

to enact laws in variance with the public policy thereof, but rather that in such cases the federal order considered intends that in a state where a clerk is paid by fees, he may retain the fees he charges for the execution of applications for passports, and in a state where the clerk is paid a salary, he shall charge and receive the fees of a clerk and account for them to the proper public officer according to the law of the state placing him upon a salary basis.

Since therefore the county salary laws in Ohio, as provided by sections 2977, 2983 and 2996 G. C. specifically require that the salary of the clerk of courts shall be instead or in lieu of all fees, costs, penalties, percentages, allowances and all other perquisites of whatsoever kind such official may collect or receive, it is concluded that the fee of one dollar charged by a clerk of courts in Ohio for the execution of applications for passports, may not be retained by such clerk as personal remuneration for services performed officially, but should, together with the other collected fees of the office be paid into the county treasury in compliance with the provisions of section 2983 of the General Code.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

2952.

DEPARTMENT OF PUBLIC WELFARE—STATE HOSPITAL FOR INSANE  
—JURISDICTION OVER PATIENT CONTINUES UNTIL LEGALLY  
DISCHARGED—PROBATE COURT WITHOUT JURISDICTION  
WHERE PATIENT EXCEEDED NINETY DAY VISITATION PER-  
MITTED BY SECTION 1968 G. C.—HOW EXPENSE INCIDENT TO  
RETURN OF ESCAPED PATIENT PAID—NO AUTHORITY OF LAW  
TO DISCONTINUE NAME OF ESCAPED PATIENTS FROM ROLLS  
OF INSTITUTION.

1. *The jurisdiction of a state hospital for the insane, over a patient lawfully committed, continues until the patient is legally discharged, and probate court proceedings of the nature of an original commitment are unnecessary and unwarranted in the instance of the return and admittance to the institution of a patient who has exceeded the period of the ninety day visitation permitted under section 1968 G. C.*

2. *The expense incident to the return of escaped patients of a state hospital for the insane, when not covered by the provisions of section 1978 G. C. may be paid from the funds of the institution appropriated or available for such a purpose.*

3. *There is no authority of law for the discontinuance of the names of escaped patients from the rolls of the institution, and the same should be continued thereon indefinitely.*

COLUMBUS, OHIO, March 28, 1922.

HON. H. S. MACAYEAL, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication which reads as follows:

“Section 1968 of the General Code referring to the absence of a patient from a state hospital provides as follows:

'When the superintendent deems it for the best interest of a patient, who has no homicidal or suicidal propensities, he may permit such patient to leave the institution on a trial visit which shall not exceed ninety days. Such patient, if necessary, may be returned at any time within such period without further legal proceedings.'

Some controversy has arisen as to whether a patient who remains away from the hospital for a period exceeding ninety days may again be admitted to the hospital without probate court proceedings. The law seems plain that such patient must be returned within the ninety days allowed for a trial visit, but we find a diversity of opinion among our state hospital superintendents. We shall appreciate your opinion on this question.

A question also has arisen as to escaped patients. Section 1831 G. C. provides:

'On the order of the superintendent or other officer of such institution, a fugitive from any benevolent, correctional or penal institution may be arrested and returned thereto, or to any officer or agent thereof, by any sheriff, constable, police officer, or other person, and may also be arrested and returned by an officer or agent of the institution.'

Section 1978 provides:

'If a patient escapes from a hospital for the insane, and returns to the county whence he was committed, the sheriff of the county, when notified by the superintendent, shall forthwith arrest and return him to the hospital. For such service he shall be paid the fees allowed by law for the commitment of insane persons to hospitals, which shall be paid by the steward on certificate of the superintendent.'

Section 1831 does not specify how the expense incident to the return of an escaped patient to the hospital shall be paid. Section 1978 makes provision for the expense only when the escaped patient returns to his home county.

We should be glad to have you advise us how the return of an escaped patient shall be handled and how the expense incident thereto shall be paid; also how long an escaped patient shall be continued on the institution rolls."

Pertinent to your first question, section 1968 G. C. provides:

"Section 1968. When the superintendent deems it for the best interests of a patient, who has no homicidal or suicidal propensities, he may permit such patient to leave the institution on a trial visit, which shall not exceed ninety days. Such patient, if necessary, may be returned at any time within such period without further legal proceedings."

Upon examination of the section quoted, it is thought the legislative intention is manifest to provide a method or means of judging a patient's fitness to be ultimately discharged from the institution, and has limited the period of probation to the ninety day period indicated therein. It is noted that the section provides that such trial visit "shall" not exceed ninety days, and if necessary the patient may be returned at any time within such period without "further legal proceedings."

From the context and general meaning indicated by the section, it is thought the language "shall not exceed ninety days," is limited in application and mandatory as to the period of the trial visitation, and is not concluded in the event such period of visitation should exceed ninety days to affect the legal status of the institution's

jurisdiction. A similar construction is thought applicable to the phrase "without further legal proceedings" and it is not presumed that the same may be said to be used in a sense requiring any particular form of legal proceedings necessary in the event the patient's return to the institution is sought at a time subsequent to the ninety day period mentioned. Thus it is concluded that the section does not prohibit the return of the patient to the institution at any time subsequent to the limited period of visitation, or conclude that a failure of his return within the period of ninety days should operate in any manner as to affect the legal status of the institution's jurisdiction.

It is believed moreover that the jurisdiction of a state hospital for the insane over a patient lawfully committed is continuing, and ceases only to exist when such patient has been legally discharged.

Although your communication does not state the nature of the probate court proceedings contemplated by your first question, it is assumed from the form of the same, that you have in mind proceedings similar in nature to the original lunacy proceedings in the probate court by which the patient was in the first instance committed to the institution, and if this be true, it is thought such proceedings are unnecessary and unwarranted in cases where the institution still retains jurisdiction over the patient, and it is necessary to return him thereto by reason of escape or violation of parole, or a failure to be returned within the ninety day period permitted for the trial visit by the provisions of section 1968 G. C.

Relative to your question as to the payment of the expense incurred in the return to the institution of escaped patients, section 1831 G. C. provides:

"Section 1831. On the order of the superintendent or other officer of such institution, a fugitive from any benevolent, correctional or penal institution may be arrested and returned thereto, or to any officer or agent thereof, by any sheriff, constable, police officer, or other person, and may also be arrested and returned by an officer or agent of the institution."

The section quoted provides the authority and method of return to the institution of an escaped patient, although it may be noted that no provision is made for the expense incident to such a procedure. Section 1978 G. C. provides for the payment of such an expense, in cases where the escaped patient is found in the county from which he was committed, but apparently makes no provision for the same in event he be found in a county other than the one from whence he was committed. It is noticed, however, even in such a case as section 1978 contemplates, the expense is to be paid from funds of the institution by the steward upon the certificate of the superintendent. Since the General Code makes no provision for the payment of the expense incident to an escaped patient's return, otherwise than provided by section 1978 G. C., it may only be concluded that in instances which this section does not cover, the payment of the expense should be made from funds of the institution appropriated or available for such a purpose.

In answer to your question as to how long an escaped patient's name should be continued upon the rolls of the institution, it is believed that there is no statutory authority for a discontinuance of such enrollment, and in the absence of the same it is thought the name of an escaped patient should be continued upon the rolls of the institution although suggestion is made that the same may be marked "escaped," or "whereabouts unknown" as the circumstances in the particular instance may require.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General,*