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COUNTY LIABILITY—PERSON DETAINED IN JAIL OF COUNTY FOREIGN TO RESIDENCE—COMMITTED AND RELEASED FROM INSTITUTION FOR INSANE PRIOR TO INCARCERATION IN OHIO PENITENTIARY—WHO BEARS COSTS OF COMMITMENT TO INSANE INSTITUTION?

SYLLABUS:

When a person has a legal residence in one county of Ohio, and is arrested in another county and detained in jail in the latter county pending action of the grand jury on his case, and while so detained is committed to an institution for the insane under Section 1955-1, General Code, and its related sections, the court costs and incidental expenses under Section 1950-1, General Code, are properly chargeable to the county in which he has a legal settlement, notwithstanding said person is released from such institution and sentenced to the penitentiary from said foreign county on the charge for which he was detained.

COLUMBUS, OHIO, January 15, 1931.

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

DEAR SIR:—Acknowledgment is made of the recent communication of your predecessor which reads:

“On October 27, 1930, one E. S., having a legal settlement in Clark County, Ohio, was arrested in Greene County for alleged commission of crime in Greene County—burglarizing a filling station. He was placed in the Greene County Jail and on September 3, 1930, was bound over to the Grand Jury. While awaiting action of the Grand Jury, this man developed an acute mental illness and according to the Sheriff could not be properly cared for in the County Jail, and affidavit in lunacy was filed against the man by the Sheriff with the Greene County Probate Court. On September 22, 1930, the Probate Court committed S. to the Dayton State Hospital, acting under Sections 1950-1 and 1955-1 G. C. (O. L. 103 v. 87; 89). The Probate Court of Greene County notified the Department of Public Welfare of such commitment and this Department notified the Probate Judge of Clark County, as provided by Section 1950-1.

On October 6, 1930, S. was indicted by the Grand Jury. On October 11th, he was discharged from the Dayton State Hospital as without psychosis and was returned to the Greene County Jail. On October 24th, S. was found guilty of robbery and was sentenced to the Ohio Penitentiary where he was received November 14, 1930.

The Judge of the Probate Court of Clark County is in doubt as to the legality of the claim made upon his county by Greene County for the costs in S.'s commitment to the Dayton State Hospital, the question arising from the fact that the man had been arrested for crime and was being held to the Grand Jury when committed by the Probate Court to the state hospital.

We respectfully request your opinion as to whether Clark County is legally liable for the payment of the costs in the Greene County commitment of E. S. under the circumstances as above set forth.”

In connection with this inquiry, it may be noted that prior to the enactment of Section 1950-1, General Code, it had been held that a person having a legal settlement in any county of the state could not be committed to an insane hospital from another county. However, Section 1950-1 was enacted apparently for the express pur-

pose of enabling persons to be committed to such institutions from counties other than those in which they have a legal settlement. Said section reads:

"Any insane person having a legal residence in the state of Ohio, but who may be temporarily residing or detained in a county other than that of his legal residence, may be legally committed to a state hospital by the probate judge of the county in which such person is temporarily residing or detained. The department of public welfare shall at once be notified of such commitment, and, through its secretary, or other officer, shall immediately notify the probate judge of the county in which such person has a legal residence, of such commitment. The regular probate court fees incident to commitment and the expenses of clothing and incidentals furnished such patient in a state hospital to which he or she has been committed, shall be charged against the county of his or her legal residence. The department of public welfare may at its discretion direct the transfer of such patient to another state hospital."

In view of the above section, there is no question as to the jurisdiction of the Probate Court of Greene County over the person you mention, who was temporarily detained in said county.

It is further stated that the commitment was made under Section 1955-1, which provides for the commitment of persons whose mental condition demands immediate care and treatment. While there is a somewhat different procedure provided for such cases, it is believed that the jurisdictional question is the same, and for the purpose of this opinion it will be unnecessary to quote the lengthy section.

The fact that the person under consideration was detained in the jail of Greene County awaiting the action of the Grand Jury upon the charge placed against him, certainly would not change his residence or legal settlement.

It should further be mentioned that where one acquires a legal settlement in one county this will continue until another has been established elsewhere (Sec. 3479, G. C.).

It therefore appears that the person under consideration was committed under authority of law while he was temporarily residing or detained in a county other than that of his legal settlement. Section 1950-1, *supra*, expressly provides that when such a commitment is made the department of public welfare shall notify the probate judge of the county in which such person has a legal settlement. The section is further specific in the provision that the probate court fees incident to such commitment and the expenses of clothing and incidentals furnished to such patient "shall be charged against the county of his or her legal residence".

In view of the foregoing, it is my opinion that under the facts being considered, the expenses are properly charged against Clark County.

Respectfully,
GILBERT BETTMAN,
Attorney General.