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1. MENTAL HYGIENE—NO STATUTORY AUTHORITY AND NO LEGAL DUTY TO CHARGE OR COLLECT FEE FOR TREATMENT OF PATIENTS IN RESIDENT AND TRAVELING MENTAL HYGIENE AND PSYCHIATRIC CLINICS—SECTION 5123.05 RC.
2. DIVISION OF MENTAL HYGIENE—WITH APPROVAL OF DIRECTOR OF PUBLIC WELFARE MAY ESTABLISH RESIDENT MENTAL HYGIENE AND PSYCHIATRIC CLINIC IN COMMUNTY—LOCAL CLINICAL FACILITIES INADEQUATE—TWO CLINICS, THE LOCAL AND ONE OPERATED BY PRIVATE ORGANIZATION—COOPERATIVE PROJECT—PRIVATE ORGANIZATIONS COULD COLLECT A CHARGE FOR NONPROFESSIONAL SERVICES SUPPLIED BY PRIVATE CLINIC TO PATIENTS ABLE TO PAY—SECTION 5123.05 RC.

SYLLABUS:

1. The division of mental hygiene is under no legal duty, and possesses no statutory authority, to charge or collect a fee for the treatment of patients in resident and traveling mental hygiene and psychiatric clinics established under the provisions of Section 5123.05, Revised Code.

2. In the event that the division of mental hygiene, with the approval of the director of public welfare, should establish a resident mental hygiene and psychiatric clinic in a community where the local clinical facilities are inadequate and should find it practicable to participate with a local mental hygiene clinic, operated by a private organization, in the operation of the two clinics as a cooperative project integrated for many practical purposes, the lack of statutory authority on the part of the division to make a charge for the services supplied by the public clinic does not operate so as to prevent such private organization from making and collecting a charge for such nonprofessional services as may be supplied by the private clinic to patients who are able to pay such charge.

Columbus, Ohio, November 12, 1953

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

Dear Sir:

Your request for my opinion reads as follows:

"On March 13, 1953, you rendered this Department an opinion relating to the establishment and operation of local mental hygiene clinics.

"Since then a question has arisen as to whether or not the Division of Mental Hygiene in this Department may or is obligated to collect fees from persons using such clinics or their responsible relatives. In connection with this question, will you please give me your opinion on the following:

"1. Is the Division of Mental Hygiene in this Department required to charge a fee for the services rendered by local mental hygiene clinics established under the provisions of Section 5123.05 of the Revised Code?

"2. If the Division is not obligated to charge a fee, may it charge a fee?

"3. If the Division of Mental Hygiene may or is obligated to collect fees for the services rendered by a mental hygiene clinic, what are the rates to be charged?

"4. If fees are collected for services rendered by a local mental hygiene clinic, what disposition should be made thereof?

"In this connection I desire to call your attention to Sections 5123.03 to 5123.05, inclusive, of the Revised Code."

Although the specific questions set out above appear upon first examination to relate only to the collection of fees by the Division of Mental Hygiene for services rendered to patients in clinics which are purely state supported and operated, the use of the expression "local mental hygiene clinics" leads me to suppose that your inquiry is somewhat broader in scope.

It will be observed that the duty of the division in the matter of local mental hygiene and psychiatric clinics is stated in Section 5123.05, Revised Code, which provides in part:

"There shall be created a bureau of prevention and education under the supervision of the commissioner of mental hygiene. The bureau shall: * * *

"(B) Promote and develop a state-wide comprehensive system of mental hygiene and psychiatric clinics and establish resident and traveling clinics to serve communities where local clinical facilities are lacking or inadequate: * * *"

It would seem that this language recognizes the fact and the propriety of the operation of "local clinical facilities" by agencies other than the state, and provides for the establishment by the state of "resident and traveling clinics" to serve the community concerned when local facilities are "lacking and inadequate." Such being the case, I deem it appropriate

to consider your inquiry as applicable to each such category of clinics, the more especially in view of the conclusion stated in my opinion 2366, dated March 13, 1953, that resident clinics established by the division might be operated in such close association with a local clinical facility that for many practical purposes the two might be operated as an integrated project.

Considering first the authority of the purely state clinics to charge a fee, we may first invite attention to what appears to be the general policy of the state in the support of the several state benevolent institutions as set out in Section 1, Article VII, Ohio Constitution, in the following language:

> "Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the General Assembly."

In considering the constitutional validity of a statute which imposed on the patients, or the persons having them in charge, a liability for clothing expense of such patients, the court in State v. Keisewetter, 37 Ohio St., 546 (1882), said at page 549:

> "It is also claimed that this construction of the statute brings it in conflict with section 1, article 7 of the constitution, which declares that 'institutions for the benefit of the insane, blind, deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the general assembly.'
>
> The answer to this objection is that the provision of the constitution is not self executing, and that the mode in which such institutions are to be fostered and supported is left to the discretion of the general assembly. That discretion has been exercised in the passage of the statute now under consideration."

The rule thus stated was approved and followed in State ex rel Price v. Huwe, 105 Ohio St., 304, (1922).

It may readily be conceded that the constitutional provision above mentioned does not by its terms comprehend the various mental hygiene and psychiatric clinics established and operated by the division, but such provision, in my opinion, is indicative of the general policy of the state that the several benevolent institutions and services established and operated for the benefit of the mentally ill should be wholly at state expense except as the Legislature shall otherwise direct.

The extent to which the Legislature has otherwise directed may be seen in the provisions of Section 5123.40, Revised Code, as follows:

> "The support and maintenance of patients confined in receiving and state hospitals for the mentally ill, state institutions for the mentally deficient, and state institutions for epileptics, including the state hospital for the criminal insane and psychopathic and the state institution for mentally deficient offenders, excepting those transferred thereto from correctional, penal, and reformatory institutions, and persons under indictment or conviction for crime, shall be collected and paid in accordance with sections 5121.01 to 5121.10, inclusive, of the Revised Code."

By referring to Sections 5121.01 to 5121.10, inclusive, Revised Code, we may note first that provision is made for the maintenance of all *inmates* of benevolent institutions at the expense of the state, with the proviso, however, that where they are able to do so the responsible relatives of such inmates are to be charged with certain enumerated expenses of maintenance.

The duty of ascertaining the identity of the responsible relatives in the case of "any person * * * committed to a state hospital for the mentally ill" is placed on the judge making such commitment under Section 5121.02, Revised Code.

The rate of support of such inmates is provided for in Section 5121.03, Revised Code, the amount being "the average per capita cost of the care and treatment of such patients, * * *". It is obvious, of course, that the expression "such patients" refers to "inmates" of the benevolent institutions mentioned in the preceding sections.

Subsequent sections in Chapter 5121, Revised Code, refer to "the financial condition of the inmates of benevolent institutions," the amount of "the estate of an inmate or of a relative liable for such inmate's support," "an inmate of a benevolent institution," etc., the import of all such language being that the provision for support and maintenance which is found in Section 5123.40, supra, relates to the support and maintenance of patients who are actually confined in benevolent institutions concerned as inmates therein.

The word "inmate" is defined in Webster's New International Dictionary as "one of a family or community occupying a single dwelling or home; * * * also one confined or kept in an institution such as an asylum or poor house." From this definition it is clear that nothing in these

statutory provisions relates to the support and maintenance of patients who receive treatment as out-patients in a state operated clinic, nor do such provisions authorize a charge or collection of a fee for services thus rendered; nor is there anything in such language which would authorize, even by implication, the charging of a fee for professional services as distinguished from support and maintenance.

I am unable to find any other statutory provision which could be supposed to authorize the division to exact a fee or charge, either for support or maintenance, or for professional services, of mentally ill patients who are given treatment at an out-patient basis, i.e., those who are not actually inmates or resident patients in one of the state hospitals or benevolent institutions enumerated in Chapter 5121, Revised Code, or in Section 5123.40, Revised Code. Accordingly, giving effect to the rule of "expressio unius," I conclude that the division is under no legal duty, and has no legal authority, to charge and collect a fee for the treatment of patients in resident and traveling clinics established under the provisions of Section 5123.05, Revised Code.

In the case of local clinics for the mentally ill, established and operated by private charitable organizations, however, neither the reasoning above outlined nor the conclusion just stated would appear to be applicable.

As already pointed out the operation of mental hygiene clinics by agencies other than the state appears to be clearly recognized by the provisions of Section 5123.05, supra. Such recognition of the propriety of the operation by private charitable organizations of clinical and hospital facilities is in complete harmony with the long history of hospital practice in this state and throughout the country, a field in which the participation of charitable organizations has been most extensive. Such recognition is in harmony also with the rule stated in 41 Corpus Juris Secundum, 333, Section 3, as follows:

> "In the absence of statute no legislative permission is necessary for the establishment of a private hospital, but the establishment of such hospitals is a frequent subject of municipal regulation."

Moreover, it may be pointed out that hospitals are regarded as public charities even though they receive pay patients as well as charity patients. 26 American Jurisprudence, 588, 599, Section 3. By analogy the same rule must be regarded as applicable to installations limited to clinical

services to out-patients as contrasted with full hospitalization services for resident patients.

By reason of the character of such private hospitals and clinics there is no necessity for finding statutory authority to charge and collect fees for services rendered to patients who are able to make payment therefor so long, of course, as such practice does not contravene the statutes relating to professional practice. The rule in this respect was stated in my opinion No. 1751, Opinions of the Attorney General for 1952, p. 608, as follows:

> "A hospital corporation, whether or not organized for profit, is entitled to a fair compensation (a) for the use of technical equipment owned by it and used by a physician in the performance of professional services, and (b) for non-professional services supplied to such physician; but where such corporation enters into an arrangement with a physician whereby it receives compensation for such use and such services which is manifestly in excess of the fair value thereof, the hospital is unlawfully engaged in the practice of medicine and the physician concerned is guilty of grossly unprofessional conduct under the provisions of Section 1275, General Code."

Subject to this limitation, therefore, I perceive no reason why a privately established and operated mental hygiene clinic should not charge and collect fees in the case of patients who are able to pay for the services supplied to them.

In my opinion No. 2366, supra, I pointed out the legal possibility of operating a public clinic and a private clinic as a single integrated project. Specifically I concluded:

> "* * * the Division does have authority, under the provisions of Section 1890-9, General Code, to 'establish resident * * * clinics * * * where local clinical facilities are * * * inadequate,' and any such resident clinics may be established in such close association with a clinic established by a corporation not for profit, and operated in such close cooperation with it that the two clinics will, for many practical purposes, be operated as an integrated project. In any such case, however, it will be necessary to preserve the separate entity of each clinic in matters involving control of operations and financial support."

Accordingly, if you should find it practicable for the division to participate with a locally established private clinic in the operation of such a cooperative project, I perceive no reason why the lack of statutory authority on the part of the division to make a charge for the services

supplied by the public clinic should operate in such a way as to prevent the private organization from making and collecting a charge for such non-professional services as may be supplied by the private clinic to patients who are able to pay such charge.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. The division of mental hygiene is under no legal duty, and possesses no statutory authority, to charge or collect a fee for the treatment of patients in resident and traveling mental hygiene and psychiatric clinics established under the provisions of Section 5123.05, Revised Code.

2. In the event that the division of mental hygiene, with the approval of the director of public welfare, should establish a resident mental hygiene and psychiatric clinic in a community where the local clinic facilities are inadequate and should find it practicable to participate with a local mental hygiene clinic, operated by a private organization, in the operation of the two clinics as a cooperative project integrated for many practical purposes, the lack of statutory authority on the part of the division to make a charge for the services supplied by the public clinic does not operate so as to prevent such private organization from making and collecting a charge for such nonprofessional services as may be supplied by the private clinic to patients who are able to pay such charge.

Respectfully,

C. WILLIAM O'NEILL
Attorney General