

May 4, 1971

Answer by Letter - Klaffenbach

OPINION LETTER NO. 253

Honorable Robert Ellis Young
Missouri State Representative
District 133
208 West Macon Street
Carthage, Missouri 63846

Dear Representative Young:

This is a letter in answer to your opinion request in which you ask the following questions:

"1. Does a police officer or Sheriff in Jasper County or cities have the right to arrest or detain a person he believes to be mentally ill or who is represented to him to be mentally ill, and take this person to State Hospital No. 3, or a local hospital, where he has cause to believe this person is mentally ill?

"2. As Jasper County has no mental hospital or detention home, can he confine the person in the county jail and later, within a reasonable time, take the person to State Hospital No. 3, under the emergency procedures of the Mental Health Code?

"3. Is there any hourly limit on the time this person can be held in jail pending transportation to Nevada, or a public hospital?

"4. Is St. John's Medical Center, Joplin, which has a psychiatrist on its staff, a hospital or institution within the definitions of Chapter 202 of the Mental Health Code?

"5. Is Ozark Psychiatric Center, Joplin, which has some federal sponsorship and support, a hospital or institution within the meaning of Chapter 202. The Center has psychiatrists and separate examining (sic) rooms but no maximum security rooms.

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"6. After commitment application, can the Probate Court order psychiatric examination at the Center's facilities without having to send these people to Nevada where there is no prior medical certificate?

"7. Does the Doctor have to have a Court order before he can make an examination? For instance, in the jail or in the emergency room?"

With respect to your first question concerning whether or not a police officer or sheriff has the right to arrest or detain a person he believes to be mentally ill, we call your attention to Sections 202.800 and 202.803, RSMo 1969. Section 202.800 states:

"1. Any individual may be admitted for temporary confinement to a hospital upon:

"(1) Written application to the hospital by any health or police officer or any other person stating his belief that the individual is likely to cause injury to himself or others if not immediately restrained, and the grounds for such belief; and

"(2) A certification by at least one licensed physician that he has examined the individual and is of the opinion that the individual is mentally ill or is a retarded person at least seventeen years of age and not under the jurisdiction of a juvenile court and, because of his mental condition, is likely to injure himself or others if not immediately restrained.

"2. An individual with respect to whom such a certificate has been issued may not be admitted on the basis thereof at any time after the expiration of three days after the date of examination.

"3. Such a certificate, upon endorsement for such purpose by a judge of any court of record of the county in which the individual is present, shall authorize any health or police officer to take the individual into custody and transport him to a hospital as designated in the application."

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Section 202.803 RSMo 1969 states:

"1. Any health or police officer may take an individual into custody, apply to a hospital for his admission and transport him thereto for temporary confinement if such officer has reason to believe that

"(1) The individual is mentally ill, or is a mentally retarded person at least seventeen years of age and not under the jurisdiction of a juvenile court, and, because of his mental condition, is likely to injure himself or others if allowed to be at liberty pending examination and certification by a licensed physician; or

"(2) The individual, who has been certified under section 202.800 as likely to injure himself or others, cannot be allowed to remain at liberty pending the endorsement of the certificate as provided in that section.

"2. The application for admission shall state the circumstances under which the individual was taken into custody and the reason for the officer's belief."

Section 202.010 RSMo 1969 defines hospital as:

"'Hospital' is a public or private hospital or medical facility or part thereof, equipped to provide inpatient care and treatment for the mentally ill or mentally retarded."

In the absence of a medical certification which is required by Section 202.800, as noted above, it would appear that the temporary confinement to which you refer would be authorized by Section 202.803 and that such a police officer, and this would include of course a sheriff of a county, has the authority to take the person defined in subsection 1 of that section into custody and apply to a hospital for his admission and transport him thereto for temporary confinement if he has reason to believe that such a person because of his mental condition is likely to injure himself or others if allowed to be at liberty pending examination and certification by a licensed physician. The clear language of the statute therefore answers your question. A private hospital, of course, can be utilized for this purpose as long as the hospital

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meets the requirements of the definition of "hospital" which we have noted above, that is, one which is equipped to provide in-patient care and treatment for the mentally ill.

In answer to your second question concerning whether such a person may be taken to the county jail, our answer is that under normal circumstances this should not be done. While we do not anticipate all the circumstances that may arise, we believe that the language of the sections that we have quoted above indicate a legislative intent that such an individual be taken to a "hospital" and not to a jail. Therefore, in answer to your second question, it is our view that Chapter 202 does not provide for confinement in a jail; although, at the same time, it is quite logical that if a person has committed a crime he may be taken to jail and at that point a determination may be made concerning his admission or commitment to a mental institution and thereafter the procedures followed as we have indicated pursuant to Chapter 202.

We also wish to call to your attention the provisions of the Probate Code, Section 475.355, with respect to the apprehension and restraint of dangerous incompetents which states:

"1. If it appears to any judge of a court of record, other than the judge of a magistrate court, that any person, by reason of his mental condition is so far disordered in his mind as to endanger his own person or the persons or property of others, and that such person is not confined by the person having charge of him, or that there is no person having such charge and that information under section 475.075 or chapter 202, RSMo, has been filed, the judge may cause the person to be apprehended and may employ any person to confine him in some suitable place until the earliest reasonable date on which a hearing may be had on the information in the probate court and judgment rendered thereon.

"2. The expenses of confinement under this section shall be paid by the guardian out of the estate of the incompetent or by the person bound to provide for and support the incompetent, or the same shall be paid out of the county treasury upon the order of the county court after the same is duly certified by the probate court."

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Under the last quoted section the probate judge has authority to confine such a person in "some suitable place." Whether a jail is a suitable place is a question of fact under the particular circumstances insofar as that section is concerned.

In answer to your third question concerning whether or not there is any hourly limit on the time such a person can be held in jail pending transportation to a hospital, we believe we have answered this question in part by our answer to your last question. However, under Chapter 202, and consistent with the basic tenets of fairness and due process, we believe that it is the legislative intent that no time be lost in transporting the person to a "hospital" under such circumstances.

In answer to your fourth and fifth questions concerning whether or not certain institutions are hospitals within the definitions of Chapter 202, we have noted the definition of hospital and it is a question of fact as applied to the definition whether or not such a "hospital" or medical facility or part thereof is "equipped to provide inpatient care and treatment for the mentally ill." If it is not equipped to provide inpatient treatment, then it does not come within the definition of hospital. We do not attempt to answer your question precisely with respect to the two particular institutions, inasmuch as the answer to those questions involve questions of fact, not properly the subject of a legal opinion, and as you realize, facts will or may change from time to time.

In answer to your sixth question concerning whether or not after commitment application the Probate Court can order psychiatric examination at a private medical facility without having to send such a person to Nevada State Hospital, it is our view that the provisions of Section 202.807 RSMo 1969 with respect to the involuntary commitment of the mentally ill do not require psychiatric examination by state hospital personnel and clearly subsection 3 of Section 202.807 provides that at least one of the witnesses at the hearing shall be a licensed and reputable physician who has examined the individual within twenty days prior to the filing of the application. In the definition Section 202.010(11) "licensed physician" is defined as:

"'Licensed physician' is a physician licensed under the laws of the state to sign birth and death certificates or a medical officer of the government of the United States while in this state in the performance of his official duties;"

The physician conducting such an examination therefore need not be a state hospital physician.

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In answer to your seventh question with respect to whether or not a doctor has to have a court order before he can make an examination, we note that in this instance the examinations contemplated under the above sections are mental examinations and do not necessarily include physical examinations. This means, therefore, that a physician can make a diagnosis by observation or conversation with a reasonable degree of certainty and at least sufficient to meet the requirements of certification and testimony. Under normal circumstances, a court order would not be required and it appears from the language used in such sections that the legislature did not anticipate that a court order would be required for examinations made pursuant to emergency commitments. Further, under Section 202.807 with respect to hospitalization on court order, since the physician who is a witness at the hearing must have examined the individual "within twenty days prior to the filing of the application," it was also anticipated by the legislature that such a witness may have made the examination at a time before the matter was called to the attention of the court. Therefore, we repeat that it is our view, at least in general answer to your question, that these provisions did not anticipate that a court order would be required for such an examination under normal circumstances.

Very truly yours,

JOHN C. DANFORTH
Attorney General