

Opinion No. 110

**Montana State Hospital—Insane—
Prisoners—State Penitentiary—
Detention of Insane Convicts.**

Held: A patient being held at the State Hospital under Section 8-745, Revised Codes of Montana, 1947, may be detained by the officials of that hospital after the expiration of sentence for a reasonable time in which to institute proceedings to determine his mental condition. Although the officials of the State Hospital owe the public a duty to see that insane prisoners are not set at large, it is only through an insanity hearing, as provided by statute, that a prisoner may be detained beyond a reasonable length of time.

August 15th, 1952.

Robert J. Spratt, M. D.
Superintendent
Montana State Hospital
Warm Springs, Montana

Dear Dr. Spratt:

You have presented the following letter to me with a request for an official opinion:

"We would appreciate an opinion on whether a patient being held at this hospital under Section 80-745, R. C. M. 1947, would need to be committed by a district court in order to give us authorization to detain him, or her, after the sentence to prison has expired, provided of course, that the mental condition of the patient requires detention after expiration of sentence."

Section 80-745, Revised Codes of Montana, 1947, provides:

"When the warden is of the opinion that any prisoner is insane, he must certify the fact under oath, to the board, which may, in its discretion, order the removal of such prisoner to the insane asylum. As soon as the authorities of the asylum ascertain that such person is not insane, they must immediately notify the board of that fact, and thereupon the war-

den must cause such prisoner to be at once returned to the prison, if his term of imprisonment has not expired."

In *State ex rel. Sullivan vs. Cocke*, 167 Tenn. 253, 68 S. W. (2d) 933, the precise question was passed upon by that court through habeas corpus proceedings brought to secure the release of one being held in the asylum after his sentence had expired. The court, in granting the writ, held:

"It is said in many well considered cases that he will not be set at liberty under a writ of habeas corpus if his going at large will be dangerous to himself or any other people. Such person will be detained in confinement, at least temporarily, to permit a lawful investigation of his condition and a lawful commitment if justified."

"We think that the order of the prison officials and the physician directing the transfer of a convict from the penitentiary to the hospital for the insane could, not, in itself, serve as a justification for detaining him in the hospital beyond his term of imprisonment."

Recognizing that there is a duty to society placed upon hospital officials to see that an insane prisoner is not set at large, even though sentence has expired, I concur in this opinion.

The case also contains dicta to the effect that, if those in charge of the institution feel that the convict should be confined for any considerable length of time, such officials should cause proper legal proceedings to be instituted to determine and adjudicate the question of the persons mental condition.

It is, therefore, my opinion that a patient being held at the State Hospital under the provisions of Section 80-745 (*supra*) may be detained by the officials of that hospital after the expiration of sentence for a reasonable time in which to institute proceedings to determine his mental condition.

It is further my opinion that only upon an insanity hearing, as provided by statute, may a prisoner be detained beyond a reasonable time.

Very truly yours,
ARNOLD H. OLSEN
Attorney General