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1. RECEIVING HOSPITAL—INSTITUTION ESTABLISHED BY DEPARTMENT OF PUBLIC WELFARE, STATE OF OHIO—OBSERVATION, CARE AND TREATMENT OF MENTALLY ILL, ESPECIALLY WHERE CONDITION INCIPIENT, MILD OR OF SHORT DURATION.

2. DETENTION HOSPITAL—FACILITIES PROVIDED BY COUNTY COMMISSIONERS OF COUNTY THROUGH CONTRACT WITH OFFICERS IN CONTROL OF PRIVATE OR MUNICIPAL HOSPITAL OR SANITARIUM—CARE AND TREATMENT OF MENTALLY ILL IN COUNTY UNTIL STATE PROVIDES FACILITIES FOR TREATMENT AND CARE OF SUCH PERSONS.

3. SECTION 1890-17 G. C. DOES NOT PROHIBIT DESIGNATION OF FACILITIES AS "RECEIVING" HOSPITAL.

4. CONTRACT—RECEIVING HOSPITAL MAY PROVIDE FACILITIES SHALL NOT BE USED FOR DETENTION HOSPITAL PURPOSES.

5. RATE PAYABLE FOR MAINTENANCE AND CARE IN DETENTION HOSPITAL SHALL NOT EXCEED $2.50 PER DAY PER PERSON NOT APPLICABLE TO RECEIVING HOSPITALS—SECTION 1890-109 G. C.

6. SUPERINTENDENT AND STAFF OF RECEIVING HOSPITAL MUST BE STATE EMPLOYES—APPOINTED PURSUANT TO LAW BY DIRECTOR OF WELFARE AND COMMISSIONER OF MENTAL DISEASES.

SYLLABUS:

1. A "receiving" hospital is an institution established by the department of public welfare of the state of Ohio, to be used as an adjunct to existing state hospitals, for the observation, care and treatment of the mentally ill, and especially those whose condition is incipient, mild or of possible short duration. A "detention" hospital is facilities provided by the county commissioners of a county through a contract with the officers in control of a private or municipal hospital or sanitarium for the care and treatment of the mentally ill persons residing in such county until

the state has provided sufficient institutions and facilities for the treatment and care of such persons.

2. Section 1890-17, General Code, does not prohibit designation of facilities as a "receiving" hospital, even though a "receiving" hospital has not previously been established at the site of the state hospital in the district in which such facilities are located.

3. A contract of the facilities of an establishment to be used as a "receiving" hospital may provide that such facilities shall not be used during the life of such contract for "detention" hospital purposes.

4. The provisions of Section 1890-109, General Code, that the rate payable for maintenance and care in a "detention" hospital shall not exceed $2.50 per day for each person, are not applicable to "receiving" hospitals.

5. The superintendent and staff of a receiving hospital must be state employes, appointed by the director of welfare and commissioner of mental diseases pursuant to law.

Columbus, Ohio, April 24, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"The State Department of Public Welfare and the City of Cleveland are negotiating, or are about to negotiate, a contract for the use and facilities of Hoover Pavilion, constructed for the care of mental illness.

In this connection the Assistant Director of Law of the City of Cleveland has submitted to this Bureau several questions involving an interpretation of law which we are unable to give without your opinion and advice.

Accordingly, we submit the following questions with the request that you consider the same and give us your opinion in answer thereto at your earliest convenience.

Question 1. Can the State Department of Public Welfare, through the Commissioner of Mental Diseases, enter into a contract with the City of Cleveland for the facilities of Hoover Pavilion (constructed for care of mental illness) at a per diem rate in excess of one-half of the $2.50 rate as established by Section 1890-109?

Question 2. Can the State designate Hoover Pavilion as a receiving hospital and in such event does the limitation of $2.50 as provided in Section 1890-109 obtain?

Question 3. Is there a recognized distinction in the law between a receiving hospital and a detention hospital for the mentally ill?

Question 4. Can the State designate Hoover Pavilion as receiving hospital unless a receiving hospital is first established on the State premises in Cleveland as provided in Section 1890-17?

Question 5. If the State can contract on a per diem basis for the facilities of Hoover Pavilion as a receiving hospital for the mentally ill, can such contract exclude use of such facilities for detention of mentally ill not requiring the services as provided in Section 1890-16?

Question 6. In the event of a contract is it imperative that the State appoint the superintendent and staff for the control and management of Hoover Pavilion as a receiving hospital, or can either or both the superintendent and staff presently employed by the City of Cleveland perform such functions for the State by such contract?"

As the answers to your first, second and fourth questions must depend to some extent upon the answer to your third question, consideration will first be given to distinguishing between a receiving hospital and a detention hospital as those terms are defined in the statutes.

Section 1890-16, General Code, provides for the development, extension and completion of receiving hospital service, and that section is as follows:

"The division may develop, extend and complete, a state-wide system of receiving hospital service by establishing, constructing, purchasing, leasing or contracting for institutions to be known as receiving hospitals as defined and provided for herein, in suitable districts, either separate from or in connection with existing or future state hospitals, which receiving hospitals shall be used for the observation, care and treatment of the mentally ill, and especially for those whose condition is incipient, mild, or of possible short duration. Such receiving hospital shall perform any of the work or duties authorized to or required of the division of mental diseases. If established in connection with a state hospital on the site of the state hospital they shall be operated under the same procedure and laws governing receiving hospitals located on sites other than a state hospital."

Section 1890-17, General Code, is as follows:

"At the earliest possible date after this act becomes effective there shall be established receiving hospitals as defined herein in

> connection with and on the site of each of the existing state hospitals, except the Lima state hospital. The district served by the receiving hospitals provided for herein shall be identical with the districts served by the state hospital in connection with which the receiving hospital is established. The districts shall be changed as additional receiving hospitals are established at places other than on the site of a state hospital."

The term "detention hospitals" is defined in the first paragraph of Section 1890-107, General Code. That paragraph reads as follows:

> "Until the time when the state has provided sufficient institutions and facilities as provided and authorized in this chapter for the care and treatment of the mentally ill, the county commissioners of any county of the state upon the request of the probate judge may provide and establish facilities for the maintenance, care or treatment of the mentally ill persons residing in such county. For the purpose of providing such facilities, the county commissioners may contract with the trustees of an established general hospital, an established sanitarium for the mentally ill, or with the authorities having charge and control of a hospital owned or operated by a municipality. Such facilities shall consist of a hospital or ward or other suitable place available for this purpose. Such facilities or place shall be designated by the term 'detention hospitals.' "

It is thus apparent that while, primarily, "receiving hospitals" are established by the department of public welfare of the state, and "detention hospitals" are provided by the county commissioners upon request of the probate judge, there is also a distinction between the functions performed. While "receiving hospitals" are "used for the observation, care and treatment of the mentally ill, and especially for those whose condition is incipient, mild or of possible short duration", the "detention hospitals" are only facilities furnished by the county for the temporary custody of the mentally ill persons residing in such county, until the "time when the state has provided sufficient institutions and facilities for the care and treatment of such mentally ill".

Section 1890-108, General Code, provides that the division of mental diseases, department of public welfare, may order the admission to a detention hospital of any persons who have been committed to a state hospital for the mentally ill but who have been denied admission to such hospital because of lack of room.

Therefore, the answer to your third question is in the affirmative. There is a recognized distinction between a receiving hospital and a detention hospital for the mentally ill.

Your first question involves a consideration of Section 1890-109, General Code, which reads as follows:

> "In all cases all patients now confined in detention hospitals as mentally ill under adjudication and commitment to a state hospital by the probate court or who shall hereafter be so adjudicated and committed, and whose admission to the state hospital is denied by reason of lack of room, the cost of maintenance and care shall be borne jointly by the state and the county from which such mentally ill person or persons are committed under the provisions of existing laws governing the support of patients confined in state hospitals, as specified by existing Sections 1815-1, 1815-3, 1815-4, 1815-5, 1815-6, 1815-7, 1815-9, 1815-10 and 1816 of the General Code, the state's financial obligation to begin as of the date the application for admission to a state hospital is refused. The rate to be paid to detention hospitals for the maintenance and care of the mentally ill shall be fixed by the state department of public welfare in an amount not to exceed two and 50/100 dollars ($2.50) per day for each person.
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> Payment at the full rate specified in this act shall be made in the first instance by the state from such funds as may from time to time be provided in any act appropriating state funds therefor. The county from which the mentally ill person or persons are committed shall have authority to expend funds to reimburse the state for its share of the obligation specified by this act. The treasurer of each county shall pay to the treasurer of state, upon the warrant of the county auditor, the amount charged against such county for the preceding month for the maintenance and care of all such persons so committed and confined (,) not later than fifteen (15) days after the presentation of the monthly statement by the department of public welfare of the state of Ohio.
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> The patient or the estate of the patient and those persons named in Section 1815-9 of the General Code shall be liable for such support and maintenance.
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> Collections from responsible relatives for the support of patients confined in detention hospitals under the provisions of this section shall be the legal responsibility of the state department of public welfare.
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> The state shall not be held responsible for the expense of care and maintenance of any person confined in any detention hospital who does not have a legal settlement in the state of Ohio."

First, your attention is directed to the fact that this section is applicable to "detention hospitals" only. Secondly, it provides that payment at the full rate specified in this act shall be made in the first instance by the state, and that the county shall reimburse the state for its share of the obligation. The cost of maintenance and care shall be borne jointly by the state and the county from which such person is committed and shall be fixed by the state department of public welfare in an amount not to exceed two and 50/100 ($2.50) dollars per day for each person.

In the event the county commissioners designate Hoover Pavilion a detention hospital, the state being primarily liable, could contract with Hoover Pavilion as a detention hospital for the maintenance and care of the mentally ill within the per diem limitation of two and one-half dollars as fixed in Section 1890-109, General Code, and the county would be required to reimburse the state for its share of the obligation as provided in that section.

Your attention was directed above to the fact that Section 1890-109, General Code, applies to detention hospitals only. No other section places a limitation upon the per diem rate for the care and maintenance of the mentally ill in a receiving hospital or other facility and accordingly, the answer to your third question is that if the state designates Hoover Pavilion as a receiving hospital the per diem limitation of two and one-half dollars does not apply.

Section 1890-17, General Code, is set forth in full earlier in this opinion. It contains no provision that a receiving hospital be established on the site of a state hospital within the district served by such state hospital, before a receiving hospital may be established elsewhere within the district. The answer to your fourth question is, then, that the state may designate Hoover Pavilion as a receiving hospital even though a receiving hospital has not first been established on the site of the state hospital in Cleveland.

Your fifth inquiry involves merely a question of contract. A reference to the sections of the General Code quoted above will disclose no limitations upon the contract which the state department of public welfare may make with an established hospital so far as excluding the use of its facilities as a detention hospital is concerned; and no such limitation appears

in any other pertinent provision of the law. If a contract, entered into between the state and the city of Cleveland for the use by the state of the facilities of Hoover Pavilion as a receiving hospital provided that the facilities of Hoover Pavilion should not be used for detention hospital services during the operation of such lease, the proviso would be enforceable.

Your sixth question involves two problems. First, is it imperative that the state appoint the superintendent of a receiving hospital; and, second, is it imperative that the state appoint the staff of a receiving hospital.

The first problem is resolved by consideration of Section 1890-11, General Code. That section reads:

> "The director with the advice of the commissioner, shall, subject to civil service rules and regulations, determine the number of officers and employees to be appointed and fix the salaries and wages to be paid in the division and at the various institutions under the control of the division. Such salaries and wages shall be uniform, as far as possible, for like service in or connected with the various institutions. In the selection of a superintendent for a state or receiving hospital, the director and commissioner shall consult with the advisory council before making any such appointment."

The last sentence of the statute just quoted provides the director and commissioner shall consult with the advisory council before selecting a superintendent of a receiving hospital. This requirement would imply the power of appointment of a superintendent of a receiving hospital. Not only must the power to select be coupled with the power to appoint in order to be effective, but the following discussion of the requirement that the staff of a receiving hospital be employes of the state is equally applicable to the superintendent.

Section 1835, General Code, provides in part:

> "The director of public welfare shall appoint such employees as may be deemed necessary for the efficient conduct of the business of the department, prescribe their titles and duties and fix their compensation, except as otherwise provided by law. * * *"

Section 1890-6, General Code, reads as follows:

> "The director of public welfare shall be the executive and administrative head of the division of mental diseases. The commissioner of mental diseases shall have supervision and responsibility in all matters relating to the medical treatment and care of the mentally ill in the State of Ohio and in all institutions that are now or are subsequently placed under the control and supervision of the division of mental diseases."

That sections refers to *institutions* under the control and supervision of the division of mental diseases. Practically the same language occurs in Section 1890-11, General Code, quoted in full earlier in this opinion.

The last paragraph of Section 1890-107, General Code, reads:

> "Provided further, that the state department of public welfare may provide facilities for the maintenance, care or treatment of mentally ill persons residing in such county through the lease or rental of suitable property or through contract with the trustees or managers of an established general or private hospital, or with the authorities having charge and control of a hospital owned or operated by a municipality. Such facility so acquired shall be operated by the state as an adjunct to the state hospital of the district in which such facility is located. Admissions thereto shall be upon transfer from such state hospital upon the order of the superintendent of such hospital."

Note in this paragraph the requirement that "such facility shall be *operated* by the state as an adjunct to the state hospital of the district." Furthermore, Section 1890-15, General Code, reads in part:

> "The department of public welfare shall have *charge and control,* through the commissioner of mental diseases, of any and all *institutions* now in existence or which may hereafter be established and which are maintained in whole or in part by the state of Ohio, for the treatment and care of the mentally ill, feeble-minded and epileptic, * * *." (Emphasis added.)

The Supreme Court of Ohio furnished a definition of the term "institution" in the case of State, ex rel. Walton v. Edmondson, 89 O. S. 351; 106 N. E. 41, as follows:

> "We think it clear that by the use of the word 'institutions' in Section 1 of Article VII of the constitution it was intended to designate the places where, and the means by which, the afflic-

> tions of the persons referred to may be relieved, although the term 'institution' is sometimes used as descriptive of the establishment where the operations of an association are carried on and at other times it is used to designate the organized body."

It would seem clear from a consideration of the various statutes referred to above that the legislature has used the term "institution" in its broad sense, and it should be construed to include not only the establishment, but also the means by which the state fulfills its responsibility for the medical care and treatment of its mentally ill.

The conclusion is inescapable that in charging the department of public welfare with the operation, charge and control of institutions for the care and treatment of the mentally ill, and delegating to that department the power of appointment of such employees as are necessary for the conduct of its business, the legislature has vested in that department a power which can not be exercised by some other person. The exercise of the power of appointment is a high public function and trust. 32 O. Jur. page 880. It is an administrative function. It is usually non-delegable and must be exercised according to the terms of the statute conferring it. 32 O. Jur. page 918.

Your questions, in order, are therefore answered as follows:

1. If Hoover Pavilion is designated by the county commissioners as a "detention" hospital, a contract with the city of Cleveland by the state department of public welfare through its commissioner of mental diseases for such facilities would be controlled as to per diem rate by the provisions of Section 1890-107, General Code. The state would be primarily liable and would contract for such facilities at a per diem not in excess of $2.50 and would be entitled to reimbursement from the county for its share of the obligation.

2. The State of Ohio could designate Hoover Pavilion a "receiving hospital" and in such event the limitations of Section 1890-107, General Code, as to per diem rate would not apply. The entire cost in such event would be the obligation of the state.

3. A "receiving" hospital is an institution established by the department of public welfare of the State of Ohio, to be used as an adjunct to existing state hospitals, for the observation, care and treatment of the

mentally ill, and especially those whose condition is incipient, mild or of possible short duration. A "detention" hospital is facilities provided by the county commissioners of a county through a contract with the officers in control of a private or municipal hospital or sanitarium for the care and treatment of the mentally ill persons residing in such county until the state has provided sufficient institutions and facilities for the treatment and care of such persons.

4. Section 1890-17, General Code, does not prohibit designation of facilities as a "receiving" hospital, even though a "receiving" hospital has not previously been established at the site of the state hospital in the district in which such facilities are located.

5. A contract of the facilities of an establishment to be used as a "receiving" hospital may provide that such facilities shall not be used during the life of such contract for "detention" hospital purposes.

6. The superintendent and staff of a receiving hospital must be state employes, appointed by the director of welfare and commissioner of mental diseases pursuant to law.

Respectfully,

HUGH S. JENKINS

Attorney General