



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Dr. C. A. Shaw, Superintendent  
Big Spring State Hospital  
Big Spring, Texas

Dear Sir:

Opinion No. O-4130

Re: Should the consent of relatives be obtained before the release of a patient to a person not connected with the hospital for a picnic, a ride, etc? And related questions.

This is in answer to your request for our opinion on the above question, and related questions. Inasmuch as the exact nature of your inquiry is best stated by your letter itself, we quote from it:

"We will thank you to render an opinion as to the legality or possible repercussion in the practice of releasing a patient committed to a mental institution into the custody of a person not related to the patient or not connected in any way with the hospital. For example, releasing a number, say six or eight, to some person who wishes to take them for a ride, on a picnic, to a ball game, etc., and defray the expenses of such recreation. Should we gain the consent of the relatives before permitting such? Should we require the person to whom the patients are released to sign them out on furlough? In such instances and in the event of an accident whereby a patient might be injured, would the superintendent or the State be liable for judgment?"

Articles 3193i and 3193h, Vernon's Civil Statutes of 1925, prescribe the conditions upon which mentally ill patients of a State hospital may be granted temporary leave of absence from the institution:

"Art. 3193i. Temporary absence

"The superintendent of any institution, after the examination as hereinafter provided, may permit any inmate thereof temporarily to leave such institution in charge of his guardian, relatives, friends, or by himself, for a period not exceeding twelve months, and may receive him when returned by any such guardian, relative, friend, or upon his own application, within such period, without any further order of commitment, but no patient, who has been charged with, or convicted of, some offense and been adjudged insane in accordance with the provisions of the code of criminal procedure, shall be permitted to temporarily leave such institution without the approval of the governor, nor shall such permission terminate or in any way affect the original order of commitment. The superintendent may require as a condition of such leave of absence, that the person in whose charge the patient is permitted to leave the institution, shall make reports to him of the patient's condition. Any such superintendent, guardian, relative or friend may terminate such leave of absence at any time and authorize the arrest and return of the patient. Any peace officer of this State shall cause such patient to be arrested and returned upon the request of any such superintendent, guardian, relative or friend. Any patient, except such as are charged with, or convicted of some offense, and have been adjudged insane in accordance with the provisions of the code of criminal procedure, who has returned to the institution at the expiration of twelve months may be granted an additional leave by the superintendent or upon his recommendation.

"Art. 3193j. Money and clothing

"No patient in a State hospital shall be discharged therefrom or permitted to leave on a temporary visit without suitable clothing; and the Board of Control may furnish the same, and such an amount of money, not exceeding twenty dollars (\$20.00) as they may consider necessary. Inquiry shall be made into the future situation of every patient about to be discharged or permitted to be temporarily absent, and precautionary medical advice shall be given him. No patient shall be discharged or permitted to be temporarily absent from any institution without a personal examination of his mental condition made by one of the hospital physicians within forty-eight hours of his departure, the result of which shall be entered in his case record."

Our interpretation of the authority granted the superintendent by these statutes, as related to the main question here involved, hinges upon the proper meaning of the word "friend" as used in the statute. We believe the following definitions are within both the letter and the spirit of the law:

A friend is "one who entertains for another such sentiments of esteem, respect, and affection that he seeks his society and welfare; a well-wisher." Webster's International Dictionary, 2nd Ed. Unabridged.

"A 'friend' is one who entertains regard for another and takes active interest in his welfare. In re Wagner, 114 N.W. 868, 869, 870, 151 Mich. 74." Words and Phrases, Vol. 17, p. 596.

"The word 'friend,' as used in a statute providing for the filing of a petition for adjudication of mental incompetency by 'a relative or friend,' means one favorably disposed toward the alleged incompetent and acting for his interest and benefit, no particular degree of intimacy being required." Ned v. Robinson, 74 P. (2d) 1156.

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"The word 'friend,' in Insanity Law, §73, Laws 1896, p. 501, c. 545, providing that any one in custody as an insane person is entitled to a writ of habeas corpus on a proper application made by him or some 'friend' in his behalf, means one 'favorably disposed.' 104 App. Div. 47, quoting And. Law Dict." Words and Phrases, Vol. 17, p. 696.

We assume that any person to whom the superintendent of a State hospital might surrender custody and control of a mentally ill patient, even for a short time, would be one who (although not a relative, nor an employee of the hospital) was favorably disposed toward the patient, and thus his friend. And our opinion is limited to such a case.

It is therefore our opinion that the superintendent of a State hospital may legally, acting in his discretion for the best interests of the patients, release mentally ill patients of such hospital to a person not connected with the hospital, nor related to any of the patients, for the purpose of furnishing recreation to such patients. It will be noted, however, that the statutes above quoted contain certain conditions upon which such action may be taken, and these conditions must be complied with. And, since the statute places the matter in the discretion of the superintendent, and does not require the consent of the patient, we are of the opinion that their consent is not required.

Your question as to the liability of the State in case a patient is injured while so released has been decided very recently by the Dallas Court of Civil Appeals in the case of Welch vs. State, 148 S. W. (2d) 876 (writ of error refused). In that case the court held that the State was not liable for the alleged negligence of the superintendent of the Terrell State Hospital in permitting an employee of the hospital, known to be a reckless driver, to carry patients to a ball game in his car (one of the patients being killed in a collision occurring during the trip). The superintendent's liability in such a case would depend on whether or not he was negligent in guarding the welfare and safety of the patient; which, of course, would depend upon the circumstances in each case.

APPROVED FEB. 20, 1941

*W. R. Allen*

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Yours very truly

ATTORNEY GENERAL OF TEXAS

*W. R. Allen*

By

W. R. Allen  
Assistant

