

1388.

PROBATE COURT—LUNACY PROCEEDINGS—AFFIDAVIT FILED—PERSON DISCHARGED—FEE TAXABLE AGAINST PERSON DISCHARGED UNDER SECTION 1602 G. C., 108 O. L. 1203—NO PROVISION UNDER SECTION 1981 G. C. FOR PAYMENT OF EXPENSES OF SUITABLE PERSON OTHER THAN SHERIFF IN MAKING ARREST—AUTHORITY TO PAY CERTAIN EXPENSES OF SHERIFF IN MAKING ARRESTS OR SERVING WARRANTS PROVIDED FOR IN SECTION 1954 G. C. RELATING TO LUNACY CASES IS PROVIDED IN SECTION 1981 G. C.

1. *In a case where an affidavit has been filed in the probate court upon which a lunacy inquest is based, and the person proceeded against is discharged under section 1602 G. C., as amended in H. B. 294, the \$5.00 fee therein provided for is taxable against the person who is thus tried and discharged.*

2. *Under section 1981, as amended in said bill, there is no provision for the payment of expenses of the suitable person (other than the sheriff) in making the arrest. There is authority in section 2997 for payment of certain expenses of the sheriff in making arrests or serving warrants provided for in 1954, relating to lunacy cases, and which are chargeable in such cases as a part of the costs against the patient, if solvent.*

COLUMBUS, OHIO, July 1, 1920.

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department as follows;

“Section 1602 General Code, as amended in House Bill No. 294, provides:

“The fees enumerated in this section shall be taxed by the probate judge in the bill of costs and collected from the estate of the person against whom the proceeding is instituted if there be such estate, if there be no such estate, then from the person legally responsible for his care and support, and shall be in full for all services rendered in the respective proceedings, * * * For each inquest of lunacy when the person is committed to a state hospital or to relatives, eight dollars, when the person is discharged, five dollars, * * *”

1. In a case where application has been made to a probate court, alleging that a certain person is insane, and the person after hearing is discharged, can this five dollar fee be taxed against the person who is tried and discharged?

2. If a warrant to arrest in such a case as the one instanced has been directed to a suitable person (other than the sheriff) how are the expenses of this suitable person to be paid? Are they also to be taxed against the patient? We presume that if the warrant to arrest were directed to the sheriff that officer could get his expense under section 2997 G. C. Can the expenses in a case of this kind be taxed against the patient if solvent?”

Your letter quotes section 1602, as amended, and its repetition is unnecessary. It is to be noted that as to the costs being taxed against and collected from the person against whom the proceeding is instituted, this part of the section is unconditional. True the latter part of the section as to the amount so taxed under that section differs where there is a commitment from the amount when the person is discharged. In the former event the fee is \$8.00 and in the latter \$5.00. The same provision is made in section 1982 for other fees and expenses being taxed and collected from the patient.

the only alternative being that in case of the patient's insolvency or the insolvency of those responsible for his care, the fees and expenses are to be paid from the county treasury.

The words used in these sections are plain and explicit, the expression is clear and distinct. In such a case, as said in *Elmwood Place vs. Schanzle*, 91 O. S., 357:

"There is no occasion to resort to other means of interpretation. In such a situation the question is not what did the general assembly intend to enact. but what is the meaning of that which it did enact?"

In view of this it is believed that your first question must be answered in the affirmative. This provision is construed as it stands and its constitutionality is not passed upon.

One of the questions stated in the paragraph entitled question 2. relates to the payment of the expense of a suitable person (other than sheriff) in making the arrest in a lunacy case. You also inquire if they (such expenses) are taxable against the patient.

Section 1954 of the chapter relating to lunacy cases provides that when an affidavit in lunacy is filed, the probate court shall issue his warrant to "a suitable person commanding him to bring the person alleged to be insane before him." This section, remained unaffected by the recent amendment. In section 1959, relating to the conveyance of insane persons to a hospital the statute provided that the probate judge should issue his warrant to the sheriff commanding him to convey such person. In this section there was provision for the appointment of an assistant if necessary.

Old section 1981 provided for the payment of expenses in making the arrest in this fashion, viz.:

"Costs and expenses * * * to be paid under the provisions of this chapter, shall be as follows: * * * To the person other than the sheriff or deputy sheriff making the arrest the actual and necessary expenses thereof and such fees as are allowed by law to sheriffs for making arrests in criminal cases.

In section 1981, as amended, there is a provision for the payment of expenses of persons other than the sheriff or his deputies in conveying insane persons to a state hospital or removing them therefrom, but the provision for the payment of expenses and fees to such persons other than the sheriff, was omitted from the section as amended, nor is there any other provision for the payment of such fees and expenses in any other section of H. B. 294, and the conclusion must be reached that there is no provision for the payment of such expenses.

It is noted that you presume the expenses of the sheriff in making the arrest could be paid under section 2997 G. C. and inquire if such expenses should be taxed against the patient if solvent.

Section 1982, as amended, provides for the taxation and collection from the patient, if solvent, of the fees and expenses enumerated in section 1981, "together with all costs in the probate court." It is believed that the language of this section clearly indicates the intention to provide that all of the costs, including the expenses provided for, are taxable against the patient unless he is insolvent, as provided in that section.

Whether or not such expenses are payable to the sheriff under section 2997, may depend to some extent upon the character of the expenses incurred, as that section provides for the payment of expenses incurred in a certain manner, and in the absence of specific facts and also in view of the form of your question, this phase of the situation is not passed upon.

Respectfully,
JOHN G. PRICE,
Attorney-General.