

## No. 448

**INSANE PERSONS—NEGOTIABLE INSTRUMENTS—  
CONTRACTS**

**Held: An inmate of the Montana State Hospital who was adjudicated to be of unsound mind is presumptively insane and his contracts and endorsements to negotiate instruments carry a risk of their being declared void to the person dealing with him.**

July 20, 1942.

Mr. C. K. Baker  
Business Manager  
Montana State Hospital  
Warm Springs, Montana

Dear Mr. Baker:

You have requested my opinion on the following problem:

An inmate of the Montana State Hospital, who was adjudged incompetent to handle his property and affairs and to be of unsound mind, signed an order to use funds on deposit with the hospital for his support which funds were realized from pension checks endorsed by him. Is his endorsement sufficient? May this office comply with his order to utilize the funds on deposit for his support?

In considering your questions, the provisions of Section 5685, Revised Codes of Montana, 1935, are pertinent:

"After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, except where such contract confers a beneficial interest to his estate, nor delegate any power, nor waive any right, until his restoration to capacity; but a certificate from the medical superintendent or resident physician or other officer of the insane asylum to which such person may have been committed, whether said insane asylum is in this state or elsewhere, showing that such person has been discharged, released or paroled therefrom, cured and restored to reason, or discharged, released or paroled in an improved condition shall establish the presumption of legal capacity in such person from the time of such discharge, release or parole."

Also the provisions of Section 5683, Revised Codes of Montana, 1935, are important:

"A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished him necessary for his support or the support of his family."

The Supreme Court of Montana, in *State v. Bucy*, 104 Mont. 416, 66 Pac. (2nd) 1049, in considering Section 5685, supra, said:

"By virtue of Section 5685, an adjudication of insanity under Sections 1431 to 1438, inclusive, does not establish a conclusive, but a rebuttable, presumption of insanity. Section 5685 substitutes for the presumption of sanity the presumption of insanity until the certificate there mentioned re-establishes the presumption of sanity from that of insanity. Hence, without the certificate, there is a presumption of insanity, but this is a rebuttable presumption, as the cases above cited show."

A presumption of insanity is raised because of the commitment to the Montana State Hospital and under the provisions of Section 5685, supra,

"a person of unsound mind can make no conveyance or other contract,"

so that anyone who deals with a person presumptively insane would do so at a risk of having any contract entered into declared void.

The Montana Rule is not in accord with the weight of authority, as the rule is stated in 8 Am. Jur. 329:

"The great weight of authority now supports the rule that the contract of an insane person made prior to an adjudication of his insanity and the appointment of a guardian is voidable only and not void, but if made after he has been regularly adjudged insane, it is void."

However, under the authority of *State v. Bucy*, supra, and the provisions of Section 5683, Revised Codes of Montana, 1935, the mere existence of a presumption of insanity of a person to a contract raises a danger the contract may be avoided by the insane party to the contract, or his legally appointed guardian.

Also, an endorsement of a negotiable instrument by an insane person carries with it risk to the person taking it. There is strong authority supporting such a view.

8 Am. Jr. 69;

*Green v. Gunsten*, 154 Wis. 69, 182 N. W. 261;

*Hosler v. Beard*, 54 Ohio St. 398, 43 N. E. 1040.

It is my opinion an inmate of the Montana State Hospital who was adjudged incompetent to handle his property and to be of unsound mind is presumptively insane, and a risk exists of having him or his legal representative avoid his contracts and negotiable instruments endorsed by him.

Sincerely yours,

HOWARD M. GULLICKSON  
Attorney General