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LIABILITY OF COUNTIES FOR SUPPORT OF INMATES IN STATE INSTITUTIONS*

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This subject could be briefly covered by reading two or three excerpts from the 1935 statutes as amended, but such procedure would be neither helpful nor instructive. We are here confronted with more than a bald statement of law. The actual situation is an intricate and perplexing problem of law and fact. One which the legislature has done little, over the years, to simplify; one which state officials have simply ignored for twenty-five years or more.

In order to bring the matter into proper perspective, let us analyze the problem which confronts us. The legislature has defined an insane person as follows:¹

The term "insane person," as used in this article, shall be construed to include idiots, and any person so insane and distracted in his mind as to endanger his own person or property, or the person and property of another, or others, if allowed to go at large. The phrases "incompetent," "mental incompetent," "incapable" and "feeble-minded" as used in this article, shall be construed to mean any person who, though not insane, is by reason of old age, disease, weakness of mind, feebleness of mind, or from any other cause, incapable, unassisted, to properly manage and take care of himself or his property, and by reason thereof, would be likely to be deceived or imposed upon by artful or designing persons.

This general and all-inclusive class of insane persons has been further broken up by the legislature into three main categories, according to the places where they are to be confined.

THE COLORADO STATE HOSPITAL

Let us first consider those confined at the *Colorado State Hospital*. This institution was established by the second session of the General Assembly in 1879 which provided that "There is hereby established the Colorado insane asylum, for the treatment and care of such persons as may become insane from any cause."²

After the decision rendered by our Supreme Court in the case of *State Bd. v. Denver*,³ there was initiated and passed Chapter 79 of the 1917 Session Laws⁴ whereby,

All persons who have been or may hereafter be adjudged to be insane, are hereby made wards of the state

* An address presented at the meeting of the County Judges Association during the bar convention at Colorado Springs on October 25, 1951.

¹ COLO. STAT. ANN., c. 105, § 1 (1935).

² *Id.* at § 37.

³ 61 Colo. 266 (1916).

⁴ COLO. STAT. ANN., c. 105, §§ 42 and 43 (1935).

of Colorado; and it is hereby made the duty of the Colorado board of corrections [now under the Administrative Code, the Division of Public Welfare] to admit into the Colorado insane asylum, or to provide and care for elsewhere all insane persons who may be committed to the Colorado insane asylum.

Chapter 118 of Session Laws of 1915 was amended by Chapter 131 of the 1925 Session Laws wherein the estates of the inmates were liable for their support and maintenance while at the Colorado State Hospital, but the counties were absolved from such support and maintenance by paragraph 3 of the same act. Since the whole matter of county liability for inmate costs at the Ridge and Grand Junction schools resolves itself around this provision, we shall here quote the statute and refer to it under our later discussion:⁵

If the commission reports that the person complained of has real or personal estate, and the report in other respects requires the patient to be committed to the care of some person or institution as before set forth, it shall be the duty of the county court in this proceeding, or at any time thereafter, if and when it shall be shown to the court that said insane person or mental incompetent has real or personal estate, to appoint some fit person to be conservator of the estate of the patient and if any patient committed under this article has any estate in the hands of his conservator, an account of his keeping shall be rendered by the proper authorities of the asylum or hospital, or the owner or owners of any other place to which he has been committed, or where he has been treated, to the county court by which said commitment was ordered, and upon further order of said court the conservator shall pay said account out of any money in his hands belonging to said estate, and which may be lawfully applied; provided, however, that when any county court shall appoint a conservator of any such estate, the court shall, in writing, at once notify the superintendent or other executive officer of the institution to which such patient has been committed, of the fact of the appointment of such conservator giving the name and address of such conservator.

If said person so committed has no estate said account shall be presented to the board of county commissioners of said county, whose duty it shall be, on satisfactory proof of the justice of such account, to issue their warrant to the treasurer of the county therefor.

Provided, however, that no such account for the treatment in the state insane asylum shall be so presented or audited.

⁵ *Id.* at § 9.

In the 1951 Session of the General Assembly it was further provided:⁶

Section 1. Whenever any person is admitted, committed or transferred to any public institution of this state, maintained for the care, support, maintenance, education and treatment of insane persons, mentally incompetent persons, criminally insane persons, feeble-minded or epileptic persons, and such person or persons have real or personal estate or both, the estate of such person or persons, irrespective of its source, composition or origin, shall be primarily liable for the payment of the claims of the said public institution for the care, support, maintenance, education and treatment of said person equal to the cost per capita per month of care and treatment of other patients in said institution.

Section 2. Upon the failure, neglect or refusal of the conservator, guardian, executor or administrator to pay the claim of said public institution as hereinbefore provided upon the complaint of the superintendent or chief administrative officer of said public institution and the requirement of the Governor, the Attorney General shall institute, maintain and prosecute an action in law for the collection and payment of said claim or claims.

In addition to the foregoing conservator or guardian liability, the legislature in 1945⁷ imposed upon the kinfolk of the insane inmate the liability for his or her support while in the Colorado State Hospital. This matter has been passed upon by our Supreme Court in the case of *People, ex rel. Zimmerman, v. Herder*.⁸ The order and rank of liability of said kinfolk appears in the statutes as Section 1 and 2 of Chapter 124.

In summation, the estate of the inmate is primarily liable for his care and support at the Colorado State Hospital. If there is no such estate, the inmate's kinfolk are next liable. If there is no estate and no responsible kinfolk, the insane pauper is a ward of the state and must be maintained at state expense, *since there is no county liability for inmates of the Colorado State Hospital.*

THE COLORADO PSYCHOPATHIC HOSPITAL

The Psychopathic Hospital was established in 1919.⁹ The objects of this hospital were stated to be as follows:¹⁰

Said Hospital shall be primarily and principally conducted, not for chronic illness, but for the care and treatment of legal residents of Colorado who are afflicted with a mental disease or disorder, or abnormal mental condition, which can probably be remedied by observation,

⁶ COLO. LAWS, c. 224 (1951).

⁷ COLO. LAWS, c. 170, p. 464 (1945).

⁸ 122 Colo. 456 (1950).

⁹ COLO. LAWS, c. 169, p. 568 (1919); now COLO. STAT. ANN., c. 105, §§ 59-66 (1935).

¹⁰ COLO. LAWS, c. 158, p. 525, (1923); now COLO. STAT. ANN., c. 105, § 69 (1935).

treatment and hospital care. Said Hospital shall also be utilized for such instruction and for such scientific research as, in the opinion of the Board of Regents, will promote the welfare of the patients committed to its care, and assist in the application of science to the prevention and cure of mental diseases.

Persons eligible to admission to said Hospital as patients shall belong to one of the following classes: First, Voluntary Public Patients; Second, Committed Public Patients; Third, Voluntary Private Patients; Fourth, Committed Private Patients; Fifth, Part Pay Patients, either voluntary or committed.

Section 4 of this same act made it the duty of the "... county judge to cause thorough investigation to be made of the financial condition of said person for whom treatment is sought, or of the persons legally responsible for his support or maintenance."¹¹

The previously referred to statutory provision giving the order and rank of kinfolk liability reads:¹²

Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, child or grandchild, brother or sister of such poor person, if they or either of them be of sufficient ability.

If the temporary patient has no estate and no relative financially able to support him, then his cost of care while undergoing such temporary treatment is to be met from the Psychopathic Fund.¹³

It also was provided in the 1923 act that:¹⁴

Section 13. If it shall appear to said Judge that any Public Patient, or Part Pay Patient ordered either admitted or committed to said Hospital, is unable financially, of himself or of others, to provide himself with transportation to said Hospital, then said Judge may authorize the actual and necessary expenses of said transportation, which expense shall be paid by the county of residence of said person, and it shall be the duty of the Board of County Commissioners to provide for such payments.

* * * Said expenses and fees shall be paid by the county of residence of said person and it shall be the duty of the Board of County Commissioners of said county to provide for such payments.

Other than this, there does not seem to be any county liability for the care, support and maintenance of such patient at said Psychopathic Hospital. Emphasis should be placed, however, upon the temporary character of admission to this hospital, as well as

¹¹ Compiled as COLO. STAT. ANN., c. 105, § 70 (1935). See also § 76.

¹² COLO. STAT. ANN., c. 124, § 1 (1935).

¹³ COLO. STAT. ANN., c. 105, § 69 (1935).

¹⁴ Now id. at § 79.

the fact that, before committing a patient to this hospital, "the Judge shall ascertain from the Director of said Hospital when said person may be received in said Hospital," and otherwise follow the procedure outlined in Section 6 of the 1923 Act.¹⁵

THE STATE HOMES AND TRAINING SCHOOLS

The next group of mental incompetents to be considered is that group admitted to the State Homes and Training Schools at Ridge and Grand Junction.

Recently the Attorney General was asked whether these institutions are hospitals or educational institutions, not penal or charitable in character. In his opinion, No. 2083-1951, he said:

The statutes which we shall hereafter consider are those relating to the said State Homes at Ridge and Grand Junction.

The institution at Ridge was created by Ch. 71, S. L. 1909 (Sec. 48, Ch. 105, 1935 C. S. A.), and Sec. 1 of the Act provides that:

"There is hereby established the State Home and Training School for Mental Defectives. The essential object of said school and home shall be the mental, moral, physical, education and training of feeble minded children and the treatment and care of persons so mentally defective as to be incompetent to care for themselves or their property."

By Sec. 1, Ch. 64, S. L. 1919 (Sec. 55, Ch. 105, '35 C. S. A.), the institution at Grand Junction was created as follows:

"There is hereby established on the property of the state at the former Indian school at Grand Junction, Colorado, *an addition to the state home and training school for mental defectives.*" (Emphasis supplied.)

Sec. 2 of Ch. 71, S. L. 1909 (Sec. 50, Ch. 105, '35 C. S. A., institution at Ridge), provides that:

"Within 90 days after appointment, the commissioners shall, with the approval of the governor appoint a superintendent, who shall be a skilled physician, who has had not less than two (2) years' experience in a similar institution, he shall be competent to direct the medical, hygienic, educational and industrial interests of said state home and training school; he shall reside at the state home and training school, and shall have a general supervision over its affairs; * * *

"Said board of commissioners, shall in like manner, appoint a matron, who shall be an assistant to the superintendent, especially in the caring for females admitted to said state home and training school; * * *."

¹⁵ Now id. at § 72.

Sec. 2, subsec. (f), Ch. 153, S. L. 1949, provides that: "*Public Schools* shall mean all state supported elementary and high schools, and junior colleges of the state. In addition, supervisory power herein set forth shall extend to the educational programs of the Colorado Industrial School for Boys, Industrial School for Girls, School for the Deaf and Blind, Home for Dependent and Neglected Children, State Home and Training School at Ridge, and State Home and Training School at Grand Junction in the matters of curriculum, teacher certification, and educational, statistical and financial reporting."

Sec. 5 of said Ch. 153, S. L. 1949, vests in the State Board of Education:

" * * * such powers and duties as are necessary for carrying out the responsibility of general supervision of the public schools of the state, * * * "

Sec. 1, H. B. No. 168, S. L. '51, provides that:

"The State Home and Training Schools for Mental Defectives at Ridge, Colorado, and Grand Junction, Colorado, shall hereafter be known and designated as the State Home and Training School at Ridge and the State Home and Training School at Grand Junction."

It is apparent from these several acts that the successive legislatures have carefully considered and denominated both institutions as schools, and that the said institutions are educational institutions of the State of Colorado. This is particularly true of Ch. 153, S. L. 1949, wherein the State Department of Education is given the power to supervise "*matters of curriculum, teacher certification, and educational, statistical and financial reporting.*"

It is, therefore, my conclusion that the State Home and Training School at Ridge is one of the educational institutions of the state, and that the State Home and Training School at Grand Junction is an addition to the institution at Ridge, and is likewise one of the educational institutions of the state.

From a reading of Secs. 48 to 58 (1), Ch. 105, '35 C. S. A., as amended, it is impossible to spell out any reformatory character to these institutions. The every purpose of the schools is to aid, assist, protect and educate those who are mentally defective and cannot otherwise feed, dress or assist themselves. That they are not charitable in character appears from Secs. 9 and 52 of Ch. 105, '35 C. S. A., and Ch. 224, S. L. 1951.

As pointed out in the beginning,¹⁶ Section 9 of the present chapter on insane persons provides that these schools shall bill on the county commissioners if the inmates have no estate of their

¹⁶ *Supra*, p. 28.

own. In addition to this expression of legislative intent upon the matter of the county's liability for the care, custody, training and education of its feeble-minded, we have only to turn to Chapter 77 of the 1901 Sessions Laws,¹⁷ for confirmation of legislative intent. Those sections provide as follows:

Sec. 28. Whenever a relative, guardian or friend of a feeble-minded person shall make application to the judge of any county court of the state for the relief, care, custody, training and education of said feeble-minded person, the judge of the county court of the county wherein such person resides, if he shall deem such feeble-minded person a proper subject for care, custody, relief, training and education, may issue an order authorizing the board of county commissioners to provide for the care, custody, relief, training and education of such feeble-minded person. The judge shall accompany said order with a certificate stating the name in full, age, place of nativity, the town, city or county in which said feeble-minded person resides, and whether such feeble-minded person, his parents, relatives or guardians are able to provide for his support, in whole or in part, which statement must be verified by the affidavit of two disinterested persons, residents of the same county as the feeble-minded person and acquainted with the facts and circumstances stated.

Sec. 29. The board of county commissioners, upon receipt of said order from the county judge, shall provide for the care, custody, relief, training and education of such feeble-minded person under the care of a public or private institution provided for the treatment of feeble-minded persons in this or other state, and the board of county commissioners shall appropriate from the fund provided for the care and relief of the poor, not otherwise appropriated, such sums as shall be necessary.

In summation, let me say that it seems to be the legislative intent to make the estates of the inmates primarily liable for their support, maintenance, etc., at the state schools at Ridge and Grand Junction, with the county of commitment secondarily liable in case there is no such estate.

PERSONALS

Charles S. Thomas is seeking an attorney who might be interested in taking over his established law practice, office, library and home in Paonia, Delta County, Colorado. There is no other practicing attorney in the near vicinity.

¹⁷ Now COLO. STAT. ANN., c. 105, §§ 28 and 29 (1935).