

INSANE PERSONS;

County may recover for money expended for insane indigent county patient in certain instances.

February 4, 1943.



Hon. John H. Keith
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Mr. Keith:

The Attorney-General wishes to acknowledge receipt of your letter of February 2, 1943, in which you request an opinion from this department. Your request, omitting caption and signature, is as follows:

"On July 26, 1926, one Ida Belle Sims, wife of Lewis Sims, was adjudged insane by the county court of Iron County, and sent to State Hospital No. 4 at Farmington, Missouri as a county patient.

"At the time they owned a farm in this county, their title being an estate by the entirety.

"She was kept at the hospital until September 4, 1926, and on that date was paroled. On July 12, 1928, she was again found to be insane by the court and ordered returned to the hospital where she has been continuously since that date.

"Lewis Sims died last December, but a short time before his death he was adjudged of unsound mind and incapable of managing his affairs, and a guardian was appointed for both of them, and an

order made by the probate court for the guardian to sell the land, which was done, the amount received for the sale by the guardian being \$3,000.00.

"The county has paid to date more than \$1400.00 for her care at the Hospital.

"Now, may the county legally collect from the guardian the amount expended for her care at the Hospital, as well as for the future expenses of her while at the Hospital?"

I assume from your statement that at the present time Mrs. Sims has a guardian and also has an amount in her estate received after the death of her husband.

In the case of Chariton County, Appellant vs. Hartman, 190 Mo. 71, it was held that where a person has been adjudged insane and indigent and therefore supported by the county at an eleemosynary institution, and the guardian and curator of such person, while she is so supported by the county, recovers for her and in her name certain property, the county cannot recover from her curator and guardian, nor from her estate, the amount of the property by him so recovered in payment to the county for money by it spent in her maintenance. At that time there was in effect a statute - Section 3697, R. S. Mo. 1899, which provided as follows:

In all cases of appropriations out of the county treasury for the support and maintenance or confinement of any insane person, the amount therefor may be recovered by the county from any person who by law is bound to provide for the support and maintenance of such person if there be any of sufficient ability to pay the same."

Under that statute the Chariton County case held that the section aforesaid had reference to the relation of parent and child or where some person is bound under the law to provide

for the support and maintenance of his father. In such case a recovery could be maintained against him. However, they held that the statute fell short of embracing within its provisions actions against the guardian of the ward personally or against him as a representative of the estate. This was predicated upon the decision of the court in *Montgomery County v. Gupton*, 139 Mo., l. c. 308, in which the court said the following:

"It is well settled at common law that the provision made by law for the support of the poor is a charitable provision from which no implication of a promise to repay arises, and moneys so expended cannot be recovered of the pauper in the absence of fraud without a special contract for repayment."

In the later case of *Audrain County v. Muir*, 249 S. W. 383, 297 Mo. 499, the court set out the principle arrived at in the *Chariton County* case and further held that in order to recover in a case of this kind, the county must bring itself within the statutory provisions and show that the defendant was "bound to provide" for the person's support and was able so to do. This case was decided in 1923. In 1927 the statute which is set out above was amended by adding a certain phrase at the end of such statute, which is as follows:

"and also the county may recover the amount of said appropriations from the estate of such insane person."

Therefore, it would appear that under Section 500, R. S. Mo. 1939, in a situation of the kind which you set out in your request, that the county may recover the amount of the appropriations made by it for the support and maintenance or confinement of any indigent insane person.

Therefore, it is the opinion of this Department that the county may legally collect from the guardian the amount

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expended for his ward's care at a Missouri eleemosynary institution. This, of course, answers the question as to whether or not future expenses can be collected, since if she remains at the hospital and she still has an estate out of which to pay her own expenses, that in such case the county would be authorized to collect such expenses from her estate.

Respectfully submitted,

JOHN S. PHILLIPS
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APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG