouri and the county of Clay went to New York City to attend school. While there he became mentally unbalanced and was committed to a State Mental Hospital for confinement and treatment. The state of New York desires to be relieved from providing for his care and treatment and to be compensated for their services in that regard to date. Is there any provision under Missouri law whereby either the State or the County can, should, or must compensate the state of New York for the services rendered in this regard?"

In this opinion we will proceed upon the assumption that this young man is indigent, since if he is not indigent the county would not under any circumstances be liable for or permitted to pay the cost of his commitment and maintenance.

Article 18, Chapter I, Mo. R.S.A.1939, states the law in regard to the procedure involved in finding a person to be insane, in committing him to a state institution, and the liability for costs involved in this procedure and maintenance. Section 453 of the above article and chapter states:

"When any person shall be found to be

insane according to the preceding provisions, the costs of the proceedings shall be paid out of his estate, or, if that be insufficient, by the county."

This section has been construed in two cases, one of which, Van Loo v. Osage County, 141 S.W. 2d 805, holds that where a person is adjudged insane in the probate court and the costs cannot be paid out of the estate of such insane person, the county is liable for costs, and the fact that the probate court committed an insane person to the state hospital instead of ordering her to be held for disposition by county court, would not relieve county of its obligation to pay costs.

In the other case, in re Thomasson, App., 119 S.W.2d 433, the court held that where verdict in insanity proceeding was against respondent, respondent died, and thereafter court permitted informant, acting with another under appointment of probate court as administratrices of respondent's estate, to enter appearance of the estate, court had no jurisdiction to enter judgment against the estate for costs of the proceedings, since the insanity proceeding had abated and consequently could not be revived in the name of the estate.

Section 498 states:

"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."

Section 499 states:

"The expenses attending such confinement shall be paid by the guardian out of his estate, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury, upon the order of the county court, after the same shall be duly certified to them by the probate court."

Section 500 states:

"In all cases of appropriation out of the county treasury for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same, and also the county may recover the amount of said appropriations from the estate of such insane person."

Section 501 states:

"If any insane person be admitted into the state lunatic asylum as a patient, the guardian shall pay for his support and expenses at such asylum, out of the estate of such ward; and if such insane person shall, at any time, come under the class of 'insane poor persons,' as specified in the law for the government of the state lunatic asylum and care of the insane, such person shall be supported and maintained at such asylum by the county in the manner provided by such law."

Laws of Missouri, 1945, Sec. 9328, page 907, states:

"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. Such probate court shall furnish the county court with a certified copy of the order finding the person to be an insane poor person and the order committing such person. The counties from which such insane poor person has been sent shall pay semi-annually, in cash, in advance, such sums for the support and maintenance of their insane poor, as the board of managers may deem necessary, not exceeding six dollars (\$6.00) per month for each patient; and in addition thereto the actual cost of their clothing and the expense of removal to and from the hospital, and if they shall

die therein, for burial expenses; and in case such insane poor shall die or be removed from the hospital before the expiration of six months, it shall be the duty of the managers of such hospital to refund, or cause to be refunded, the amount that may be remaining in the treasury of such hospital due to the county entitled to the same; and for the purpose of raising the sum of money so provided for, the several county courts shall be and they are hereby expressly authorized and empowered to discount and sell their warrants, issued in such behalf, whenever it becomes necessary to raise said moneys so provided for."

This Section 9328 has been construed in the case of Thomas v. Macon County, 175 Mo. 68. In that case the court held that:

"The county court is not authorized by its arbitrary will or unlimited discretion to send any insane poor person it may select to the asylum at the expense of the county, but the court must hold due proceedings upon a petition filed showing that the insane poor person is 'a citizen residing in the county' and other essential facts as prescribed by the statute, and there must be a trial of the facts and a judgment of the court thereupon. (Section 9323 to 9328 incl.) The county court has no authority under those statutes to send a person to the asylum or maintain one there at the expense of the county who is not a resident thereof.

"The sections above referred to contain the only provisions to be found in our statutes expressly authorizing the cost of keeping a patient in the asylum to be charged to a county and in each of those cases it requires that the person be a resident of the county and that the county court should take the prescribed action in the premises.

"Where, as in State ex rel. v. Cole County Court, 80 Mo. 80, all the facts within the purview of sections 4885 and 4887, above

mentioned, appear as matters of record, the county court will be required by mandamus to make the necessary orders to place the person in the asylum at the expense of the county. In that case the county court had previously taken such action under section 4140, Revised Statutes 1879 (now Sec. 4883, R. S. 1899) as was therein authorized to make the person in question a county patient. This court per NORTON, J., there said: 'We think it apparent from the above statutory provisions and the general law regulating asylums (2 R. S. 1879, p. 818) that it was the intention of the Legislature to cast the burden of supporting the insane poor upon each county where such insane poor have acquired a residence or settlement, and that when an insane person is sent from a county and is discharged from the asylum, he shall be deemed to be the county patient of such county for twelve months after such discharge, the language of the statute being that every patient in the asylum shall be deemed to be the county patient of the county first sending him till one year after his regular discharge.' The court was there speaking of a person sent to the asylum by the county court, and further commenting, said that it was the same policy indicated in the law regulating the support of the poor, wherein it was provided that no person shall be deemed an inhabitant within the meaning of the chapter who has not resided in the county for the space of twelve months next preceding the time of any order being made respecting such person. (Emphasis ours)

"From the statutes and decisions above referred to we find that provision is made for the maintenance of a person in the insane asylum at the expense of the county in the following cases:

"First. When the county court adjudges a person who is 'a citizen residing in the county' to be insane and insolvent and orders him to be sent to the asylum at the expense of the county. (Sec. 4867.)

"Second. When the county court certifies to the superintendent of the asylum that a person already there as a pay patient has become insolvent. (Sec. 4883.)

"Third. Where a person on trial for a crime is acquitted on the ground that he was insane at the time he committed the act, in which case if he remains insane the county court shall proceed with him as in a case arising under the first clause of this enumeration, except that there will be no inquiry in the county court as to his insanity. (Secs. 4885, 4887.)

"Fourth. When the convict becomes insane during his imprisonment and is sent to the asylum by order of the Governor, as in the case at bar. (Sec. 2666.)

"In the first three of these categories the county court is required to take action and pass judgment and when it has done so the patient is held in the asylum at the expense of the county. And, as was held in State ex rel. v. Cole County Court, above referred to, that, if the county court in a proper case should refuse to take action, it may be required by mandamus to do so. But of the 114 counties in the State against which is the mandamus to go? In the case just cited it went against the county court of Cole County because the insane person in that case was a resident of that county. No county court has jurisdiction to send a person to the asylum who is not a resident of the county and therefore could not be required by mandamus to do so."

It will be noted that in the above the court holds that the county is liable for the costs of maintaining an insane person in a state institution if the person is "a citizen residing in the county."

In the instant case the person under consideration was a citizen of Clay County, Missouri, but at the time of his commitment as an insane person in New York he was not, obviously,

residing in Clay County, Missouri.

We would call your further attention to Chapter 51, Article 2, Section 9356 R. S. Mo. 1939, this chapter and article dealing with state eleemosynary institutions. The sections immediately preceding Section 9356 discuss the admittance and maintenance of patients in state hospitals. Section 9356 reads:

"No person shall be entitled to the benefit of the provisions of this article as a county patient, except persons whose insanity has occurred during the time such person may have resided in the state, and except the insane poor under sentence as criminals, as provided in sections 9348 to 9352, inclusive, of this article. Every patient in a state hospital shall be deemed to be the county patient of the county first sending him till one year after his regular discharge from the hospital."  
(Emphasis ours.)

We also call your attention to the two following excerpts from cases:

"Term 'resided' and term 'residence,' within statutes relating to poor relief, refer to actual residence as distinguished from legal or technical residence or domicile (Comp. Laws 1913, Secs. 14, 2501, 2515-2517). City of Enderlin v. Pontiac Tp., Cass County (N.D.) 242 N.W. 117, 122."

"Rev. St. 1919, Sec. 11140, Mo. St. Ann. Sec. 9212, p. 7084, requiring school directors to enumerate school children 'resident' in their district between April 30 and May 15 means children residing in the district at that time, 'residence' being used to mean merely present place of abode temporary or permanent as distinguished from 'domicile,' meaning permanent home. State ex rel. Logan v. Shouse, Mo., 257 S.W. 827, 828."

It is our belief that the above substantiates our previous findings that before a county is liable for the costs of commitment and maintenance of a person in a state hospital that the person must have been residing in the state at the time of his commitment.

All of the above law cited, and all of the cases cited construing this law, relate to situations in which the county is liable for the costs of finding a person insane and for the costs of maintaining such person in a state institution, where the insane person was residing in the county in which he was found to be insane, and in which situations he was confined in a Missouri institution. Not any of the law or the cases construing the law relates to a situation in which a Missouri citizen was committed and maintained in another state. In view of this fact it is our opinion that neither the county court of Clay County nor the State of Missouri would be authorized to use county or state funds to pay New York for the costs of commitment and maintenance in the instant case, or could be compelled by New York to do so, since Missouri law makes no provision for such an expenditure of county or state funds.

Your second question is:

"Further, is there any provision in the law of the state of Missouri which makes any provision for returning this patient to a State of Missouri institution for confinement and treatment and the payment of expenses in so doing and the authorizing of any officer to do such?"

We find no Missouri law which would authorize the action contemplated above.

#### CONCLUSION

1. It is the opinion of this department that neither a county in this state nor the state itself is authorized to or could be compelled to pay to another state the costs of commitment of an insane person, or the maintenance of such person in an institution of such other state, who is a citizen of a Missouri county but who at the time of his commitment was residing in such other state.

2. It is the further opinion of this department that there is no provision in Missouri law authorizing the removal of such a person to a Missouri institution and the payment

Hon. Robert G. Kirkland

1-25-50

of the expenses involved in so doing by a Missouri county or  
by the state.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General