



THE ATTORNEY GENERAL OF TEXAS

Gerald C. Mann

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable C. A. Shaw, Superintendent
Big Spring State Hospital
Big Spring, Texas

Dear Dr. Shaw:

Opinion No. 0-4411

Re: Whether or not certificates from
two physicians should be required
for patients who are admitted to
the Big Spring State Hospital.

Your request for an opinion from this Department is, in part,
as follows:

"Under article 3193a, Vernon's State Statutes, 1936
edition, it specifies that two physicians certificates are
necessary in the commitment of an insane person to a
state mental institution. This is under the eleemosy-
nary division.

" . . .

"We will very much appreciate your advising us as
to whether or not we are within our jurisdiction in re-
questing these two physicians certificates for patients
who are admitted to the Big Spring State Hospital."

Article 3193a, Vernon's Texas Statutes, is as follows:

"No person shall be committed to any institution
for the treatment of the insane and other mentally
ill persons, unless there has been filed with the county
judge a certificate of the insanity of such person by
two properly qualified and licensed physicians, nor
without an order therefor, signed by the county judge,
stating that he finds that the person committed is in-
sane, and is a proper subject for treatment in a hos-
pital for the insane, and either that he has been an
inhabitant of the State for the six months immediately
preceding such time or that provision satisfactory to

the Board of Control has been made for his maintenance, or that by reason of insanity he would be dangerous if at large. The order of commitment shall also authorize the custody of the insane person either at the institution to which he shall first be committed or at some other institution to which he may be transferred by order of the Board of Control. Neither of the physicians mentioned in this section shall be a relative of the person applying for the order, or of the person alleged to be insane, nor shall he be a manager, superintendent, proprietor, officer, stockholder, or have any pecuniary interest, directly, or indirectly, or be an attending physician in the institution to which it is proposed to commit such alleged insane person.*

The statute is emphatic that "no person shall be committed to any institution for the treatment of the insane and other mentally ill persons unless there has been filed with the County Judge a certificate of the insanity of such person by two properly qualified and licensed physicians, nor without an order therefor, signed by the County Judge, stating that he finds that the person committed is insane. * * *"

It will be observed, however, that the prohibition is that no person shall be "committed" to any institution mentioned, thereby imposing a limitation upon the power of the County Judge to make such a commitment. It has no reference to the admission to the institution of one properly adjudged insane. The requirement of the statute for the certificates of two physicians is for the court, and the institution may, and should, upon receipt of the court's order, assume that the court had properly performed its duty.

The same intention of the Legislature is further evidenced in the language of Article 3193e of the statute, where a patient is committed by the County Judge to an institution for the treatment of his ailments or for observation, pending the determination of his insanity.

H. B. No. 126, passed at the regular session of the 45th Legislature (p. 542, ch. 268) appearing in Vernon's Annotated Civil Statutes of Texas as Article 3193o provides for the temporary commitment of mental patients, and contains the following language:

"The court's order shall fix the temporary commitment period at a term which shall not exceed ninety (90) days. A sworn statement of the evidence of said two (2)

physicians shall be filed in said matter and a duly certified copy thereof and the court's order committing such persons and the financial property statement hereinafter provided for shall be forwarded immediately to the State Board of Control, and said certified copy shall be any hospital superintendent's sufficient authority to admit and hold said person in said hospital for observation and/or treatment for not exceeding ninety (90) days."

It will be observed there is no necessary conflict between this Article and Article 3193e hereinabove referred to. Article 3193e pertains to a temporary commitment pending a hearing of a sanity proceeding, whereas, Article 3193o pertains to a proceeding -- not for a final judgment with respect to insanity -- but to the commitment of a mental patient to such an institution for mere observation.

If the application now pending before you involves a final judgment, or a proceeding looking to a final judgment with respect to insanity and the commitment is an incidental temporary commitment, you will be governed by Articles 3193a and 3193e, as hereinabove construed. If, on the other hand, the application for admission is one involved merely in a proceeding for temporary admission for observation under Article 3193o, you will be governed by the provisions of that Article. Specifically, in the latter case you would be entitled to demand -- not the original certificates of the two physicians, but certified copy or copies of statements of the evidence of said two physicians as given before the County Judge or court. Under the last-named Article, this sworn statement or certified copy of the testimony of the two physicians will come to you through the State Board of Control.

Very truly yours,

APPROVED FEB. 17, 1942

ATTORNEY GENERAL OF TEXAS

s/Grover Sellers

By s/Ocie Speer
Ocie Speer
Assistant

FIRST ASSISTANT
ATTORNEY GENERAL

OS-MR:rn

APPROVED:
Opinion Committee
By B.W.B.
Chairman