

Opinion No. 44-4433

January 3, 1944

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of January 1, 1944, and the enclosed letter from Mrs. Laura M. Calkins.

In your letter you ask whether a pre-existing guardianship of the property of a patient of the hospital automatically terminates (a) when the patient is paroled, (b) when the patient is discharged.

Your attention is directed to Section 35-203 of the N.M. 1941 Compilation, in which provision is made for the guardianship of the property of a person adjudicated to be insane.

There are only two ways by which such a guardianship may be terminated. First, as provided by Section 35-210, wherein any person who has been adjudged insane or incompetent, may apply to the Court which so adjudged him for an adjudication of sanity. If the Court finds such person to be sane and competent, any guardianship of such person or his estate shall thereby be terminated. The other method by which a guardianship may be terminated is that provided by Section 37-220, Paragraph 6. It is there provided that when a person is discharged from the New Mexico Insane Asylum **as recovered**, that any guardianship of the estate of such person automatically terminates.

Thus, there are only two ways that the guardianship of an insane person's estate may be terminated. First, by a Court proceedings in which event it would make no difference whether the patient was in or out of the hospital, or whether he had been discharged or not.

The other method is automatic on the discharge of a patient as recovered. There is no such provision made in connection with the parole of a patient. In fact, by Section 35-205, provision is made for an accounting by the guardian of the estate of a person who is paroled from the New Mexico Insane Asylum.

You will find enclosed your letter from Mrs. Calkins.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Assistant Attorney General

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