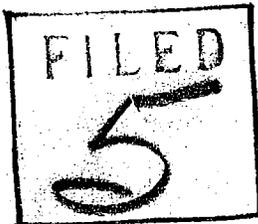


PUBLIC ADMINISTRATORS:
PRIVATE PATIENTS:
STATE HOSPITALS:

It is the opinion of this department that a public administrator who in the course of his official duty becomes the guardian of an insane person and curator of such person's estate and who places such person in a state hospital as a private patient is not required to give the maintenance bond provided for in Section 202.863, RSMo Cum. Supp. 1957, because of the fact that the official bond given by him as public administrator covers such a situation



January 22, 1959

Alfred K. Baur, M. D.
Superintendent
State Hospital No. 1
Fulton, Missouri

Dear Dr. Baur:

I have your letter of October 7, 1958, in reference to my letter to you of September 30, 1958, which was a reply to your letter to me of September 26, 1958. I have noted the copy of the letter dated October 3, 1958, to you from Walter Stilwell of Hannibal.

It is my impression that the first question which you raised with respect to the admission of private patients to state hospitals had to do with a situation where private individuals sought to have a person committed as a private patient. With respect to that situation, we stated that we felt that Sections 202.863 and 867, RSMo Cum. Supp. 1957, should be followed. That is our continued opinion.

Your latest inquiry, based upon the Stilwell letter, is whether the bond provided for in Section 202.863, supra, must be given when a public administrator applies for and is given leave to have admitted to a state hospital as a private patient an insane person who has been committed to the custody of the public administrator. In respect to this matter, we would first call attention to Section 473.743, RSMo Cum. Supp. 1957. That section reads in part:

"It shall be the duty of the public administrator to take into his charge and custody the estates of all deceased persons, and the person and estates of all minors, and the estates or person and estate of all insane persons in his county, in the following cases:

* * * * *

(8) The estates or person and estate of all insane persons in his county who have no legal guardian, and no one competent to take charge

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of such estate, or to act as such guardian, can be found, or is known to the court having jurisdiction, who will qualify;"

From the above, it will be seen that it is the official duty of the public administrator to take into his charge and custody, whenever the situation arises, the person and estate of an insane person where such person has no legal guardian. When such has occurred and it is proposed to admit such person to a state hospital as a private patient, the question arises as to whether or not the public administrator must give the bond provided for in Section 202.863, RSMo Cum. Supp. 1957. Numbered paragraphs 1 and 2 of Section 202.863, supra, reads:

"1. Patients admitted to the state hospitals under the provisions of this law shall be classified as private patients or as county patients.

2. When admission is sought for any person as a private patient, payment for care and treatment shall be made to the business manager of the hospital for thirty days in advance and a bond executed in sufficient amount to secure the payment for such care and treatment. No part of the advance payment shall be refunded if the patient is taken away within such period uncured and against the advice of the superintendent."

Section 202.867 sets forth the form of such bond as is provided for in Section 202.863.

If a public administrator has to comply with the above sections, then he finds himself in the position of having to give a personal bond and to obligate himself personally to guarantee the maintenance of his insane ward at a state hospital and, in the event that the estate of the insane ward fails entirely or becomes insufficient to pay the full amount of such maintenance, then to be obligated to pay all or whatever part of such maintenance as is required out of his private means. We cannot believe that such was the intent of the law because if such a requirement were placed upon a public administrator, it would create extreme hardship and would in many situations make the office of public administrator wholly untenable. Neither do we believe that it was the intention of the law that the public

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administrator be required to attempt to find private individuals who would sign such a maintenance bond and in the event of his failure to find such persons to sign the bond himself. We believe that the contrary is clearly indicated in Section 473.730, RSMo Cum. Supp. 1957, which reads:

"Every county in this state, and the city of St. Louis, shall elect a public administrator at the general election in the year 1880, and every four years thereafter, who shall be ex officio public guardian and curator in and for his county. Before entering on the duties of his office, he shall take the oath required by the constitution, and enter into bond to the state of Missouri in a sum not less than ten thousand dollars, with two or more securities, approved by the probate court and conditioned that he will faithfully discharge all the duties of his office, which said bond shall be given and oath of office taken on or before the first day of January following his election, and it shall be the duty of the judge of the court to require the public administrator to make a statement annually, under oath, of the amount of property in his hands or under his control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property; and such court may from time to time, as occasion shall require, demand additional security of such administrator, and, in default of giving the same within twenty days after such demand, may remove the administrator and appoint another."

From the above, it will be noted that the bond is given and conditioned that the public administrator "will faithfully discharge all the duties of his office * * *." Since it may be the duty of the public administrator, as guardian, to have his ward admitted to a state hospital as a private patient, we believe that the bond of the public administrator covers the costs thereof to the full extent of the estate of the ward and that the public administrator is not required to give the bond provided for in Section 202.863, supra. The public administrator is not required to assume personal liability for the care of the ward.

Alfred K. Baur, M. D.

CONCLUSION

It is the opinion of this department that a public administrator who in the course of his official duty becomes the custodian of an insane person and curator of such person's estate and whose ward is admitted to a state hospital as a private patient is not required to give the maintenance bond provided for in Section 202.863, RSMo Cum. Supp. 1957, because of the fact that the official bond given by him as public administrator covers such a situation.

The foregoing opinion which I hereby approve was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

HPW:GD