Opinion No. 34-745

April 18, 1934

BY: E. K. NEUMANN, Attorney General

TO: Dr. A. B. Stewart, Superintendent, New Mexico Insane Asylum, Las Vegas, New Mexico.

In Re: **Carl Hunsaker.**

OPINION

{*128} At the request of Mr. Hiram Dow, a member of the Board of Trustees {*129} of the New Mexico Insane Asylum, I have examined copies of the records in the case of State v. Carl Hunsaker, No. 1454 on the docket of the District Court of Curry County, New Mexico. This man was on trial for the crime of assault with a deadly weapon. The verdict of the jury reads as follows:

"We the jury in the above entitled and numbered cause, duly impaneled and sworn, do find the Defendant Carl Hunsaker is at the present time insane."

The court, acting pursuant to this verdict, committed Hunsaker to the New Mexico Insane Asylum.

It seems that you, as Superintendent of said Insane Asylum, have found this man to be sane at this time and wish to have him removed from the asylum. In a previous letter I advised you to proceed under paragraph 4 of Section 24, Chapter 76, Laws of 1933 and I understand that you have done so. I think this procedure is proper under the facts in the present case.

In committing this man to the asylum, the court apparently acted under Section 105-2227 of the 1929 Code. This section, among other things, provides that the person so found to be insane shall be confined "at the expense of the county in which the trial is had" for **"so long as such person shall continue to be of unsound mind."**

Since the jury found this man to be insane at the time of the trial he could not be tried for the offense of which he stood indicted and in my opinion "jeopardy" would not attach so as to prevent his being tried after release from the Insane Asylum upon the same indictment. 16 C.J. 250-252.

I think it is plainly the duty of the sheriff of Curry County to receive this man after you have made and filed the certificate mentioned in paragraph 4, Section 24, Chapter 76, Laws of 1933.

By: QUINCY D. ADAMS,

Asst. Attorney General