

Opinion No. 43-4232

February 12, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Dr. J. J. Johnson, Sr., Superintendent, New Mexico State Hospital, Las Vegas,
New Mexico

We have your letter of February 8, 1943, wherein you state that you have been advised any patient who has recovered his sanity can be taken home by the Sheriff of the County in which the patient has residence. You asked to be advised whether or not it is mandatory with the Sheriff to do so or not.

The advice that you have received is apparently not in all respects correct. Section 5-212 of the New Mexico 1941 Compilation provides that upon the release of an indigent person that such person shall be delivered by said Superintendent to the Sheriff of said County where he consents thereto and be returned to the County from which he was sent to said Asylum at the expense of said County and there be maintained at the cost of said County until he shall no longer be indigent or until he otherwise elects. In such an instance it is my opinion that it is mandatory on the Sheriff to return such person to his County as provided in such section.

Section 37-220 (4) of the New Mexico 1941 Compilation provides that upon the release of a person charged with crime or who is serving a sentence of imprisonment, that such individual shall be delivered to the Sheriff of the proper County or to the Warden of the State Penitentiary or to such other person as the court having jurisdiction of the offense shall direct, to be dealt with according to law. When under this section the Sheriff is found to be the proper person to take charge of such patient it is his duty to do so at the expense of the County.

See also to the same effect Attorney General's Opinion 1933-34, Page 128. The above are the only instances under our Statutes that I have found where it can be said that it is the duty of the Sheriff to take custody of such person upon his release from the State Hospital. However, there are other instances where upon release of a person it is provided that the person released must be returned to the County he is from at the expense of such County. However, it is not provided that the Sheriff must return the patient in such instances. In connection with this matter see Sections 5-212 and 37-220 of the New Mexico 1941 Compilation.

Hoping that the above fully answers your question, I remain

By HARRY L. BIGBEE,

Asst. Atty. General