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FEEBLE-MINDED PERSONS — COMMITTED BY COURT — STATE INSTITUTIONS UNABLE TO RECEIVE ADDITIONAL INMATES—PROBATE JUDGE HAD NOTICE OF SUCH FACT—DUTY OF PROBATE JUDGE AT EXPENSE OF COUNTY TO PROVIDE FOR DETENTION, SUPERVISION, CARE AND MAINTENANCE OF SUCH PERSONS — PERIOD OF TIME — FEEBLE-MINDED INSTITUTIONS ABLE TO RECEIVE SUCH INMATES.

DEPARTMENT OF PUBLIC WELFARE — DUTY TO INSURE ADEQUATE AND PROPER OVERSIGHT AND SUPERVISION TO PROTECT SUCH PERSONS AND PUBLIC DURING TEMPORARY PERIOD—CARE AND MAINTENANCE FURNISHED AT EXPENSE OF COUNTY.

SYLLABUS:

Where feeble-minded persons have been committed by the court and it has been determined that the institutions of the state for feeble-minded are unable to receive additional inmates and the probate judge in making such commitment has been notified of such fact, it is the duty of the probate judge at the expense of the county to provide for the detention, supervision, care and maintenance of such feeble-minded person until such time as the state institutions for the feeble-minded are able to receive such inmate. However, in such case it is the duty of the Department of Public Welfare of the state to insure adequate and proper oversight and supervision for the due protection of such person and the public during such temporary period while the care and maintenance is being furnished at the expense of the county.

Columbus, Ohio, September 2, 1943.

Hon. Herbert R. Mooney, Director, Department of Public Welfare,  
Columbus, Ohio.

Dear Sir:

Your request for my opinion reads:

“For many years there have not been sufficient facilities in our State institutions to admit all of the feeble-minded persons who have been committed to these institutions by the courts. This situation has brought up the question as to the State’s responsibility in the cases of feeble-minded persons who have been committed by the courts, but not received into the institutions.

Section 1890-100 and Section 1890-105 pertain to this question. I am, therefore, requesting an opinion from you to deter-

mine what is the responsibility of the State, if any, in the cases of feeble-minded persons who have been committed by the courts but whom we have been unable to receive in our State institutions because of lack of facilities to care for them."

Section 1890-96 of the General Code provides that :

"Except as otherwise provided, the state of Ohio shall have the care, custody, control and treatment of persons adjudged to be feeble-minded and of each feeble-minded person who shall be received into any institution for the feeble-minded under the control of the division of mental diseases and department of public welfare."

For the purpose of the statutes defining the duties of the state and the counties thereof with respect to the care of "feeble-minded" persons, the term "feeble-minded" is defined in Section 1890-97 of the General Code as follows :

"The term 'feeble-minded' or mentally defective refers to any person who is not mentally ill, but whose intellectual development is so retarded that he has not acquired sufficient control, judgment and discretion to manage himself and his affairs, and for whose own welfare or that of others, supervision, guidance, care or control are necessary or advisable.

The term 'feeble-minded' or mentally defective for the purposes of this chapter shall include idiots, imbeciles and morons, which are defined as follows :

An idiot is a mentally defective person having an intelligence quotient of less than twenty-five.

An imbecile is a mentally defective person having an intelligence quotient from twenty-five to fifty inclusive.

A moron is a mentally defective person having an intelligence quotient of not less than fifty or more than sixty-nine."

Section 1890-100 of the General Code, as enacted in 117 O. L. 578, prescribed the duties of the Welfare Department with reference to feeble-minded persons as follows :

"The department of public welfare shall have the power and authority, also, to provide for the custody, supervision, control, *care, maintenance* and training of feeble-minded persons committed to its custody and care, *and to pay, in the manner provided by law, the expense thereof out of any funds available therefor. Such persons may be held in custody and control, and may be*

*supervised, cared for, maintained and trained*, elsewhere than within the enclosure of an institution, if the department of public welfare and the division of mental diseases shall so determine with respect to any individual or group of individuals, *and under such regulations as may be appropriate to carry out the purposes of this section and of section 1859 of the General Code*; provided that in all such cases the department shall insure adequate and proper oversight and supervision for the due protection of such persons and of the public." (Emphasis mine.)

And as amended in 119 O. L. 636, reads:

"The department of public welfare shall have the power and authority, also, to provide for the custody, supervision, control, and training of feeble-minded persons committed to its custody and care elsewhere than within the enclosure of an institution, if the department of public welfare and the division of mental diseases shall so determine with respect to any individual or group of individuals; provided that in all such cases the department shall insure adequate and proper oversight and supervision for the due protection of such persons and of the public."

It will be observed that the emphasized portion of the original Section 1890-100, General Code, was eliminated by the amendment.

Section 1890-37 of the General Code specifies the manner in which the probate judge may make application for admission of a person whom he has committed for treatment or care by reason of mental insufficiency, as follows:

"The probate judge, upon making an order committing a person to a state hospital or other facility referred to by this chapter, shall forthwith make application for the admission of the patient to the superintendent of the hospital situated in the district serving the county of commitment, subject to the restrictions of section 1890-31. At the same time, he shall transmit the certificate of the medical witnesses and of his findings in the case. \* \* \* Upon receiving the application, the superintendent shall immediately advise the probate judge whether the patient can be received, and, if so, at what time."

Section 1890-105 of the General Code then provides the procedure to be followed if the state institutions are unable to receive such committed person, as follows:

"If by reason of inability of the institutions for the feeble-minded to receive additional inmates and the department of public welfare or the division of mental diseases is unable to provide for the custody and care of any feeble-minded person, the super-

intendent of the institution to which application is made shall forthwith notify the judge of the probate court in which the proceedings for the commitment of such feeble-minded person are pending, of his inability to receive such feeble-minded person. The probate judge shall thereupon take such action and make such order as he may deem necessary and advisable to provide for the detention, supervision, care and maintenance of said feeble-minded person, *at the expense of the county*, until such time as he may be received in an institution for the feeble-minded." (Emphasis mine.)

From the foregoing statutory provisions it is evident that:

1. Except to the extent provided by law the State Welfare Department has the care, custody, control and treatment of all feeble-minded persons committed to the institutions under its jurisdiction. (Section 1890-96, General Code.)

2. The State Welfare Department *may* provide for the custody, supervision, control and training of feeble-minded persons *committed to its custody* at other places than institutions under its jurisdiction. (Section 1890-100, General Code.)

3. If the Welfare Department is unable to provide for the reception of feeble-minded persons, it is the duty of the probate judge to make provision for the care, detention, supervision and maintenance of such feeble-minded persons, *at the expense of his county*, until such time as the patient can be received at a state institution. (Section 1890-105, General Code.)

The General Assembly, in making provision for the care of persons of imperfect mentality, has classified them into four classifications which it has denominated as (1) "mentally ill", (2) "insane", (3) "feeble-minded" and (4) "epileptic persons". (Section 1890-2, General Code.) It has defined the term "mentally ill" as follows:

"'Mentally ill' means the condition of any person found within the state of Ohio, who is or who appears to be insane as defined in this section, or so mentally disturbed or mentally defective as to require for his own protection or the protection of society, care, control or treatment; or a person so addicted to the intemperate use of narcotics or stimulants, so as to require for his own protection, or the protection of society, care, control or treatment." (Section 1890-22, General Code.)

It defined the term "insane" as follows:

"The term 'insane' as used in this act, means the condition

of any person determined to have a prolonged and persistent departure from the individual's normal standard of thinking, feeling or acting; or any person who is mentally ill as herein defined and whose condition is either incurable or requires a type of or duration of treatment that cannot be given except in a state hospital." (Section 1890-22, General Code.)

It defined the term "epileptic persons" as follows:

"The term 'epileptic' means the condition of a person found within the state of Ohio who is or appears to be afflicted with epilepsy, and includes the sane epileptic as well as those whose epileptic condition is accompanied by insanity or mental illness as defined in this act, regardless of whether the epileptic condition preceded or followed the insanity or mental illness." (Section 1890-84, General Code.)

It has defined the term "feeble-minded" as above quoted in Section 1890-97, General Code.

In such Act (Sections 1890-1 to 1890-114, General Code), the General Assembly has made separate provision for the care of mentally ill persons (Sections 1890-14, 1890-23 to 1890-63, 1890-107 to 1890-110, General Code); for insane persons (see same sections); epileptics (Sections 1890-84 to 1890-95, General Code) and feeble-minded persons (Sections 1890-96 to 1890-105, General Code).

In the case of mentally ill persons the General Assembly has made provision for the establishment by the county commissioners of "detention hospitals" for the temporary care of persons "mentally ill" who can not at the time be taken care of in state institutions (Section 1890-107, General Code). It has further provided that the State Welfare Department may rent or lease additional facilities for the purpose of the care of persons "mentally ill." However, I am unable to find any similar provision with reference to the case of feeble-minded persons when they may not be cared for in state institutions for the care of feeble-minded persons.

It would, therefore, seem to me that when the General Assembly amended Section 1890-100 of the General Code by taking therefrom the words "care and maintenance" and the language "and to pay, in the manner provided by law, the expense thereof out of any funds available therefor", it was its intent to change the meaning of such section to the extent of the change made in the language thereof. *Kiefer v. State*, 106 O. S. 285; *Board of Education of Putnam County v. Board of Education*, 112 O. S. 108.

Especially does this appear to be true by reason of the fact that in

Section 1890-105 of the General Code it is specifically provided that when the Probate Court has been advised of the inability of the state welfare institutions to care for additional patients, that:

“The probate judge shall thereupon take such action and make such order as he may deem necessary and advisable to provide for the detention, supervision, care and maintenance of said feeble-minded person, *at the expense of the county*, until such time as he may be received in an institution for the feeble-minded.” (Emphasis mine.)

In view of such amendments it now appears that the duty of providing for the care and maintenance of feeble-minded patients, who may not be cared for in state institutions, is upon the probate judge at the expense of his county but that in all such cases the State Welfare Department “shall insure adequate and proper oversight and supervision for the due protection of such persons and the public,” until space is available for such persons in state institutions.

Specifically answering your inquiry, it is my opinion that where feeble-minded persons have been committed by the court and it has been determined that the institutions of the state for feeble-minded are unable to receive additional inmates and the probate judge in making such commitment has been notified of such fact, it is the duty of the probate judge at the expense of the county to provide for the detention, supervision, care and maintenance of such feeble-minded person until such time as the state institutions for the feeble-minded are able to receive such inmate. However, in such case it is the duty of the Department of Public Welfare of the state to insure adequate and proper oversight and supervision for the due protection of such person and the public during such temporary period while the care and maintenance is being furnished at the expense of the county.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.