

OPINION NO. 77-081

Syllabus:

Where a probate court, pursuant to R.C. 5122.35, is required to conduct judicial hospitalization hearings for residents of another county, those fees which are not specifically reimbursed by the state pursuant to

R.C. 5123.96 may be charged to the county of legal residence of such persons pursuant to R.C. 5123.29.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, December 1, 1977

I have before me your request for my opinion which reads, in part, as follows:

The Bureau of Inspection and Supervision of Public Offices has recently received numerous inquiries as to the allocation of the costs of hearings for the judicial hospitalization of the mentally ill. Sections 5122.11 through 5122.19, Ohio Revised Code, set forth the procedural requirements for such hearings. Pursuant to Section 5122.35, Ohio Revised Code, jurisdiction is conferred upon the probate court of the county in which the person alleged to be mentally ill is found. Where an affidavit for hospitalization is filed . . . , and the person alleged to be mentally ill is detained in a hospital in another county, the probate court of the county in which the hospital is located is required to conduct a hearing and make disposition of the person, upon request of the court receiving the affidavit.

Certain costs of such proceeding are reimbursed by the state from monies appropriated for such purposes. Section 5123.96, Ohio Revised Code. Other costs, including fees enumerated in Section 2101.17, Ohio Revised Code, are not subject to reimbursement. . . .

Therefore, you have asked the following question:

Where a probate court, pursuant to Section 5122.25, Ohio Revised Code, is required to conduct judicial hospitalization hearings for residents of another county, may those costs which are not reimbursed by the state under Section 5123.96, Ohio Revised Code, be charged to the county of residence of the respondent?

It appears that your question is answered by R.C. 5123.29 which provides, in pertinent part, that:

If the legal residence of a person suffering from mental illness is in another county of the state, the necessary expense of his return shall be a proper charge against the county of residence. If an adjudication and order of hospitalization by the county of temporary residence is required, the regular probate fees and expenses incident to the order of hospitalization . . . , and any other expense incurred in his behalf, shall be charged to and paid by the county of his legal residence upon approval and certificate of the probate judge thereof.

Accordingly, it is my opinion that:

Where a probate court, pursuant to R.C. 5122.35, is required to conduct judicial hospitalization hearings

for residents of another county, those fees which are not specifically reimbursed by the state pursuant to R.C. 5123.96 may be charged to the county of legal residence of such persons pursuant to R.C. 5123.29.