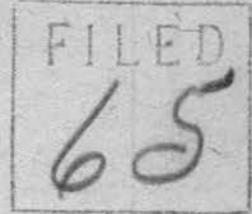


Hearing in Probate Court : County patient discharged by
before discharged county : State hospital for the insane
patient in State hospital for : cannot be re-committed without
the insane can be re-committed. : a further sanity hearing by
: Probate Court.

March 15, 1948.



Dr. Orr Mullinax, Director,
Division of Mental Diseases,
Department of Public Health and Welfare,
Jefferson City, Missouri.

Dear Dr. Mullinax:

We have your letter of March 5, 1948, in which you request an opinion of this department. Your letter is as follows:

"This department has before it a question which I believe requires a legal opinion from your department in order that we may be properly guided in our course of action. I have discussed this matter with Mr. Samuel M. Watson, your assistant who is assigned to our department, and have decided that it is best to request a formal opinion. The question is whether or not when a person has been adjudicated to be an insane person by a Probate Court in any county of Missouri and has therefore been committed to one of the State hospitals for the insane and has after treatment and care in such hospital been determined by the proper authorities in the hospital to have recovered his or her sanity or to have so improved as to render further institutional care unnecessary and has been discharged from the hospital on the theory that he or she has either recovered or improved as to render further institutional care unnecessary, does the Probate Court have jurisdiction or authority to demand that the person be taken back into such hospital at a later date without first having a further hearing, at which hearing the question as to the sanity or the degree of the sanity of the person involved and the question as to the necessity for institutional care would be the question for determination by the court.

"In this connection, we refer you to an opinion rendered by your office on July 27, 1945, addressed to Honorable W. R. Painter, President of the Board of Managers of the State Eleemosynary In-

stitutions, on a very closely related subject, the question there having involved the commitments to such institutions by County Courts rather than by Probate Courts. We should be pleased to be informed whether or not the holdings of the opinion rendered above referred to would be applicable in cases in which the commitment has been made pursuant to adjudication by the Probate Court rather than by the County Court."

We have reread the opinion rendered by this Department on July 27, 1945, referred to in your above-quoted letter. That opinion covered the question as to whether a county patient, who had been committed to a State hospital for the insane and who had been discharged by the hospital authorities, could be recommitted to the hospital without a further hearing in the county court. The substance of the aforesaid opinion, in answer to the question, was that recommitment of such a patient, without a further hearing before the county court would amount to a deprivation of liberty without due process of law under Section 10, Article 1, at p. 16 of the present Constitution of Missouri, and under the fifth amendment to the Constitution of the United States.

We are of the opinion that our above-mentioned opinion of July 27, 1945, correctly stated the law as it then existed. The question remaining then is whether the enactment of the law, which took the jurisdiction in the matter of the commitment of county patients away from the county court and placed it in the probate court (Laws of Missouri, 1945, pp. 905-913) changes the law to the extent of making it possible to recommit a discharged patient to a state hospital without having a further hearing in court. In this connection we have carefully considered the 1945 law above cited, and it is our opinion that there is nothing in the new law making it legal to recommit such a discharged patient without a sanity hearing. The only change brought about by the new law being that the sanity hearing must be in the probate court rather than in the county court.

CONCLUSION

We are, therefore, of the opinion that when a county patient has been regularly discharged by a state hospital he

Dr. Orr Mullinax,

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cannot be legally recommitted to such an institution without
a formal hearing in the probate court.

Respectfully submitted,

APPROVED:

SAMUEL M. WATSON
Assistant Attorney-General

J. E. TAYLOR *JE*
Attorney-General

SMW/LD