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MENTALLY ILL—COMMITMENT UNDER SECTION 1890-23 ET SEQ., G. C.—NOT INVALIDATED BY FAILURE OF OFFICER TO EXECUTE WARRANT OF CONVEYANCE—SECTION 1890-38 G. C.

SYLLABUS:

Commitment of a person adjudicated mentally ill under the provisions of Section 1890-23 et seq., General Code, is not invalidated by failure of the officer to execute the warrant of conveyance prescribed by Section 1890-38, General Code.

Columbus, Ohio, June 21, 1946

Hon. Frazier Reams, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“We respectfully refer you to the provisions of the General Code of Ohio Sections 1890-27 (O. L. 121, S. B. No. 48), 1890-23 (O. L. 119 v. 625), 1890-30 (O. L. 117 v. 561), 1890-37 (O. L. 121 S. B. No. 48), 1890-38 (O. L. 117 v. 563), 1890-40 (O. L. 119 v. 628), and ask to be advised whether in your opinion there is any time limit to the validity of court papers in commitments of patients to state hospitals.

As an example of questions which arise, we cite the following situation:

On April 20, 1940, a woman having a legal settlement in Jackson County, Ohio, was adjudged mentally ill by the Jackson County Probate Court and was committed to the Athens

State Hospital. The court papers in the adjudication and commitment were transmitted to the superintendent of the hospital, and the patient was placed in the custody of her husband 'until she can be admitted into said hospital; and this cause is continued'. At that time, Section 1890-37 G. C. provided that 'Upon receiving the application, the superintendent shall immediately advise the probate judge whether the patient can be received and, if so, at what time'. Notice that the patient would be received was sent by the superintendent to the court on April 23, 1940; but the warrant to convey was not executed by the sheriff for the reason, as expressed by the court, 'the condition of the patient improved during the time of her adjudication of mental illness and the authorization for her admission'.

During the period from April 20, 1940 to April 1, 1946, this woman resided with her husband. On April 1, 1946, the court addressed a communication to the superintendent of the Athens State Hospital, requesting that the woman be admitted to the hospital 'in accordance with the adjudication and order of the court under date of April 20, 1940'.

The superintendent expressed the doubt that the 1940 commitment papers are now valid, and the opinion that an adjudication and commitment made six years ago can not necessarily establish the patient's present mental condition."

An examination of the statutes concerning persons thought to be mentally ill, including those sections specifically referred to in your inquiry, discloses the following pertinent provisions:

Section 1890-23, General Code, reads in part as follows:

"For the detention of a person thought to be mentally ill and for his admission to a receiving hospital or state hospital or for other legal disposition the following proceedings shall be had except as otherwise provided by this act: One of the next of kin, or a resident of the county in which the person alleged to be mentally ill has a legal residence or is temporarily residing or detained, shall file in the probate court of said county an affidavit in the manner and form prescribed by the division of mental hygiene which shall contain the following information: * * *."

Section 1890-24, General Code, provides that upon the filing of an affidavit as prescribed in the preceding section, the probate judge shall issue a warrant of detention commanding the officer to whom such warrant is issued to take such person to the place designated by the probate

judge in such warrant of detention and detain him until the time of hearing unless the probate judge orders otherwise, and Section 1890-25 provides for a notice of hearing upon the affidavit prescribed in Section 1890-23, General Code, and the persons to whom such notice shall be given.

Section 1890-27, General Code, reads as follows :

“Unless for good cause the hearing is adjourned, the probate judge, on the next law day after the return of the service of the warrant of detention, shall, without the intervention of a jury, proceed to examine the witnesses in attendance, and further witnesses that he may desire to call. He shall cause an examination of such person to be made by at least one physician and a report of such examination to be made a part of the court record. Upon the hearing of the testimony, which hearing may be had at any place within the county as the probate judge may designate, and after receiving the report of the physician or physicians, if he is satisfied that the person charged is mentally ill and in need of specialized care and treatment, he may by order duly entered proceed as follows :

1. To order that such person be placed in a receiving hospital for observation or treatment or both.
2. To commit such person to the proper state hospital for the mentally ill for treatment.
3. To commit such person to the state department of public welfare and to deliver him to the facility provided by the department for persons described in section 1890-72 of the General Code.
4. To commit such person to the veterans administration or other agency of the United States government, as provided for by section 11037-15 of the General Code, after having received the written consent of such hospital to receive such person.
5. To order that such person be placed in a private hospital, home or institution licensed and approved by the division of mental hygiene at his own or county expense.
6. To remand such person to the custody of a relative, friend, or other suitable person.
7. To commit such person to the county home or other place provided by the county commissioners under authority of law.
8. Discharge him.

The medical witnesses provided by this section and section 1890-28 of the General Code must be registered physicians in Ohio and must have had at least three years' experience in the practice of medicine."

If under the provisions of paragraph numbered "I" above, a person is placed in a receiving hospital for observation or treatment or both, and the superintendent of such receiving hospital reports that in his opinion such patient is mentally ill and in need of hospital care and treatment, such patient may be called for a rehearing before the probate judge under the provisions of Section 1890-28, General Code. Said latter section also provides for a rehearing upon the report of any person into whose charge a patient was previously committed and provides for notification of all persons notified of the original hearing. Thereupon any of the findings enumerated in Section 1890-27, supra, may be entered by the probate judge.

Section 1890-30, General Code, reads as follows:

"The relative of a person charged with mental illness, or found to be mentally ill, in all cases, may, with the approval of the probate court, take charge of and keep such person if they desire to do so. In such case, the probate judge, before whom the hearing has been held, may deliver such mentally ill person to them."

Section 1890-31, General Code, gives the probate judge of any county jurisdiction, upon the filing of an affidavit that a person within his county is suffering from mental illness, to inquire into such allegations and make any of the orders enumerated in Section 1890-27, General Code.

Section 1890-37, General Code, reads:

"The probate judge, upon making an order committing a person to a state hospital or other facility referred to by this chapter, shall forthwith, subject to the restrictions of section 1890-31, transmit to the superintendent of the hospital, copies, under his official seal, of court papers in the case, including the certificate of the medical witnesses and of his findings in the case. If the person committed has been confined in a receiving hospital, the certificate of the superintendent of the receiving hospital shall also be furnished."

Section 1890-38, General Code, provides for the issuance of a warrant directing the sheriff or other person named therein to convey such mentally ill person to the hospital.

Section 1890-40, General Code, reads in part :

“On receipt of the warrant to convey, the sheriff or other person to whom directed shall execute and return it to the probate court that issued such warrant, showing how it was executed and the date the patient was delivered to the hospital or place set out in said warrant. The warrant shall contain the receipt of the delivery of the patient signed by the superintendent or a member of the medical staff of such institution or place set out in said warrant.”

I also note certain sections pertaining to the discharge of a patient, the first of which sections is 1890-63, General Code, reading as follows :

“The superintendent of a hospital, with the approval of the director of public welfare or the commissioner of mental hygiene, except as otherwise provided by law, may discharge any patient, not under indictment or conviction for crime, from such hospital or under his custody or control when, in the opinion of the superintendent such patient is no longer mentally ill, feeble-minded or epileptic, or when such person has recovered to such an extent that he may be discharged from the hospital without danger to others and with benefit to himself, or when such superintendent and commissioner deem such discharge proper. No patient, who in the judgment of the superintendent, has dangerous, homicidal or suicidal tendencies, shall be discharged as long as such tendencies exist.”

Section 1890-63b, General Code, provides for an application for release and that section reads :

“Any person, not under indictment or conviction for crime, committed under the provisions of this act, may, after the expiration of one year from the date of his commitment, make written application to the court by which he was committed, for his release.

Such application may be made personally, by counsel, by guardian, or by next friend but must be supported by a certificate of a reputable physician.

The court shall grant a hearing upon such application, at which hearing it shall give consideration to reports and recommendations of the department of public welfare and to such evidence as the applicant may present.

No subsequent application to said court shall be filed on behalf of any person whose application is denied, except by leave of court, within one year after the date of the last preceding hearing.

If upon any hearing provided by this section, the court finds that such person is not then mentally ill, insane, mentally deficient, psychopathic or epileptic, as the case may be, the court shall order the department of public welfare to discharge such person."

Furthermore, Section 1890-63a, General Code, sets forth the procedure to procure an adjudication of competency. That section reads:

"After a person has been adjudicated to be mentally ill, feeble-minded or epileptic, such person may at any time thereafter, file an application in the Probate Court wherein the adjudication was made to determine whether such person is then competent: Provided, however, any person committed to a state institution under the provisions of this act shall not be permitted to file such application until such person has received a certificate of discharge from such institution.

Upon filing of such application, notice of the purpose, time and place of the hearing shall be given to the person upon whose affidavit such adjudication was made, to the guardian, if any, and to the spouse, if any, at his or her residence, if such address is known.

Upon hearing, if it is proven that said applicant is competent, the Court shall so find and enter such finding on its journal.

The Court shall fix the sum of \$5.00 as costs for such proceeding."

It would thus appear that the pertinent statutes in their present form set forth a comprehensive step-by-step procedure for (1) the determination of mental illness, (2) the orders that may be made pursuant to such determination, as outlined in Section 1890-27, General Code, supra, (3) the procedure for executing such orders, and (4) the methods for discharge or release of the patient and an adjudication of competency. In my opinion the sections last referred to are exclusive, with the possible exception of habeas corpus proceedings, in that a release or discharge of a patient who has been committed to a state hospital under the provisions of Section 1890-27 must be obtained by the procedure provided in those sections. Nowhere in such statutes is there provided a time limit for execution of a warrant to convey to a state institution one declared mentally

ill, nor any indication that a failure to do so operates as a release or discharge.

In the case of *In re Silverman*, 69 O. App., 128 (23 O. O. 555, 42 N. E. (2d) 87; affirmed without opinion, 140 O. S. 335), it was held that a sentence is not void by reason of not being executed within five days. While that opinion involved a sentence in a criminal case, and the procedure for control and care of the mentally ill is not a criminal proceeding, yet there is a certain analogy due to the fact that in each instance an adjudication is made and the custody and control is transferred to the proper officer of the state government. Furthermore, it certainly could not be argued that if a person committed to a state mental institution should escape from the custody of the officer entrusted with the transportation of such person, the commitment becomes void at the expiration of some period of time so that if the mentally ill person would be thereafter apprehended he could not be received in to the custody of a state institution upon the warrant issued at the time of commitment.

Therefore, in specific answer to your inquiry, you are advised that in my opinion there is no time limit to the validity of a commitment made by a probate court pursuant to an adjudication of mental illness. It would, therefore, follow that in the example given in your inquiry the Athens State Hospital should now receive the person adjudged mentally ill and committed April 20, 1940. If the superintendent of such hospital is of the opinion that such patient is no longer mentally ill he may follow the procedure outlined in Section 1890-63, General Code, and discharge such patient; or the patient herself, or someone on her behalf, may make application for her release as provided in Section 1890-63b, General Code, *supra*.

It does not appear to me to be necessary to discuss the problem raised by the last sentence of your letter wherein you state the superintendent expressed a doubt that an adjudication and commitment made six years ago can establish the patient's present mental condition, for we are here concerned only with the validity of the commitment, not the present mental condition of the patient. I have pointed out the statutes which provide full authority and procedure for any action desirable in the event the superintendent reaches the conclusion that the patient is no longer mentally ill, and I have also pointed out the statutes under which a person who has been adjudicated mentally ill may make application for discharge

and for an adjudication of competency. The steps outlined in said statutes are fully available for the benefit of such patient. Any release, discharge or adjudication respecting a person mentally ill, regardless of the date of adjudication and commitment, should follow the procedure outlined therein.

Respectfully,

HUGH S. JENKINS
Attorney General