



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. Fred Norris
County Auditor
Polk County
Livingston, Texas

Opinion No. 0-2297
Re: Procedure for restoration
of sanity.

Dear Sir:

We have your letter of April 26, 1940, requesting our opinion on the question as to whether it is necessary to convene a jury to hear evidence and render a verdict on a trial for restoration of sanity or whether the county judge may conduct such hearing without a jury.

The procedure for restoration of sanity is provided for by Article 5561a, Section 4, Vernon's Annotated Revised Civil Statutes of Texas, which article was enacted by the 45th Leg., Acts 1937, p. 1049, ch. 446, and reads as follows:

**"RESTORATION OF SANITY; PROCEDURE; EFFECT OF
FINDINGS; COSTS**

Sec. 4. Upon the filing in the county court in which a person was convicted or in the county court of the county in which a person is located at the time he is alleged to have had his right mind restored, information in writing and under oath made by a physician legally licensed to practice medicine in Texas, that a person not charged with a criminal offense, who has been adjudged to be of unsound mind, has been restored to his right mind, the judge of said court shall forthwith, either in term time or vacation, order said person brought before him by the sheriff of the county and if said issue be in doubt said judge shall cause a jury to be summoned and impaneled in the same manner as is provided for in Sec. 3 hereof and shall proceed to the trial of said issue, or if there appears no doubt as to said issue, said judge may try the same without the intervention of a jury, and if said person shall be found to be of sound mind, a judgment shall be entered upon the minutes of said court

reciting and adjudging such fact and said person shall, if then under restraint, be immediately discharged, or in the event he shall be found to be still of unsound mind, he shall be returned by the county court to the place of restraint from which he had been previously ordered, and the original order of commitment shall continue in full force and effect. All costs of proceedings of restoration shall be paid by the county."

We call your attention to that part of the above quoted statute which reads "or if there appears no doubt as to said issue, said judge may try the same without intervention of a jury." The statute purports to leave the determination of whether or not a jury shall be called in such case within the discretion of the county judge.

A sanity trial, whether it be to declare a person insane in the first instance or to restore sanity to one previously declared insane is unquestionably a proceeding involving the liberty of that person. The Supreme Court of Texas in *White v. White*, 196 SW 508, held that a statute providing for the issue of sanity to be determined by a commission of six physicians to be appointed by the county judge was unconstitutional in that it deprived the defendant of his right of trial by jury as guaranteed by Sections 15, 19 and 29 of Article I of the Texas Constitution.

Under the authority of the *White* case, we are compelled to construe the above quoted statute to mean, that the county judge may try the issue of restoration of sanity without a jury only if a jury has been expressly waived by the person being tried.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed) WALTER R. KOCH
Assistant

APPROVED MAY 20, 1940

s/ GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

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AMM

Approved Opinion Committee
By RWF, Chairman