

5827.

INSANE PERSON—MAY NOT BE HOUSED IN ANY PART OF  
A COUNTY HOME.

## SYLLABUS:

*In view of the express inhibition contained in section 2541, General Code, insane persons may not be housed in a wing of the county home even though it is planned that such wing will be designated a detention hospital for insane persons and even though such insane persons be segregated from other inmates of the county home.*

COLUMBUS, OHIO, July 9, 1936.

HON. HERMAN E. WERNER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR: I am in receipt of your communication which reads as follows:

"A question has arisen in reference to a request made to the County Commissioners by the Probate Judge, to establish a mental detention hospital as provided in Sections 3154 and following of the General Code, as to whether or not such a detention hospital can be established in a separate wing of the building which otherwise houses our County Home. This particular wing of the County Home had been and is now used to house our senile dementia cases which the State Hospital refuses to admit. Their rule at the present time is not to admit any person over the age of 59 years.

It is the purpose and intention of the Probate Court and the County Commissioners to set aside and designate this particular wing of our present County Home as a mental detention hospital for the treatment of insane who cannot be provided this treatment due to the inability of the state institutions to receive them on account of the crowded conditions.

The condition in Summit County is very serious. We have continually on our waiting list a patient body of between 30 and 45 patients who are badly in need of mental treatment. At the present time these patients are being kept in our County Jail, senile cases in the County Home, and other cases in privately owned and operated convalescent homes. In establishing this mental clinic in a separate wing of the County Home, these patients will be entirely segregated from the indigent persons being kept in the County Home.

This opinion is being requested because of the provisions contained in section 2541 of the General Code, which provides that 'no insane shall be received or kept at any county infirmary in this state'.

Summit County is financially unable to acquire a new building or even to rent suitable quarters elsewhere. Unless some program can be worked out by the use of existing property owned by the county, it will be necessary to keep Summit County patients in the present unsatisfactory conditions and without treatment for an indefinite period.

This plan for a mental detention hospital has been worked out through a citizens' committee and has the endorsement of the Ministerial Association, Catholic organizations, Jewish organizations, the Fraternal Order of Eagles, the Home and School League, Summit County Medical Society, and many other groups.

The management will be entirely separate and it will be operated separate and apart from the County Infirmary. This particular building will be designated as the Summit County Mental Detention Hospital, or some other appropriate name.

The adoption of this plan would give Summit County an immediate opportunity to try out in temporary quarters a method that, if successful, will ultimately lead to the establishment of a hospital about which there will be no question as to the legality of its site.

We are enclosing copy of letter received from Mrs. Margaret Allman, Director of Welfare of our state, in reference to receiving the maximum amount as provided in the McIntyre Bill, namely, \$2.50 per day per patient. You will also find enclosed a resume of the legal steps required, which has been prepared by Mr. H. G. McGee of the Municipal Research Bureau of the Chamber of Commerce."

Rephrasing for clarity purposes, the precise legal question is whether or not in view of the express prohibition of section 2541, General Code, insane persons may be housed and kept in a wing of the county home, such wing of the county home to be designated a "mental detention hospital," the plan being that such mental patients are to be segregated from other indigent inmates of the home.

I call your attention to an opinion of one of my predecessors in office to be found in Opinions of the Attorney General for 1920, Volume 2, page 861, which held as disclosed by the first branch of the syllabus:

"By reason of the provisions of section 2541 G. C. no insane person may be received or kept at a county infirmary."

At page 863 it is stated :

“In 93 O. L. 276, sections 707 and 708 R. S. were repealed. The act also contained this section :

‘Section 5. That on and after June 1, 1900, it shall be unlawful to receive, or keep, at any county infirmary in the state of Ohio, any insane or epileptic persons and all sections authorizing the receiving or committing of such insane and epileptic persons to the infirmaries of the state are hereby repealed.’ The section just quoted is the forerunner of section 2541, etc.”

Section 2541, General Code, in its present form was enacted in 94 O. L. 166, and provides :

“No insane or epileptic person shall be received or kept at any county infirmary (now ‘county home’) in this state.”

There is also an analogous inhibition in section 3139, General Code, with reference to persons suffering from pulmonary tuberculosis. This section provides :

“On and after January 1, 1914, no person suffering from pulmonary tuberculosis, commonly known as consumption, shall be kept in any county infirmary.”

The obvious humane purpose of both these sections is to prevent the housing of persons afflicted with tuberculosis or persons mentally ill in the county home in that such housing endangers the life and health of all inmates. I recognize the laudable desire of in some manner providing a county detention hospital for those persons who were found to be insane and who cannot be committed or received into the state hospital. However, the accomplishment of a laudable desire is not always lawful, as in the particular case, the General Assembly has enacted section 2541, General Code, which expressly prohibits the housing of insane persons in the county home. The wisdom of this policy is solely within the province of the law-makers and no doubt in the long run such a legislative policy is a wise one even though in a particular case it may work a hardship.

With reference to section 2541, General Code, it is stated in the 1920 opinion of the Attorney General, cited supra, at page 862 :

“Said section is free from ambiguity, and indicates in language which is about as clear as it is possible to use, what the

legislature's intention was on the admission of this particular class of persons to the county infirmary."

The wing of the county home being actually as well as legally a part of the county home, there is thought to be no room for construction or interpretation of section 2541, General Code, quoted supra. As stated in *Stanton vs. Realty Company*, 117 O. S. 345, at pages 349 and 350:

"It is the general rule of interpretation of statutes that the intention of the legislature must be determined from the language employed, and, where the meaning is clear, the courts have no right to insert words not used, or to omit words used in order to arrive at a supposed legislative intent, or where it is possible to carry the provisions of the statute into effect according to its letter."

It is also stated in the case of *Slingluff vs. Weaver*, 66 O. S. 621:

"The intent of the law makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the General Assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has clearly expressed, and hence no room is left for construction."

Likewise, it is stated in Volume 2 of *Sutherland's Statutory Construction*, section 389:

"A familiar rule of construction, alike dictated by authority and common sense, is that common words are to be extended to all objects which, in their usual acceptance they describe or connote."

Consequently, in view of the express inhibition in section 2541, General Code, it is my opinion, in answer to your inquiry, that insane persons may not be housed in a wing of the county home even though such wing be designated a detention hospital for insane persons and even though such insane persons be segregated from other inmates of the county home.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*