

Opinion No. 13.**Feeble-Minded—Operations—
Public Institutions.**

HELD: There is no authority in law for the State School for Feeble-Minded to cause an operation to be performed, without consent, upon an inmate for tubercular breast, but the proper course would be to have a guardian appointed or to have the patient transferred to the tuberculosis sanitarium.

December 26, 1934.

Dr. Thos. L. Hawkins
Surgeon, Montana State Training
School for Backward Children
Helena, Montana

We acknowledge receipt of yours of November 24, accompanied by a certified copy of Order of Commitment of the District Court of Pondera county, committing William and Mary Sampson, husband and wife, and their five minor children to the school at Boulder of which you are surgeon.

You advise that Mary Sampson is afflicted with tubercular breast; that you have advised that an operation is necessary; that William Sampson objects to such operation, and you request advice in the premises, as follows:

"1. Is the institution justified in forcing this woman to submit to the operation?"

"2. Has the objection of her husband to having the operation performed any legal status?"

"3. Who is responsible for the care of these inmates?"

"4. Will the Tuberculosis Sanitarium admit a patient of sub-normal mentality, who has been regularly admitted to the State School at Boulder?"

"5. Who is the guardian and responsible person for an inmate of the training school?"

On question No. 1, the provisions of the statutes on the subject are not specific. While this is true, your institution would be derelict in its duty to permit one or more inmates, having an infectious or contagious disease, to endanger the lives or health of all other inmates.

Section 1464, R. C. M. 1921, provides in part that "the said feeble-minded department shall be under the general control and supervision of the said board of trustees and superintendent."

The "said board" here referred to is the local executive board referred to in sections 1459 and 1477.

The control and supervision here referred to, we think, is the general executive control and supervision of the school. We do not think it refers to the question of operating on an inmate at discretion. In case of emergency, however, we think the board and the superintendent would be justified in authorizing an operation. The emergency, however, we think should be imminent.

In view of the uncertainty of the statutory authority of the school authorities to compel the patient to submit to an operation, we think your best course would be to have a guardian appointed under the provisions of sections 10412-10416, R. C. M. 1921.

On question No. 2, the legal questions involved are as unsettled as in No. 1. Commitment to the school for feeble-minded, of course, raises the question of mental capacity, but not to the same degree as a commitment for insanity or idiocy. The provisions of the statute are not clear enough to justify our advising you to

proceed in opposition to the husband's objections.

Question No. 3. The "feeble-minded" committed to your school are committed for the purpose of receiving such training as they are capable of receiving. The legislature appears to have had in view mental care alone, and did not anticipate such questions as you submit. As stated above, your duties as to the physical welfare of inmates would be similar to those of officials of any other state school, but possibly of a higher degree of care.

Question No. 4. The Tuberculosis Sanitarium is really the proper place for Mrs. Sampson. Her admission there would have to be arranged through the executive board referred to in section 1513, and the order of commitment to your school by the district court of Pondera county would have to be modified by that court.

Question No. 5. In the case you submit there is no guardian. Mr. and Mrs. Sampson are the natural guardians of their children who have been committed to your school, but the commitment of the parents at the same time gives rise to the assumption that the parents are likewise proper subjects for guardianship and incapable of qualifying as guardians of others.

The absence of statute applicable to the questions you submit is no doubt due to the fact that the legislature did not anticipate a situation where wholesale commitments would be made of entire families.

The remedy for your situation is to have the legislature specifically provide by statute for such contingencies, defining the measure of control placed in the hands of your school officials. In the meantime, your best course with Mrs. Sampson is to have her transferred to Galen or have a guardian appointed.