



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL**

**ATTORNEY GENERAL**

**February 12, 1948**

Hon. O. B. Ellis  
General Manager  
Texas Prison System  
Huntsville, Texas

Opinion No. V-498

Re: Authority of the State  
Prison System to hold  
insane criminals

You request an opinion from this Department upon the above captioned subject matter as follows:

"It has been called to my attention that we are holding three prisoners whose time has expired because they have been adjudged insane. The attached memo gives the names, numbers, ages, county of crime, sentence, home address and expiration date of these three men. I find in our files a ruling of your department that the custody of insane criminals is a responsibility of the Prison System for the duration of their sentences.

"I would appreciate an opinion from you as to what authority I have to hold these men beyond their expiration date. It was my thought that they should be returned to the sheriff of the county in which they were sentenced and from that point on, they would be handled as other insane cases are handled."

We assume from your request that the prisoners in question were lawfully adjudged insane by the County Judge of Walker County in accordance with the provisions of Article 3186a, V.C.S., and were committed to the State Prison Psychopathic Hospital before their sentences had expired.

Article 6203e, V.C.S., provides in part as follows:

"Section 1. That there shall be built, established and maintained, as a part of the Prison System of Texas, an Institution for the examination, observation, treatment and

incarceration of all persons who have been convicted of felony, and who have been duly adjudged insane by any competent court at law in the State of Texas; and, who have been acquitted by a court of competent jurisdiction upon the grounds of insanity; said institution to be known as the State Prison Psychopathic Hospital.

"Sec. 4. When any person shall be confined in any jail, asylum or other institution of confinement, who is charged by indictment and has been convicted of felony in this State and who has been duly adjudged insane by a Court of Competent Jurisdiction, upon the grounds of insanity shall be confined in said Institution and all persons who are now confined in the State Hospital for the insane who are classified by the superintendents of said different Hospitals for the insane as criminally insane shall upon proper certificate from the superintendent be transferred from said Hospital for the Insane to the State Psychopathic Hospital.

"Sec. 8. . . . that a great many prisoners have been committed to the various State Hospitals for mental diseases and have escaped, and that escaped insane prisoners are a menace to the people of this State.  
. . ."

A careful reading of the above statutes reveals a legislative intent to create within the prison walls a place of incarceration for the criminally insane where they could be adequately cared for and guarded. While the Legislature did not attempt to define specifically what it meant by "criminally insane", we believe it fairly inferable from the above act that they did mean to include within that classification those persons who have been convicted of a felony and who have subsequently been adjudged insane. From the facts which you have furnished us we have concluded that the three prisoners to whom you refer are within this classification. Therefore, you are advised that under Article 6203e, supra, you are authorized to retain custody of the three insane prisoners, at least until such time as they are adjudged sane.

We note from your request that you assume that the sentences of these three insane convicts have "expired". While we find it unnecessary now to pass upon the question of when the sentence of an insane felon expires, we refer you to Attorney General's Opinion No. 0-5721, by a former administration, a copy of which is enclosed, which contains this statement:

"We are of the opinion that the foregoing discussion discloses a legislative policy in Texas of not subjecting insane persons to criminal punishment, and that the time spent by an insane in a state hospital should not be counted on his sentence as a criminal."

SUMMARY

The authorities of the State Prison System may retain custody of three convicts who have been adjudged insane and committed to the State Prison Psychopathic Hospital even though they have been incarcerated for the period of their sentences. Article 6203e, V.C.S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Martin Harris*  
Martin Harris  
Assistant

MH/lh

APPROVED:

*Price Daniel*  
PRICE DANIEL  
ATTORNEY GENERAL

Considered and approved in Conference