

Opinion No. 45-4776

August 22, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Jack Hanlon, Manager New Mexico State Hospital Las Vegas, New Mexico

{*121} You have requested this office to give you an opinion concerning the procedure which should be followed in handling various allotments that certain patients in your institution receive, such as allotments from the Federal government.

Section 35-204 of the 1941 Compilation provides as follows:

"In case any person who has no guardian of his estate and who has been or shall hereafter be committed to the New Mexico Insane Asylum, is the owner of any property, the secretary of the directors of the Insane Asylum of New Mexico, or its other duly authorized agent, in case such insane person has no guardian, may apply to the court of competent jurisdiction for the appointment of a guardian of the estate of such insane person, and having no relatives at the time residing in this state, the secretary of the directors of the Insane Asylum of New Mexico, or its other duly authorized agent, shall be entitled to administer such estate and to have letters of guardianship on such estate issued to him in preference to any other person. Such secretary or agent shall not be entitled to receive any compensation for his services as guardian, but the court may allow such reasonable fees for such administration as it deems proper, said fees to be used and handled in the same way as fees charged for the maintenance and care of non-indigent patients."

{*122} Section 37-208 of the 1941 Compilation further provides:

"The insane person, together with certified copies of the affidavit, warrant of arrest, and of the order for hearing and examination, and the order of commitment, must be delivered to the sheriff of the county and by him must be delivered to the medical superintendent of the New Mexico Insane Asylum; but no female insane person shall be taken to the New Mexico Insane Asylum without the attendance of some other female, or of some relative of such insane person.

"Any moneys, jewelry, or other personal property found on the person of an insane person at the time of the arrest must be certified to before the judge, and sent with such person to the insane asylum, there to be delivered to the medical superintendent and such money shall by him be deposited in a fund to be known as the 'Patients' Personal Deposit Fund'; and such jewelry and other personal property shall by him be kept in some safe place.

"If the sum exceeds one hundred dollars (\$ 100), the excess must be by the medical superintendent turned over to the legal guardian of the estate of such person; if the sum

is one hundred dollars (\$ 100) or less, it may be expended for the personal expenses of the person or applied to the payment of funeral expenses if the person dies at the asylum."

In view of the above provisions, it is the opinion of this office that before the Insane Asylum can take any action whatsoever, other than indicated in Section 37-208, in connection with any property which includes dependency payments belonging to any inmate of the asylum, that proper guardianship proceedings must be instituted or such payments must be handled by a duly appointed legal guardian of the estate of such inmate. There is no authority for any member of your institution to endorse any check made to a patient unless such person is acting pursuant to a court order or is the duly appointed guardian of the estate of such person in which event the estate would need to be administered as all other guardianship matters are, under the direction of the court.

In connection with charges for maintenance being made, I call your attention to Section 37-215 of the 1941 Compilation which should be read in full. I further call your attention to Section 37-216 which provides as follows:

"The guardian of the estate of an insane person who is confined in the New Mexico Insane Asylum may, from time to time, pay to the asylum moneys out of such estate to be used for the future personal needs of such insane person while in the asylum and for the burial expenses, such sums paid to be credited to the patient's personal deposit account."

Section 37-213 of the 1941 Compilation should also be considered.

By HARRY L. BIGBEE,

Asst. Atty. General