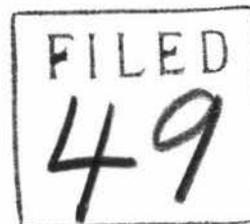


INSANE PERSONS: The burden of supporting the insane poor
COUNTY LIABILITY: rests upon the county in which insane poor have
acquired a residence.

May 9, 1950

Filed: #49



Honorable Robert Kirkland
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

I.

This will acknowledge receipt of your request for an official opinion from this department, which request is as follows:

"On March 9, 1950 a resident of Clay County, Missouri, who resided in that portion of Clay County heretofore annexed by the city of Kansas City, was adjudged insane and committed to State Hospital #2 by the Probate Court of Clay County. Prior to that date, but subsequent to the date of the filing of the information against the alleged insane in the Probate Court, the alleged insane was ordered restrained by the Clay County Probate Court in the General Hospital in Kansas City because of his violent condition. The city of Kansas City has now billed the County Court for payment for care of this patient from March 1 to March 9, 1950. Since the alleged insane at that time was a resident both of Clay County and of the city of Kansas City, is the Clay County Court liable for this bill?"

II.

We presume, for purposes of this opinion, that the person adjudged to be insane is a poor person.

Section 9590, R. S. Mo. 1939, provides as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 9591, R. S. Mo. 1939, defines poor persons as follows:

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"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law and able to maintain them, shall be deemed poor persons."

The above sections have been re-enacted by Senate Revision Bill No. 1061(1949 Revised Statutes).

Section 9328, R. S. Mo. 1939, as amended, Laws 1945, page 905, and re-enacted by Senate Revision Bill No. 1059, provides that the county shall pay for the maintenance of the insane poor committed to the state hospital.

Section 10914, R. S. Mo. 1939, of the County Budget Law provides that the first class of estimated expenditure for each year shall be for the care of paupers designated by lawful authority to be insane (in state hospital).

Section 499, R. S. Mo. 1939, re-enacted by Senate Revision Bill No. 1131, provides as follows:

"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."

The Supreme Court of Missouri said in the case of Yarnell v. Cole county court, 80 Mo. 80, 1.c. 84:

"We think it apparent from the above statutory provisions and the general law regulating asylums, (2 R. S. 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 * * *."

The Supreme Court of Missouri in the case of State v. Smith, 96 S.W.(2d) 40, 1.c. 41, said:

"We are of the opinion that it is the duty of a county to support the poor who are within its boundaries. Section 12950, R. S. Mo. 1929(Mo. St. Ann. Sec. 12950, p. 7474), is as follows: 'Poor persons shall be relieved, maintained and supported by the county of which they are

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inhabitants.'

"An examination of the Revised Statutes of Missouri 1929 clearly shows that poor relief is a "public purpose" and a governmental duty because by sections 12950 and 12952 (Mo. St. Ann. Secs. 12950, 12952 (p. 7474)), counties are authorized to spend money in support of the poor; by section 9986 (Mo. St. Ann. Sec. 9986 (p. 8022)), a county pauper fund is provided; by section 12058 and 13942 (Mo. St. Ann. Secs. 12058, 13942 (pp. 6410, 4240)) county poor houses and county hospitals are maintained; section 9697 (Mo. St. Ann. sec. 9697 (p. 7349)) gives authority to educate poor children that are blind or deaf; section 12961 (Mo. St. Ann. sec. 12961 (p. 7476)) directs the county court to set aside, out of its annual revenues, a definite sum for the support of the poor; article 1, chapter 90, creates a state board of charities and defines its functions: section 12930 (Mo. St. Ann. Sec. 12930, p. 7465) requires this board to supervise public relief to the poor. * * *

"The good of society demands that when a person "is without means, and unable, on account of some bodily or mental infirmity, or other unavoidable cause, to earn a livelihood," he is entitled to be supported at the expense of the public. "It is immaterial how the alleged pauper is brought into need, as it is the fact of the situation and not the method of producing it that is important." "So the fact that a person's want is the result of gross intemperance does not prevent him from securing relief as a pauper." An able-bodied man, who can, if he chooses obtain employment which will enable him to maintain himself and family, but refuses to accept employment, is not entitled to public relief, though relief may be properly extended to the wives and children of such men." 21 R.C.L. 705, 706. It necessarily follows that an able-bodied man, who is unable to obtain employment on account of the economic conditions existing at the time, and who is without means of support, is entitled to public relief.

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¹Jennings v. City of St. Louis, 332 Mo.
173, 58 S.W.(2d) 979, 981, 87 A.L.R. 365."

The Supreme Court of Missouri in the case of City of Joplin v. Jasper County, 161 S.W.(2d) 411, l.c. 413, said:

"In the instant case no question is raised as to the validity, constitutional or otherwise, of any statute but a declaration is sought as to the rights and duties of the parties in caring for the poor and especially the sick poor of Jasper County who are also residents of the City of Joplin. In addition to the statutes relied on by the City, Secs. 9590-9593, R. S. Mo. 1939, relative to the county poor it appears there are several other laws relating to the same subject. Article 1, Chapter 57, Secs. 9733-9759, R. S. Mo. 1939, Mo. R.S.A. Secs. 9733-9759, deals with the State Board of Health and its duties to the sick as well as the poor. Article 6, Chapter 54, R. S. Mo. 1939, Mo. R. S. A., Secs. 9550-9560, deals with the support of needy mothers and dependent children, while Article 7, Chapter 54, R. S. Mo. 1939, Mo. R.S.A. Secs. 9561-9568, relates to funds for dependent women in certain counties. Article 3, Chapter 51, Secs. 9360-9362, R.S. Mo. 1939, Mo. R.S.A. Secs. 9360-9362, deals with city and county hospitals for the insane, * * * "

The Supreme Court in this case did not decide the respective duties and rights between the City of Joplin and the county of Jasper in regard to their respective poor persons. The court pointed out that a suit could be filed to determine an actual case or issue as to the liability of either for the support of actual cases of persons in need, but that this case did not present issues ripe for determination.

If the City of Kansas City filed suit against Clay county to recover and charge for the care of the insane person temporarily restrained in their general hospital, then a real issue would be presented to the court to determine.

We can find no statute making it the duty of the city of Kansas City to support its insane poor. Furthermore, the Clay county probate court ordered the person temporarily confined in the General

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Hospital in Kansas City as part of the proceedings in that court. The probate court had authority to make this order under the provisions of Section 9336, as re-enacted Laws Mo. 1945, page 905.

CONCLUSION

It is, therefore, the conclusion of this department that Clay county is liable for the hospitalization of its insane poor in the General Hospital in Kansas City, Missouri, when ordered temporarily confined therein by the Probate Court of Clay County, even though such insane poor are also residents of the city of Kansas City, Missouri.

Respectfully submitted,

STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SJM:mw