

4619.

COMMITMENT—FEEBLE MINDED FELON—COMMON PLEAS COURT
MAY NOT COMMIT TO A FEEBLE MINDED INSTITUTION.

SYLLABUS:

A court of common pleas cannot commit a feeble-minded person found guilty of a felony in that court to an institution for the feeble-minded.

COLUMBUS, OHIO, September 17, 1932.

HON. JOHN MCSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads in part as follows:

“On April 6, 1932, one Frank Ulanski was committed to the Lima State Hospital for the Criminal Insane from the Common Pleas Court of Cuyahoga County for a period of observation, under Section 13451-3 G. C. This man had been convicted of housebreaking.

On June 3, 1932, the Superintendent of the Lima State Hospital reported to the Prosecuting Attorney of Cuyahoga County as follows:

‘We have made a careful mental and physical examination of him and the observation period will expire on the fifth instant. It is the unanimous opinion of our medical staff that Ulanski is not suffering from an active mental disorder. He is, however, definitely feeble-minded and constitutionally inferior. Such individuals frequently become anti-social and are generally unstable, if not potentially dangerous. The medical opinion, therefore, is mental deficiency, while legally he is insane.’

On June 13, 1932, Frank Ulanski was removed from the Lima State Hospital by an officer from Cuyahoga County and was delivered to the Institution for Feeble-Minded, Columbus. No commitment papers accompanied his delivery but a copy of a journal entry of the Common Pleas Court of Cuyahoga County was received reading as follows:

Cuyahoga County

State of Ohio

vs.

Frank Ulanski

June 6, 1932:

April Term, 1932

Indictment for

housebreaking.

‘Upon recommendation in report from the Superintendent of Lima Hospital for Criminal Insane, it is therefore ordered and adjudged by the court that the defendant Frank Ulanski be committed to the Institute for Feeble Minded, Columbus, Ohio, and that he pay the costs of this prosecution.’

In our opinion this man should have been committed to the Lima State Hospital. Section 1985 G. C., of the Lima State Hospital law provides for the care at Lima ‘of persons acquitted because of insanity.’ It also provides in Section 1994 G. C., for the transfer to Lima by this department of persons who after their commitment by probate courts to institutions for feeble-minded exhibit criminal tendencies, this indicating that the law contemplates the care of the criminal feeble-minded at

Lima. While Frank Ulanski is not medically insane, he is feeble-minded and according to our understanding legal insanity includes feeble-mindedness.

We now have confined at the Lima State Hospital through commitment by the courts of common pleas many feeble-minded persons who have been accused or convicted of crime, the diagnosis of feeble-mindedness made by the superintendent of the Lima State Hospital after a period of observation of the accused having been accepted by the court.

The fact that Frank Ulanski was sent to the Lima State Hospital for observation, under Section 13451-3 G. C., indicates that he was convicted of crime. He was diagnosed by the Lima State Hospital staff as feeble-minded. This diagnosis was accepted by the court and the court committed him to the Institution for Feeble-Minded. We enclose a copy of the journal entry received by the Institution for Feeble-Minded with the patient.

We respectfully request your opinion as to whether or not this commitment to the Institution for Feeble-Minded was legal.

If the commitment was not legal, what steps should be taken to effect a proper disposition of the case?"

The legislature has expressly provided for the commitment and admission of feeble-minded persons of any age to institutions for the feeble-minded. Section 1893, General Code, provides that feeble-minded persons shall be committed and admitted to institutions for the feeble-minded in the same manner and by the same court as in the commitment and admission of insane persons to hospitals for the insane. Section 1893 reads in part as follows:

"Feeble-minded persons of any age, whether public charges or not, shall be admitted to the institutions for the feeble-minded, provided such persons are of such inoffensive habits as to make them, in the judgment of the board of administration, proper subjects for care and discipline. Such persons shall be committed to the board of administration and admitted to the institutions for the feeble-minded in the same manner and by like proceedings as are provided for the commitment and admission of insane persons to the state hospitals for the insane; and the provisions of chapter 7, division II, title V, part first of the General Code governing and regulating the admission and commitment to, and conveyance and escort to and from the state hospitals for the insane, the clothing, traveling expenses, care and maintenance of persons adjudged insane, the arrest and return of escaped insane patients, the release of insane patients from the hospitals for the insane on *habeas corpus*, and the record of inquests of lunacy to be made and kept by the probate judge, shall apply to and govern the commitment, custody, care, support, maintenance and release of the feeble-minded, and the same fees, costs and expenses that are allowed and paid in lunacy cases shall be allowed, taxed and paid for similar services in all proceedings related to feeble-minded persons. Provided, however, that the medical certificates mentioned in section 1957 of the General Code shall not, when the same relate to feeble-minded persons, be void after ten days, as stated in said section. * * *."

The procedure for the commitment and admission of insane persons to hospitals for the insane is outlined in sections 1849 to 1983, inclusive, General Code.

These sections are in Title V, Division II, Chapter 7 of the first part of the General Code, which title, division and chapter are specifically referred to in section 1893. It is readily apparent on a reading of sections 1849 to 1983, inclusive, that the legislature has conferred solely on the probate courts of this state, except as provided in sections 13441-1 to 13441-4, inclusive, the power and jurisdiction to inquire whether a person is insane or not and upon such determination to commit an insane person to a hospital for the insane. The various sections contained in the title and chapter referred to in section 1893 make mention only of the probate court in the matter of the commitment, admission and release of insane persons. See sections 1950-1 to 1962, inclusive, 1966, 1967, 1969, 1970, 1977 and 1981.

It is necessary, before one alleged to be insane can be committed to a hospital for the insane, that an inquiry be held into the mental status of such a person. The institution of proceedings for such an inquiry can only be commenced in and heard by a probate court, except as provided in sections 13441-1 to 13441-4, inclusive. See sections 1953 to 1958, inclusive.

A similar power to inquire into the sanity of a person and to commit an insane person to a hospital for the insane has been conferred by the legislature on the courts of common pleas of this state in the enactment of sections 13441-1, 13441-2, 13441-3 and 13441-4, General Code. An examination of these sections clearly indicates that the power of the court of common pleas to hold inquests to determine whether persons are sane or not and to commit insane persons to hospitals for the insane arises only in criminal cases pending before the court of common pleas. The authority granted by sections 13441-1, 13441-2, 13441-3 and 13441-4 can be exercised by the court of common pleas before or after trial.

Section 13451-3, General Code, referred to in your letter, provides that the court of common pleas may temporarily commit to a hospital for the insane or to the Lima State Hospital a person convicted of a felony, for the purpose of observation. Section 13451-3 reads as follows:

"An accused who has been convicted of felony and who has not yet been sentenced may be temporarily committed to an insane hospital or to the Lima State Hospital, for the purposes of observation and report by the superintendent thereof to the court, in any case in which the court has reasonable doubt as to the mental responsibility of such accused person.

Said temporary commitment shall be for such period as the Court determines.

Upon the report of the Superintendent of such hospital, the court shall make such further order concerning such accused either as to his continued detention or otherwise, as the facts of the case justify under the law."

The court of common pleas also has the power to commit a person to a hospital for the insane prior to his conviction, for the purpose of observation, provided the same does not exceed one month. See section 13441-4, General Code.

Insanity has been generally defined as a derangement of the mind produced by a disease of the brain. This same definition has been accepted by the legislature of this state. Thus, the legislature, in section 1983, General Code, has defined the term "insane" as including every species of insanity or mental derangement. The same term is similarly defined in sections 4677 and 10507-1, General Code. A feeble-minded person does not come within the definition of an insane person,

since a feeble-minded person is one who has a weak mind and not a diseased mind. This conclusion finds support in 32 C. J. 622, where it is stated that "mere weakness of mind is not insanity or idiocy nor does it amount to any unsoundness of mind."

Since feeble-mindedness is not a species of insanity, it is apparent at once that the courts of common pleas of this state, by virtue of sections 13441-1 to 13441-4, inclusive, and 13453-1, General Code, cannot commit a feeble-minded person, either before or after conviction on a criminal charge pending in such courts, to a hospital for the insane. There is no provision in the criminal code which authorizes a court of common pleas before or after conviction to commit a feeble-minded person to an institution for the feeble-minded. The provisions of sections 13441-1 to 13441-4, inclusive, and 13451-3 apply only to insane persons and not to feeble-minded persons. The conclusion that the courts of common pleas in criminal cases have no authority to commit feeble-minded persons to institutions for the feeble-minded finds support in section 1894, wherein the legislature has provided that the juvenile court may commit feeble-minded children who are delinquent or dependent without complying with the provisions of sections 1949 to 1983, inclusive. Section 1894 reads as follows:

"In the reception of feeble-minded persons into the institutions for the feeble-minded, preference and priority, so far as practicable shall be given to feeble-minded children who are delinquent or dependent, as defined in sections 1644 and 1645, respectively, of the General Code. No prior or separate proceedings under the juvenile court act as provided in chapter 8 title IV, part first of the General Code shall be necessary, however, to the institution of proceedings and commitment to the board of administration for admission to the institutions for the feeble-minded, of a delinquent or dependent feeble-minded child under the age of eighteen years."

If the legislature had intended to permit courts of common pleas in criminal cases to commit feeble-minded persons to institutions for the feeble-minded, it would have enacted a statute similar to section 1894.

The legislature having expressly provided in section 1893 that the commitment and admission of feeble-minded persons to institutions for the feeble-minded shall be in the same manner and by the same court as in the commitment and admission of insane persons to hospitals for the insane, it necessarily follows that a feeble-minded person can be committed only in the manner prescribed by the legislature in sections 1949 to 1983, inclusive. Thus, there must be an inquiry into the mental status of the person alleged to be feeble-minded before such a person can be committed to an institution for the feeble-minded. The power to make such an inquiry and commitment has been conferred by the legislature solely upon the probate court, except as provided in section 1894.

The courts of common pleas having no power to commit feeble-minded persons to institutions for the feeble-minded, either under the provisions of sections 13441-1 to 13441-4, inclusive, and 13541-3, 1893 or 1949 to 1983, inclusive, it follows that the commitment made by the Court of Common Pleas of Cuyahoga County of the feeble-minded person found guilty of a felony in that court to the Institution for the Feeble-Minded at Columbus, Ohio, was without authorization in law and the Department of Public Welfare need not receive or admit such feeble-minded person to such institution. The person so committed by the Court of Common Pleas of Cuyahoga County should be returned by the Department of

Public Welfare to the jurisdiction of that court for proper disposition. The provisions of section 1944, authorizing the transfer from other state hospitals to the Lima State Hospital of patients exhibiting dangerous or homicidal tendencies, would not be applicable to the case of the person referred to in your inquiry, since that person was not committed to the Institution for the Feeble-Minded at Columbus, Ohio, in the manner provided for by law.

It is therefore my opinion that a court of common pleas cannot commit a feeble-minded person found guilty of a felony in that court to an institution for the feeble-minded.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4620.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND W. L. PARKINSON OF MANSFIELD, OHIO, FOR THE CONSTRUCTION AND COMPLETION OF SERVICE LINES AND NECESSARY CHANGES IN POWER HOUSE, AT LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, AT AN EXPENDITURE OF \$11,851.00—SURETY BOND EXECUTED BY THE STANDARD ACCIDENT INSURANCE COMPANY OF DETROIT, MICH.

COLUMBUS, OHIO, September 17, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, Columbus, Ohio, and W. L. Parkinson of Mansfield, Ohio. This contract covers the construction and completion of contract for Hot Water Supply and Return Piping for a project known as Service Lines to and Necessary Changes in Power House, Longview State Hospital, Cincinnati, Ohio, in accordance with Item No. 2, Item No. 10 (Alternate W-1), and Item No. 16 of the form of proposal dated August 8, 1932. Said contract calls for an expenditure of eleven thousand eight hundred and fifty-one dollars (\$11,851.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also shown that the Controlling Board has approved the expenditure of moneys for this contract in accordance with Section 3 of House Bill No. 596 of the 89th General Assembly. In addition, you have submitted a contract bond, upon which the Standard Accident Insurance Company of Detroit, Michigan, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relat-