



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. J. D. Baker
County Attorney
Randall County
Canyon, Texas

Dear Sir:

Opinion No. O-4758
Re: Whether County Court has jurisdiction to try a person alleged to be a lunatic when such person is outside county.

The substance of your recent letter together with enclosures, is as follows:

On November 30, 1940 an adult male person, a legal resident of Randall County, Texas enlisted in the United States Army. He has recently been found to have a mental disease, this finding having been made by a board of medical officers of the United States Army. It is further stated that in the opinion of the medical staff of the Government hospital where the person is now a patient that institutional care will be necessary for an indefinite period, and that the person is now totally incapacitated for further military service. The medical board has now recommended his discharge from the military service and his transfer to a hospital for mental diseases. The hospital where the person is now confined is located outside Randall County but within the State of Texas. The person, if discharged from military service, would be an indigent within the meaning of the Constitution and statutes of the State of Texas here applicable. The military authorities have requested that the County Court of Randall County assume jurisdiction of the case and to designate a state institution to receive the patient for an indefinite period. It appears that a temporary commitment would not be proper.

Assuming the person is insane and a legal resident of Randall County, Texas, you request the opinion of this department as to whether the County Court of Randall County may

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assume jurisdiction of the matter as requested by the military authorities.

A lunacy inquisition is a proceeding instituted by the state primarily for the purpose of determining the question as to whether an alleged lunatic should be confined because of his danger to, and the safety of, society. This proceeding is wholly statutory. The court trying the case has only such authority as expressly given or clearly implied by the statutes, and the alleged incompetent has the right to insist on a strict compliance with every form prescribed by law for his protection.

The procedure for adjudging one not charged with crime to be a person of unsound mind and providing for his restraint is solely through the county courts; and although the state is a party to such an inquiry, the character of the proceeding is essentially civil. See Tex. Juris. Vol. 24, p. 388.

Sections 1 and 2 of Article 5361a, Vernon's Civil Statutes, reads as follows:

"Section 1. If information in writing under oath be given to any county judge that any person in his county, not charged with a criminal offense, is a person of unsound mind, and that the welfare of either such person or any other person or persons requires that he be placed under restraint, and such county judge shall believe such information to be true, he shall forthwith issue a warrant for the apprehension of such person, or, if such like information be given to any justice of the peace in such county, said justice may issue a warrant for the apprehension of said person, making said complaint and warrant returnable to the county court of said county, and said county judge in either event shall fix a time and place for the hearing and determination of the matter, either in term time or in vacation, which place shall be either at the court house of the county, or at the residence of the person named, or at any other place in the county, as the county judge may deem best for such hearing. Notice of the time, place and purpose of such hearing shall be served upon the person charged, such notice to be under the hand and seal of the county clerk of said county, and served and returned by the sheriff or a constable of such

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county, and the return to state the time and place of service. Such notice shall be served not less than three days prior to the day of hearing.

"Sec. 2. The warrant provided for herein shall run in the name of 'The State of Texas', and shall be directed to the sheriff or any constable of the county, and the officer receiving same shall forthwith take into custody the person named therein, and at the designated time and place shall have him and the return of said warrant before the county judge for examination and trial."

After a careful consideration of the above quoted sections of Article 5561a, which sections are applicable to the situation outlined, it is the opinion of this department that the person sought to be charged with lunacy must be physically present within the county at the time of the making of the information. Note the language used in Section 1 of Article 5561a:

"If information in writing under oath be given to any county judge that any person in his county, . . . is a person of unsound mind . . . he shall issue a warrant for the apprehension of said person . . ."

The word "resident" is not used in the section and there is nothing to indicate that the legislature ever intended that the county court should assume jurisdiction of such a matter when it does not appear that the person sought to be charged is "in" the county. The county judge is without authority to act in the matter unless it appears that the person sought to be charged with insanity is "in his county."

There is another reason, we think, why the person sought to be charged must be physically within the county before the county court of such county may assume jurisdiction. The Act provides:

"Notice of the time, place and purpose of such hearing shall be served upon the person charged . . . and served and returned by the sheriff or any constable of such county. Such notice shall be served

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not less than three days prior to the day of hearing."

This notice, being a civil process, must be served by the sheriff or constable of "such county" meaning, we think, the county wherein the information is filed. Under the applicable statutes, a sheriff or constable may not go outside his respective county to serve a civil process. If the person upon whom the notice is to be served is not within the county it then follows that he may not be served with "such notice", as required by statute. The proceedings, being purely statutory, must be conducted in strict accordance thereto.

Finally, the alleged lunatic must be present before and during the lunacy proceedings. This department so held in its Opinion No. O-1798 on June 12, 1940, which opinion is here re-affirmed.

The Constitution and laws of Texas jealously protect the liberties of the citizens of the commonwealth, and throw about each citizen, sane or insane, the safeguards of being heard in person or by attorney, or by both, before a jury of his countrymen. If the rights of any class of persons should be more closely and sacredly guarded than another, it is that unfortunate individual who, rightfully or wrongfully, is charged with having a mind diseased or a reason dethroned. Where, therefore, there is any Constitutional or statutory right or privilege conferred upon such persons, either expressly or impliedly, the courts are not inclined to disregard them.

It is therefore the considered opinion of this department, under the facts stated, the County Court of Randall County is without jurisdiction to entertain lunacy proceedings against a person outside such county, this regardless of the person's legal residence.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 25, 1942

Genard C. Mann

ATTORNEY GENERAL OF TEXAS

By *E. G. Pharr*

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KGP:PO

