

It would thus appear that since the assessment becomes a lien upon the property, the same rule would obtain in the case of a board of education purchasing property upon which an assessment had been placed as would govern where such property had been purchased by a private individual; that is to say, if the case should exist that there were unpaid assessments resting upon such property at the time of purchase, the purchaser would be compelled to assume such further assessments in carrying out conditions existing at the time of the contracts. As regards purchases of real estate by boards of education upon which assessments are partially unpaid, the better rule is to have such assessments fully cleared up by the seller at the time of purchase and in practice include these unpaid assessments in the purchase price thus closing any question as to who should pay future unpaid assessments, but if such assessments are not cleared up at the time of sale and purchase, such unpaid assessments, as indicated in the opinion of the court herein, cited, would continue to be a lien upon such property, regardless of who was the owner.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

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LUNACY PROCEEDINGS—MEDICAL CERTIFICATE UNDER SECTION 1957 G. C. BECOMES VOID IF PERSON NAMED IN SUCH CERTIFICATE IS NOT ADMITTED TO STATE HOSPITAL WITHIN TEN DAYS FROM DATE OF ISSUE—WHO MAY EXECUTE SECOND MEDICAL CERTIFICATE AND WHO ENTITLED TO WITNESS FEES.

1. *When under section 1957 G. C. the medical certificate in a lunacy proceeding becomes void because the person named in such certificate is not admitted to a state hospital within ten days from the date of issue, a new inquest is not by that fact rendered necessary.*
2. *In such a case the same medical witnesses, if available, may execute a second medical certificate. Said witnesses are not, however, entitled to extra compensation for their services relative to such second certificate.*
3. *If, however, the medical witnesses who made the first certificate are not available to make a second certificate, when the first has been voided by lapse of time, the probate judge may issue subpoenas for two other medical witnesses, and cause them to execute the second medical certificate. In such case each of said medical witnesses would likewise be entitled to the fees provided by section 1981 G. C., to wit, "five dollars in full for all services rendered."*

COLUMBUS, OHIO, July 24, 1920.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent letter is at hand, requesting my opinion upon the following questions:

"Question 1: When the medical certificate in a lunacy proceeding becomes void, under the provisions of section 1957 G. C., because of the patient named therein not being admitted to a state hospital within ten days from the date thereof, are the same medical witnesses required to make a new certificate without extra compensation, or is a new inquest necessary under the circumstances?"

Question 2: In the event that the medical witnesses who made the first certificate are not available to make a new one when the first has been voided

by law, must an entire new proceeding be had in the matter, before the patient can be conveyed to the state hospital?"

Pertinent in this connection are the following sections of the General Code :

"Section 1954. When such affidavit is filed, the probate judge shall forthwith issue his warrant to a suitable person, commanding him to bring the person alleged to be insane before him, on a day therein named, not more than five days after the affidavit was filed, and shall immediately issue subpoenas for such witnesses as he deems necessary, two of whom shall be reputable physicians, commanding the persons in such subpoenas named to appear before him on the return day of the warrant, * * *."

"Section 1956. Unless for good cause the investigation is adjourned, the judge, at the time appointed, shall proceed to examine the witnesses in attendance. Upon the hearing of the testimony, if he is satisfied that the person so charged is insane, he shall cause a certificate to be made out by two medical witnesses in attendance that the person is insane to the best of their knowledge and belief. * * *"

"Section 1957. * * * All medical certificates shall be void after ten days from date of issue, if the persons therein named are not admitted to a state hospital within that time. * * *"

"Section 1958. The probate judge, upon receiving the certificate of the medical witness made according to the provisions of the preceding section, shall forthwith apply to the superintendent of the hospital situated in the district in which such patient resides. At the same time, he shall transmit copies, under his official seal, of the certificates of the medical witnesses, and of his findings in the case. Upon receiving the application and certificate, the superintendent shall immediately advise the probate judge whether the patient can be received, and, if so, at what time."

"Section 1981 (108 O. L. part II, p. 1224). * * * The costs and expenses * * * shall be as follows: To each of the two physicians designated by the court to make examination and certificate five dollars in full for all services rendered * * *."

The language of section 1957 G. C. to the effect that "all medical certificates shall be void after ten days from the date of issue, if the persons named therein are not admitted to a state hospital within that time," is clear and unambiguous, and needs no construction. Its evident purpose was to insure a speedy commitment of the insane person to a state hospital for the insane, and to do away with the condition of things formerly obtaining where the unfortunate person was often allowed, after inquest, to remain in the county jail or infirmary for an indefinite period.

The only thing that becomes void, however, by reason of the lapse of the ten days, is the certificate, the prior proceedings which have terminated in the adjudication of lunacy being unaffected. The court's jurisdiction over the lunatic continues as well after the ten days as before, for as was held in *Heckman vs. Adams*, 50 O. S. 305, "the jurisdiction acquired by the probate court in an inquisition of lunacy, under our statutes, continues until the discharge of the patient."

It seems to be clear, therefore, that a new inquest—that is to say, a proceeding *de novo*, initiated by the filing of a new affidavit under section 1953 G. C., is not made necessary merely by the fact that the medical certificate has become void because of the non-admission of the lunatic to a state hospital within ten days after the date of the issuance of such certificate.

Obviously, after the medical certificate becomes void, it is no certificate at all. Hence, before the superintendent of the state hospital is in a position to receive the

patient, a new medical certificate must be issued, and copies of the same transmitted under the seal of the court, as provided by section 1958 G. C.

Your question at this point is:

“Are the same medical witnesses required to make a new certificate without extra compensation.”

It is not thought that in thus framing your question you are interested in knowing whether medical witnesses may be *required* to make a certificate at all that is, whether they may be compelled to do so under legal compulsion. Rather it is believed that the real point of your question has to do with the matter of fees. The question may be re-stated thus:

When a certificate has been made out by two medical witnesses in attendance to the effect that the person proceeded against is insane and that certificate becomes void by reason of the non-admission of such person to a state hospital within ten days from the date of issue of said certificate, and a new certificate is later made by the same medical witnesses who made the first certificate—may such witnesses receive additional compensation by reason of their services in connection with the issuance of the second certificate?

This question in my opinion is fully answered by the plain language of section 1981 G. C. above set forth, namely:

“To each of the two physicians designated by the court to make examination and certificate, five dollars in full for all services rendered.”

In opinion No. 1392, rendered by the Attorney General on July 2, 1920, to your bureau, it was said:

“The words ‘in full for all services rendered’ refer to and include all of the services rendered by such physician in such a case * * *.”

The second medical certificate issued under the circumstances just referred to relates to the same case, and I am, therefore, of the opinion that the question as just above restated, must be answered in the negative.

We come now to your second question. No reason is seen for instituting entirely new proceedings merely because the same medical witnesses who made the first certificate are not available to make a second certificate, following the voiding of the first by lapse of time.

As pointed out in answer to your first question, the voiding of the certificate leaves unaffected the proceedings had prior to the issuance of the certificate.

Under section 1954 G. C. the probate judge has the right to issue subpoenas “for such witnesses as he deems necessary, two of whom shall be reputable physicians.” This section applies, we think, as well to the issuance of a second medical certificate as to the issuance of the first certificate. When it appears that the first certificate has been voided by lapse of time and that the medical witnesses certifying to such certificate are absent, or dead, or are from some other reason unavailable to execute a second certificate, we see no reason why the probate judge may not issue subpoenas for two other medical witnesses and cause them to execute the medical certificate agreeably to section 1956 G. C. Said witnesses would likewise be entitled to the fees provided by section 1981 G. C. to wit, “five dollars in full for all services rendered.”

Accordingly, your second question is also answered in the negative.

Respectfully,

JOHN G. PRICE,
Attorney-General,