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HOSPITAL OWNED AND OPERATED BY CITY—CINCINNATI
MUNICIPAL COURT—WITHOUT LEGAL AUTHORITY TO
COMMIT PERSONS CHARGED WITH MISDEMEANORS TO
SUCH HOSPITAL FOR OBSERVATION TO DETERMINE POS-
SIBLE MENTAL DEFICIENCY.

SYLLABUS:

The municipal court of Cincinnati is without legal authority to commit persons charged with misdemeanors to a hospital owned and operated by the city, for observation and determination of possible mental deficiency.

Columbus, Ohio, February 5, 1943.

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

Gentlemen:

I am in receipt of your letter requesting my opinion, as follows:

“We are enclosing herewith a letter from our City of Cincinnati Examiner, in which he outlines a procedure practiced by municipal court judges in committing persons charged with misdemeanors to the City General Hospital for observation as to mental deficiency before passing sentence on them.

The Examiner also refers to certain sections of the City Charter and Municipal Code, concerning hospital service and the payment for same by non-residents of the city, and by residents able financially to pay for same.

In this connection the following questions are submitted:

Question 1. Is the Municipal Court possessed of jurisdiction to commit persons charged with violation of misdemeanor ordinances or statutes to the hospital for mental observation, in like manner to the Probate Court of the county?

Question 2. If the answer to our first question is in the affirmative, is the Cincinnati General Hospital, to which said commitments are made, authorized or required to collect the fixed charges for services rendered in said cases; especially from non-residents of the city?”

Accompanying your request I note the letter from your Cincinnati examiner setting forth a provision of the City Charter of Cincinnati rela-

tive to the administration of the City Hospital, and also certain provisions of the Administrative Code of that city which seem to have a bearing on the question submitted and are therefore here set out, as follows:

"Section 2. To the extent that any resident of the city of Cincinnati who requires care or treatment at the city hospitals is unable to pay therefor, and that no other person responsible for such resident is unable to pay therefor, such person shall be treated and cared for at such hospitals without charge. Every effort shall be made to secure payment for the services of the hospitals in cases where the patients or those responsible for them are able to pay therefor in whole or in part.

Section 3. Except in emergencies no person not a resident of Cincinnati shall be accepted by any city hospital unless he shall agree to pay for services rendered and shall make provision therefor, or unless such payment is provided for under contract with another political subdivision of the state of Ohio."

The municipal court of the city of Cincinnati is organized pursuant to Sections 1558-1 to 1558-45a of the General Code, and its jurisdiction, powers and mode of procedure are therein set forth.

An examination of these statutes fails to disclose any provision relative to inquiry into the mental capacity of persons charged in that court with misdemeanors or other offenses. There is no right given to the court under any circumstances to commit any person to either the City Hospital or any other hospital for observation as to his mental condition. Nor do I find any authority in the statutes of a general character granting to the courts of the state authority to adopt such practice or to commit persons charged with offenses to a hospital for observation.

There are provisions found in Section 13441-1 of the General Code whereby the court of common pleas is authorized, when a question is raised as to the sanity of a person accused of crime, to proceed with the aid of a jury to determine the present sanity or insanity of such person. There is also a provision in Section 13441-3 for a defense of "not guilty by reason of insanity" on the part of a person accused of crime, and the statute provides for the commitment of a person acquitted on that ground to the Lima State Hospital.

Aside from these provisions, the jurisdiction for the determination of the sanity or insanity of any person is vested in the probate court. Section 1890-34 provides as follows:

"In a case wherein the jurisdiction of a court has not been specifically given or the procedure provided for, the probate court

and the judge thereof shall have full, complete and general jurisdiction to determine the actual mental status of any person alleged to be mentally ill, feeble-minded or epileptic and found within his county, and make disposition of such person in accordance with the procedure prescribed by this chapter."

This section is a part of an act of the 94th General Assembly found in 119 O. L. 616, rather completely revising and re-enacting the statutes relative to the commitment and care of the insane and persons mentally ill.

Section 1890-16 et seq. provide for the establishment by the state, under the direction of the director of public welfare, of receiving hospitals to be located in suitable districts either separate from or in connection with existing or future state hospitals, such receiving hospitals to be used for the observation, care and treatment of the mentally ill.

Section 1890-27 outlines the procedure by the probate judge, when a person is brought before him alleged to be mentally ill or insane. After a hearing, without the intervention of a jury, the probate judge may make any one of several orders, among others:

"1. To order that such persons be placed in a receiving hospital for observation or treatment or both.

2. To commit such persons to the proper state hospital for the mentally ill for treatment. * * *

8. Discharge him."

It would appear to me that the municipal court might in a case of real doubt call upon the probate court for assistance, pursuant to the statutes just noted, in determining the mental condition of a person charged before the court with the commission of a misdemeanor. It is my opinion that the municipal court has no authority in law to commit a person mentally deficient either to a municipal hospital or any other hospital. This conclusion, however, is not intended in the least as a criticism on the commendable practice of the judges in endeavoring, by every available means, to determine the question of possible mental deficiency on the part of accused persons brought before them.

In view of the above answer to your first question, it would seem hardly necessary to discuss the second, as to the right of the Cincinnati General Hospital, to which such commitments are made, to collect charges for services rendered either to residents or non-residents of a city. The terms of the Administrative Code herein above quoted, seem to cover that matter and leave no room for discussion. Plainly the city hospital is not

required to receive such patients merely because they are committed by the municipal court. If it does accept them under any circumstances, the question of compensation for the services rendered to them is covered by the sections of the Administrative Code above referred to.

I have dealt with this question on the assumption that the municipal court has actually "committed" persons to the hospital, about whose mental condition there was some question. Recognizing the possibility that these persons may not have been committed in the technical sense, but merely sent in for observation, I deem it proper to call attention to the possibility of the proceeding being had pursuant to Sections 1541 and 1541-1 of the General Code.

Section 1541 authorizes the judges of the Common Pleas Court, in counties having a population in excess of 300,000, to appoint one or more psychiatrists, psychologists or other examiners or investigators, who are to receive compensation to be fixed by the judge or judges appointing them, payable from the county treasury. It is further provided that such appointees, when called upon by a judge of said court in a criminal case, should perform such duties as are prescribed by Section 13696, General Code, which section has since been repealed. Substantially the provisions of the repealed section are now found in Section 13451-2, which authorizes the court to appoint not to exceed two psychiatrists or psychologists who may be called upon to report upon the mental condition of an accused person. This section authorizes the payment to such appointee of a fee to be fixed by the court and taxed in the costs of the case.

Section 1541-1, enacted by the 93rd General Assembly as a supplement to Section 1541, provides as follows:

"In counties in which there have been appointed one or more psychiatrists, psychologists or other examiners or investigators pursuant to the provisions of section 1541, the judges of the common pleas court may enter into an agreement with the judges of any municipal court located in such county for the participation by such municipal judges in the services made available by the employment of such psychiatrists, psychologists, other examiners or investigators upon such terms and conditions as may be mutually agreed upon."

These sections, while pointing out a possible procedure, do not meet the question of the compensation to the hospital to which these psychiatrists or psychologists may be attached, and where accused persons are sent for observation.

Referring again to Section 1890-16, to which reference has been made earlier in this opinion, it may be noted that under the provisions of this

section the director of public welfare is authorized to provide for the system of receiving hospitals where persons may be sent for observation as to their mental condition, either by constructing, purchasing, leasing *or contracting for* such hospitals. Pursuant to the provisions of this section it would be competent for the city of Cincinnati to enter into a contract with the state for the use of its general hospital as a receiving hospital, in which event the question of compensation for the care of patients sent to such hospital by the judges could be taken care of by contract.

Respectfully,

THOMAS J. HERBERT,
Attorney General.