

Opinion No. 160.

**Insane Persons—Insanity, voluntary application for examination—Mileage, Sheriff's, for delivering voluntary applicant to State Hospital.**

Held: A district court has not been granted the authority to make a record of a voluntary application for examination as to mental condition or order the commitment of a voluntary applicant under the provisions of Section 6, Chapter 157, Laws of 1943, until after a certificate has been made by the superintendent and physicians of the state hospital that the applicant is disordered in his mind. A sheriff has no legal authority to deliver a voluntary applicant to the state hospital until after a certificate has been made by the superintendent and physicians of the state hospital that the applicant is disordered in his mind and an order of commitment made by the court. A sheriff may not collect the expenses of transportation for taking a voluntary applicant to the state hospital prior to an order of commitment.

January 7, 1944.

Mr. Fremont W. Wilson  
County Attorney  
Missoula County  
Missoula, Montana

Dear Mr. Wilson:

You have requested my opinion concerning the following questions:

"1. May any court record be made of any kind as to a voluntary appli-

cant's mental condition under Section 6, Chapter 157, Laws of 1943?

"2. May the district court order a voluntary applicant committed without having on file an affidavit of insanity and without following out the process provided by Chapter 117, Laws of 1939?

"3. May the district court order the sheriff to deliver a voluntary applicant under Section 6, Chapter 157, Laws of 1943, to the state hospital for the insane, at county expense?

"4. May the sheriff bill the county and collect mileage for taking a voluntary applicant to the state hospital for the insane without court order, taking into consideration the provisions of Section 6, Chapter 157, Laws of 1943?"

The answer to your first question is apparent from Section 6, Chapter 157, Laws of 1943, which provides in part:

"Section 6. Any resident of this state may make voluntary application for admission to the Montana state hospital in order to have examinations, tests and observations and treatment of his mental condition. Such application shall be in writing and made in duplicate on a form prescribed by the superintendent of such hospital, and if approved by any physician licensed to practice medicine in this state, both copies thereof shall be presented to a judge of a district court who shall enter his written approval on each thereof upon the condition that the applicant, if admitted to such hospital, may be received and kept and retained therein for observation for a period of at least six (6) weeks, unless sooner released therefrom by the superintendent thereof. **No entry with regard thereto shall be made in any of the court's records.**" (Emphasis mine.)

The legislature by enacting the above quoted intended that a voluntary applicant might avoid the publicity connected with an insanity hearing and the language used, "no entry with regard thereto shall be made in any of the court's records," is not susceptible of a construction that would permit a record to be made. This is borne out by another provision of Section 6 which states that if after examination at the

hospital it is determined "such person is not disordered in his mind, or is disordered in his mind but not to such an extent as to justify or require his commitment to such hospital, the superintendent shall return both copies of such application to him and release him from the hospital." This would have the effect of preventing any public record from continuing as an embarrassment to a person who had voluntarily submitted to an examination as to his sanity and found to be sane.

The district court has not been granted authority to make an order in regard to a voluntary application for tests, observations and treatment of mental condition until the superintendent of the state hospital after examination has concluded that the applicant should be committed to the hospital as provided in Section 6, Chapter 157, Laws of 1943. In other words, the district court may not make an order committing a person to the state hospital until after the affidavit as to insanity and the physician's certificate have been filed as required by Chapter 117, Laws of 1939, and Section 1, Chapter 157, Laws of 1943. As a consequence questions two and three must be answered in the negative.

In *Brannin v. Sweet Grass County*, 88 Mont. 412, 293 Pac. 970, our Court said:

"In our opinion it is generally essential, if not indispensable, for the sheriff or other county officer to point to the particular statute entitling him to receive the compensation claimed."

The authority for a sheriff to deliver an insane person to the state hospital is found in Section 1439, Revised Codes of Montana, 1935, as amended by Chapter 117, Laws of 1939, which provides in part:

"The insane person together with the order of the judge, and certificate of the physicians must be delivered to the sheriff of the county, and by him must be delivered to the officer in charge of the insane asylum. . ."

The sheriff has the duty of delivering insane persons who have been committed to the insane asylum and may receive compensation therefor as provided in Section 4885, Revised Codes of Montana, 1935, as amended by Chapter

121, Laws of 1941, but a voluntary applicant not having been committed by the court may not be delivered by the sheriff in his official capacity and therefore the sheriff as such is not entitled to his expenses for transportation of a voluntary applicant.

It is therefore my opinion:

1. A district court is not authorized to make a record of a voluntary application for examination as to mental condition or order the commitment of a voluntary applicant under the provisions of Section 6, Chapter 157, Laws of 1943, until after a certificate has been made by the superintendent and physicians of the state hospital that the applicant is disordered in his mind.

2. A sheriff has no legal authority to deliver a voluntary applicant to the state hospital until after a certificate has been made by the superintendent and physicians of the state hospital that the applicant is disordered in his mind and an order of commitment made by the court. Under our statutes a sheriff may not collect the expenses of transportation for taking a voluntary applicant to the state hospital prior to an order of commitment.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General