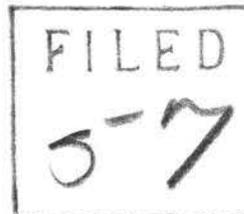


ELIEMOSYNARY INSTITUTIONS: (1) Counties and cities qualify for
HOSPITALS (County & City): State aid for care of insane persons
INSANE PERSONS: when they maintain wards or sections
in hospitals caring for other types of
patients. (2) Payments not limited to
persons adjudged insane by a court.
(3) Payments may be made only for the
care, detention or treatment of in-
digent insane persons. (4) The claim

August 17, 1949 for Kansas City may not be
paid out of the appropriation
as passed by the 64th General
Assembly.

Hon. Samuel Marsh
Director, Department of
Public Health and Welfare
Jefferson City, Missouri



8/30/49

Dear Mr. Marsh:

This is in reply to your request for an opinion which reads
as follows:

"Sections 9360, 9361 and 9362 of Laws of
Missouri 1947, Volume I, Page 291, provide
for payments of \$8.00 per month from State
funds to be made to any county or city in
the State for the care of insane patients,
if such county or city maintains from pub-
lic funds a hospital for the care, deten-
tion or treatment of the insane.

"These provisions in the law place upon
the Director of the Department of Public
Health and Welfare certain responsibilities
to examine by proper medical authorities
any institutions presenting claims against
the State for such payments, and to certify
the claims to the Director of the Department
of Revenue, who shall cause such payments to
be made.

"The last appropriation of money for this
purpose was made by the Sixty-fourth General
Assembly. This appropriation is set forth
in Laws of Missouri 1947, Volume I, page 114,
Section 5.160, and we have several claims
pending at the present time for funds to be
paid from this appropriation. These claims
are from the City of St. Louis, and are based
on the patients cared for in the following
institutions:

City Sanitarium, prior to July 19, 1948, Malcolm Bliss Psychopathic Hospital, Homer G. Phillips Hospital, City Infirmary.

"We have also received a notice that the City of Kansas City will soon present a claim for the first time against this fund for insane patients cared for in the General Hospital there.

"Inasmuch as there is considerable question in our mind as to whether the intent of the law was to cover only patients cared for in a mental hospital, such as the City Sanitarium in St. Louis, which has been operated as a State institution since July 19, 1948, or whether the intent was to provide payments from State funds for patients cared for in other city institutions as well, we would like your interpretation of these provisions in the law.

"First, we would like to know whether we can make these payments to any institution maintained by a county or city that cares for insane patients along with other types of patients, or whether we are limited to payments to counties or cities that maintain hospitals exclusively for insane patients.

"Second, we would like to know whether we are limited in making these payments for the care of patients who have been adjudged by the courts to be insane, or whether we are free to set up our own standards to define 'insane patients.'

"Third, are we limited to making payments only to indigent insane persons?

"Fourth, in the event the answer to the first question is 'Yes,' may the City of Kansas City receive any of the moneys appropriated for the purpose of state aid to mental hospitals established and maintained by counties or cities?"

Section 9360, R. S. Mo. 1939, Laws of Missouri, 1947, Volume I, page 291, is as follows:

"Any county or city in this state which shall maintain from public funds a hospital for the care, detention or treatment of the insane, which hospital is properly equipped as to facilities, staff and personnel, shall be entitled to \$8 per month per patient, upon proper report filed and sworn to by the superintendent of such hospital for the insane, when such report is filed with the state department of public health and welfare. Such reports shall be filed quarterly and shall show name, address and other necessary data so as to properly identify and authenticate the patients of such insane institution."

Section 9361, R. S. Mo. 1939, Laws of Missouri, 1947, Volume I, page 291, is as follows:

"The department of public health and welfare shall have authority to examine by proper medical authorities any and all such institutions for the insane, so as to determine if said hospital is efficiently equipped and if said list as filed by the superintendent is correct and authentic and shall have power to make suggestions where conditions are found which need correction or improvement."

Section 9362, R. S. Mo. 1939, Laws of Missouri, 1947, Volume I, page 291, is as follows:

"Upon receipt and approval of the sworn statement of the superintendent of such hospitals for the insane, the director of the department of public health and welfare shall certify such approval to the director of the department of revenue who shall cause to be paid, in the same manner other payments are made, to the county treasurer or city treasurer of any county or city containing such hospital for the insane, the sum of \$8 per month per patient out of the general revenue funds of the state or any other funds which may be provided or set aside for this purpose."

These sections were originally enacted by the 56th General Assembly in 1931, and are found in Laws of Missouri, 1931, page 221. At that same session, Section 9345, R. S. Mo. 1939, was also enacted in which a method was prescribed for commitment of indigent insane persons in the City of St. Louis. Section 9345 was re-enacted by Laws of Missouri, 1945, page 905. The changes that have been made in that section have been merely technical changes and the substance of the law has not been changed since the original enactment in 1931. In brief, the law provided that the hospital commissioner of the City of St. Louis could make supplemental orders authorizing the commitment of insane persons to the City Sanitarium of the City of St. Louis or any other institution maintained by said city for the care of the indigent insane.

The payment of the money appropriated pursuant to Sections 9360-9362 is under question since the transfer of the St. Louis City Sanitarium from control of the city to the Department of Public Health and Welfare. In the past large sums of money have been appropriated in order to carry out the provisions of the aid program. For example, for the fiscal year beginning July 1, 1945 and ending June 30, 1946, the sum of \$267,500.00 was appropriated for this purpose; for the fiscal year beginning July 1, 1947 and ending June 30, 1948, the sum of \$300,000.00 was appropriated for this purpose. On July 19, 1948, the City Sanitarium was transferred to the State of Missouri, and undoubtedly as a result thereof the Legislature limited the appropriation for the aid program to \$50,000.00 for the fiscal year July 1, 1948 to June 30, 1949.

However, under the view that we take of Section 9360, supra, we do not believe that the transfer of the City Sanitarium has resulted in making inoperative this aid section. If any county or city in the state maintains from public funds a hospital for the care, detention or treatment of the insane and the hospital is properly equipped as to facilities, staff and personnel, we believe that the said county or city would be entitled to \$8.00 per month per patient upon filing the proper reports which are approved by the Director of the Department of Public Health and Welfare.

Your first question is really concerned with whether or not compliance is had when a county or city maintains a hospital for the care, detention or treatment of the insane along with other types of patients. In the case of New York Life Ins. Co. v. Ince, 27 S.W. (2d) 476, the St. Louis Court of Appeals was considering a case in which one point in question was whether or not a "clinic" was a "hospital, asylum or sanitarium." In its opinion the court said, l.c. 480:

"In response to question 7-B as to whether the applicant had been under observation or treatment in any hospital, asylum, or sanitarium, he answered in the negative. It appears, however, that he had been under observation at the Mayo Clinic at Rochester, Minn., on two occasions, once in 1914 and again in 1919.

"Defendants contend that the answer to this question is correct because the Mayo Clinic is not a hospital, asylum, or sanitarium, and that therefore his negative answer to the question was true. Counsel say that since the insurer framed the question it must be assumed that if it deemed it important to know whether one had been to a 'clinic' it would have included that word in its question. Technically speaking, a 'clinic' is not an hospital, asylum, or sanitarium, in the sense, at least, that it does not provide beds for its patients, yet a clinic is usually, if not always, an adjunct of a hospital or medical college, and when connected with a hospital is as much a part thereof as all other departments of the institution devoted to the observation or treatment of ill. The defendants introduced evidence to the effect that the Mayo Clinic is separate and distinct from their hospital; that their clinic is just a large clinical building they put their patients through before sending them to the hospital; that is where they make their examination. It seems to follow that while the clinic is used for the examination of patients before placing them in the hospital, it is yet a part of the hospital. * * *"

So, in the present instance, the hospitals in question have wards and operate departments for the care, detention and treatment of the insane. We believe that following the principle evolved in the Ince case, supra, the maintenance of these wards would be sufficient to qualify these hospitals for the aid provided for in Section 9360, supra. We do not think it would be necessary, nor in most cases practical, that counties or cities desiring to qualify under Section 9360 should be required to set up separate hospital buildings for the care, detention or treatment of the insane. Of course, Section 9361, quoted supra, gives

the Department of Public Health and Welfare the authority to determine if the sections of said hospitals are efficiently equipped for the purpose of the care, detention or treatment of the insane.

Your second question is as follows:

"Second, we would like to know whether we are limited in making these payments for the care of patients who have been adjudged by the courts to be insane, or whether we are free to set up our own standards to define 'insane patients.'"

Section 9358, R. S. No. 1939, defines the term, "insane," as follows:

"The words, 'insane' and 'lunatic,' as used in this chapter, shall be construed as including every species of insanity or mental derangement. * * *"

With this definition in mind, and in view of the authority of the Director of the Department of Public Health and Welfare to determine the correctness and authenticity of the list filed by the superintendent, we believe that the Director is authorized to determine for himself whether or not the patients allegedly insane are in fact insane so as to enable the county or city to qualify for said aid. Of course, if a person has been adjudged insane by a court, we do not think that the Director would be authorized to question such a finding.

Your third question is as follows:

"Third, are we limited to making payments only to indigent insane persons?"

Although Section 9360, supra, does not limit payments to indigent persons, we note that the Legislature in making the appropriation for the fiscal year in question has so limited the payments. Section 5.160, Laws of Missouri, 1947, Volume II, page 115, reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Fifty Thousand Dollars (\$50,000.00) or so much thereof as may be necessary for the purpose of paying the mental hospitals, established and

maintained by any county or city not within a county in this state, the sum of Eight Dollars (\$8.00) per month, for each indigent insane person, detained and treated in such hospital, pursuant to the provisions of Section 9360, Revised Statutes of Missouri, 1939; for the period beginning July 1, 1948 and ending June 30, 1949." (Underscoring ours.)

The term "indigent insane" has been defined by the Legislature in Section 9358, R. S. Mo. 1939, as follows:

" * * * The terms 'insane poor' or 'indigent insane,' when applied to a person without a family, shall mean one whose property of all kinds does not exceed, after payment of his debts and liabilities, that which is exempted by the laws of this state from attachment and execution when owned by any person other than the head of a family; and the same words, when applied to a person having a family, shall mean one whose property of all kinds does not exceed, after payment of his debts and liabilities, that which is exempted by the laws of this state from attachment and execution when owned by the head of a family: Provided, that when the said words are applied to a married woman, her separate estate, if any, and that of her husband shall be estimated as aforesaid, and the total amount of both estates shall determine the question aforesaid, whether she be a 'poor' person or not, within the meaning of this chapter. * * *"

Therefore, because the Legislature has only appropriated money for aid in the cases of indigent insane persons, the Department of Public Health and Welfare is limited to making payments only for the care, detention or treatment of such persons.

Your fourth question is as follows:

"Fourth, in the event the answer to the first question is 'Yes,' may the City of Kansas City receive any of the moneys appropriated for the purpose of state aid to mental hospitals established and maintained by counties or cities?"

We note in your request that Kansas City is planning to submit a claim for the first time against this fund for insane patients cared for in the General Hospital there. In the first appropriation made pursuant to what is now Section 9360, R. S. Mo. 1939, the Legislature limited payments to "mental hospitals, established and maintained by any county or city not within a county in this state." (Section 46c, Laws of Missouri, 1933, page 88.) The 64th General Assembly also limited payment to "mental hospitals, established and maintained by any county or city not within a county in this state." (Section 5.160, Laws of Missouri, 1947, Vol. II, page 115.) In view of this limitation in the appropriation act, it is obvious that the only city which is qualified to receive money, under Section 9360, is the City of St. Louis, since it is the only city not within a county in this state. Therefore, even though the claim for Kansas City may be a valid one, it may not be paid out of the appropriation as passed by the 64th General Assembly.

Conclusion.

Therefore, it is the opinion of this department that:

1. Counties or cities maintaining wards or departments in hospitals may qualify for aid from the state for the care, detention or treatment of the insane when found by the Director of the Department of Public Health and Welfare to be efficiently equipped for the purpose.
2. Payments are not limited to those adjudged insane by a court, but may also be made for the care, detention or treatment of those persons determined by the Director to be insane.
3. Payments out of the appropriation as passed by the 64th General Assembly may be made only for the care, detention or treatment of indigent insane persons.
4. The claim for Kansas City may not be paid out of the appropriation as passed by the 64th General Assembly, because said appropriation limits payments to any county or city not within a county, and Kansas City does not fall within such classification.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General