

1400.

PROBATE COURT—SECTION 12025 G. C. CONSTRUED—APPLICABLE ONLY TO STATE AND NOT PRIVATE INSTITUTIONS.

In section 12025 G. C. the words ‘in this state’ in the line “is an inmate of an asylum for the insane in this state” mean an asylum provided by the state—a state institution.

COLUMBUS, OHIO, July 3, 1920.

HON. LEWIS D. SLUSSER, *Probate Judge, Akron, Ohio.*

DEAR SIR:—Your letter of recent date, receipt of which is hereby acknowledged, is as follows:

“Kindly inform me under section 12025 of the General Code if the words: ‘is an inmate of an asylum for the insane in this state, includes a private institution or only holds to state institutions.’”

Section 12025 G. C. when first enacted in April, 1890, to supplement section 5725 R. S. and being section 5725a R. S. read in part as follows:

“That any real estate or interest therein, coming to *any* person by purchase after the husband or wife of such person is adjudged insane, and is an actual inmate of *any* asylum for the insane *provided by the state*, may be conveyed * * *. 87 O. L. 281.

This original section 5725a R. S. was amended in 95 O. L. p. 65 by changing “provided by the state” to “this state” and inserting the following after “this state;” “or confined in the insane department of any epileptic hospital of this state, or any state of this union, may be conveyed * * *.”

The present law, found in section 12025, is in part as follows:

“Any real estate or interest therein coming to *a* person by purchase after the husband or wife of such person is adjudged insane, and is an inmate of an asylum for the insane in *this* state, or confined in the insane department of any epileptic hospital of this state, or any state of the United States, may be conveyed * * *.”

You will notice that the original section says ‘any asylum for the insane provided by the state.’ This language is clear and can only mean a state institution. The next time this comes before the legislature the phrase above quoted is changed to ‘any asylum for the insane in this state’ and adding this new matter; ‘or confined in the insane department of any epileptic hospital of this state or any state of this union.’

After the General Code was adopted in 1910 this statute appears as section 12025 and is practically the same as when first amended in 95 O. L. 65. The words “any person” become “a person;” the words “is an actual inmate of any asylum for the insane in this state” become ‘is an inmate of an asylum for the insane in this state or * * *’

Thirty-two years ago, when this law was enacted, there were probably very few institutions in Ohio for the insane not supported by the state. Private asylums of this character have since that time come into existence in many parts of our state and in other states. At the time of the enactment the legislature had in mind only state

institutions and could have had only such from the language then used in the statute. The original statute said "asylums provided by the state."

You will observe further that the statute in each case and in the present law says:

"After the husband or wife of such insane person is adjudged insane and is an inmate of an asylum for the insane."

What, under the law, may be done by the probate court after it has adjudged a person to be insane with that insane person?

Section 1958 provides that the probate judge shall "apply to the superintendent of the hospital situated in the district in which such patient resides" and if the superintendent advises that the patient can be received then sends such insane person to the indicated hospital.

Section 1959 is in part as follows:

"When advised that the patient will be received the probate judge shall forthwith issue his warrant to the sheriff commanding him forthwith to take charge of and convey such insane person to the hospital * * *."

In other words, the probate judge may commit an adjudged insane person to a state institution only.

Section 1961 provides that the probate judge may turn over a person adjudged insane to the relatives of such insane person but in that event the insane person does not come within the purposes intended in section 12025 because such person is not then an inmate of an asylum.

From what is disclosed by the history of section 12025 and the further fact that a probate judge may commit a person adjudged by him to be insane to a state institution only or permit such insane person to be kept by his relatives, I am of the opinion that the language of section 12025, G. C., to wit: "is an inmate of an asylum for the insane in this state" means a state institution and cannot mean a private one.

Very respectfully,

JOHN G. PRICE,

Attorney-General.

1401.

SCHOOLS—SUPERINTENDENT OF A SUPERVISION DISTRICT (4740 G. C. DISTRICT) MAY SERVE UPON BOARD OF COUNTY SCHOOL EXAMINERS AS TEACHER MEMBER.

A superintendent of a supervision district (commonly known as a 4740 district) may serve upon the board of county school examiners as the teacher member thereof to be appointed by the county board of education.

COLUMBUS, OHIO, July 3, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter requesting the opinion of this department on the following question:

"Can a superintendent of a supervision district (commonly known as a 4740 district) serve upon the board of school examiners as a 'teacher' member?"