

COURTS: Jurisdiction of probate court to entertain  
INSANE PERSONS: insanity inquiry under Section 458.020,  
RSMo. 1949, depends on residence in the  
county of the alleged insane person and  
not his mere presence there.

March 6, 1951

3/6/51

Mr. Ray J. Cunningham  
Chief Attorney, Regional Office  
Veterans Administration  
415 Pine Street  
St. Louis 2, Missouri



Dear Mr. Cunningham:

The following opinion is rendered in reply to your  
recent inquiry reading in part as follows:

"\* \* \*The purpose of this letter is  
to request an opinion from your office  
as to the interpretation to be placed  
upon Section 447 Missouri Revised Statutes  
1939, as to the meaning of the words "in  
its county"; also whether these words  
may, in the exercise of the jurisdiction  
of the Probate Court, be interpreted to  
mean in any county, or wherever found,  
or is restricted to the county of the  
residence of the person sought to be  
committed.\* \* \*"

Section 447, R. S. Missouri, 1939, referred to in  
your inquiry is now found at Section 458.020, RSMo 1949,  
and provides as follows:

"If information in writing, verified by  
the informant on his best information  
and belief be given to the probate court  
that any person in its county is an  
idiot, lunatic or person of unsound  
mind, and incapable of managing his  
affairs, and praying that an inquiry  
thereinto be had, the court, if satis-  
fied there is good cause for the exercise  
of its jurisdiction, shall cause the facts

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to be inquired into by a jury; provided, that if neither the party giving the information in writing, nor the party whose sanity is being inquired into call for or demand a jury, then the facts may be inquired into by the court sitting as a jury."

In the case of Baker v. Smith, 226 Mo. App. 510, 18 S.W. (2d) 147, decided in 1929, the Kansas City Court of Appeals reviewed at length prior decisions of the appellate courts of Missouri touching the matter of jurisdiction required under Section 458.020, RSMo. 1949, cited above. The court spoke as follows in 226 Mo. App. 510, l.c. 523:

"\* \* \* We find nothing in the decisions of Missouri which justifies the conclusion that a probate court may inquire into the question of sanity or insanity upon a bare showing that the defendant is actually present in the county. The showing must go farther. Some good reason must be shown why that particular court should exercise its jurisdiction. \* \* \* We believe that the words 'in its county' as used in section 444, mean 'resident in its county', except in exceptional circumstances, which require a different construction upon the grounds of public policy. \* \* \*"

#### CONCLUSION

It is the opinion of this department that Section 458.020, RSMo. 1949, does not confer jurisdiction on a probate court to entertain an insanity inquiry affecting a person who is merely present in the county and who is an actual resident of some other county.

Respectfully submitted,

JULIAN L. O'MALLEY  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General