

529

1. HOSPITAL, MUNICIPAL—OPERATED BY MUNICIPALITY—REPRESENTED TO BE A PUBLIC HOSPITAL, NOT A PRIVATE HOSPITAL—MUST BE LICENSED TO CARE FOR MENTALLY ILL—DIVISION OF MENTAL HYGIENE—DEPARTMENT OF PUBLIC WELFARE—SECTION 1890-20 G. C.
2. NON-PROFIT PRIVATE ORGANIZATION, WHICH CARES FOR MENTAL PATIENTS REQUIRED TO BE LICENSED.
3. LICENSE FEE MAY NOT BE WAIVED ON GROUND HOSPITAL IS CHARITABLE ORGANIZATION.
4. PRIVATE INSTITUTIONS ESTABLISHED TO CARE FOR CHRONIC ALCOHOLICS—MAY BE CONSIDERED INSTITUTIONS TO CARE FOR THE MENTALLY ILL.

SYLLABUS:

1. Where a licensing procedure has been established by the Division of Mental Hygiene of the Department of Public Welfare, under Section 1890-20 of the General Code, for institutions caring for the mentally ill, a municipal hospital which is operated by a municipality and claims to be a public hospital rather than a private one, must be licensed in order to care for such mental patients.

2. A non-profit private organization caring for mental patients is required to be licensed.

3. The Division of Mental Hygiene, Department of Public Welfare may not waive the license fee on the ground that it is a charitable organization.

4. Private institutions established for the care of chronic alcoholics may be considered as institutions caring for persons who are mentally ill.

Columbus, Ohio, May 20, 1949

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

This is to acknowledge receipt of your request for my opinion, which reads as follows:

“Under the provisions of Section 1890-20 of the General Code, a Division of Mental Hygiene within the Department of Public Welfare has the duty of licensing private hospitals, homes

and institutions established or used for the care or treatment of persons mentally ill. The Code also provides for the collection of a reasonable license fee to be fixed by the Division.

We are writing for your opinion as to whether it is necessary for an institution such as the Cincinnati General Hospital, which is operated by Cincinnati and claims to be a public hospital rather than a private one, to be licensed in order to care for mental patients; second, we would like your opinion as to whether a non-profit private organization caring for mental patients is required to be licensed and if so, whether the Division can waive the license fee on the ground that it is a charitable organization; and third, whether private institutions established for the care of chronic alcoholics can be considered as institutions caring for persons who are mentally ill."

In answer to your first question, your attention is directed to Section 1890-20 of the General Code, which reads in part:

"The division shall have the right to inspect, license and supervise *all institutions for the mentally ill, maintained in whole or in part by public funds or by any political subdivision* of the state of Ohio."
(Emphasis added.)

Although the above quoted language would indicate that the inspection, licensing and supervision of such institutions is discretionary, once that discretion is exercised it must have a uniform application throughout the state, and where the Division has instituted such licensing procedures, they should be applied to the Cincinnati General Hospital, for the reason that it is an institution for the mentally ill, maintained by a political subdivision of the State of Ohio.

In answer to your second question, Section 1890-20 of the General Code, says:

"The division shall have the right to inspect, license and supervise *all private institutions that may or do receive mentally ill persons.*"
(Emphasis added.)

According to this language there is no distinction made between profit and non-profit private organizations. The term "all" is to be construed in the sense of "each and every."

In answer to the second part of your second question, you are again referred to Section 1890-20 of the General Code, which reads in part:

"The division may fix reasonable fees for said license and for renewals thereof."

In the absence of any authority granted by the legislature, the division may not waive a license fee. The statute is devoid of authority in that respect. It has only said that the Division may fix reasonable fees for said license and for renewals thereof.

In answer to your third question, you are referred to Section 1890-19 General Code, which reads in part as follows :

“ ‘Mental illness,’ ‘mentally ill,’ ‘mental disease,’ ‘mental disorder,’ shall mean an illness which so lessens the capacity of the person to use self-control, judgment and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance or control. The terms *shall be construed to include* ‘lunacy,’ ‘unsoundness of mind,’ ‘insane’ and also *cases in which such lessening of capacity for control is caused by such excessive addiction to narcotics, sedatives or stimulants* as to make it necessary for him to be under treatment, care, supervision, guidance or control.”
(Emphasis added.)

It is therefore my opinion that it is necessary for an institution, such as a municipal hospital, which is operated by a municipality and claims to be a public hospital rather than a private one to be licensed in order to care for mental patients. Further, it is my opinion that a non-profit organization caring for mental patients is required to be licensed, and the Division may not waive the license fee on the ground that it is a charitable organization. It is further my opinion that private institutions established for the care of chronic alcoholics, may be considered as institutions caring for persons who are mentally ill.

Respectfully,

HERBERT S. DUFFY,
Attorney General.