



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable D. W. Stakes
General Manager
Texas Prison System
Huntsville, Texas

Dear Major Stakes:

Opinion No. O-7460

Re: Procedure to be followed
by the Prison System in
the handling of insane
convicts as to hospital-
ization.

Your letter requesting an opinion of this department has been received and is quoted below:

"We find it necessary to request an Opinion of your Department on the following:

"The personnel of the State Eleemosynary Institutions (as administered by the Board of Control) have refused to accept insane prisoners in some instances, from the Texas Prison System, by virtue of the existence of Article 6203e, Revised Civil Statutes.

"It appears to us that Articles 3186a and 6203e may conflict, as Article 3186a provides for insane convicts to be turned over to the state hospitals, while Article 6203e provides that insane convicts are to be held in the prison hospital.

"Please advise what procedure should be followed by the Prison System in the handling of insane convicts as to hospitalization, that is, which State Agency should take care of such insane convicts, also furnishing us with the Statutes and your Opinions, if any, regarding this subject."

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A subsequent letter dated October 31, 1946, furnishing additional information is, in part, as follows:

"Replying to your letter of October 29, 1946, regarding the State Prison Psychopathic Hospital called for in Article 6203e, will advise that this hospital was constructed out of money appropriated by the Forty-Third Legislature. However, in this connection, we wish to advise that this hospital has been used principally for a general hospital for the entire Texas Prison System, admitting cases of various kinds, and only a very small part has been used for psychopathic patients. In fact, it is not equipped to handle but a very limited number of patients in that category.

"I will also advise that we have no appropriation to pay a Superintendent or other person qualified to handle and treat psychopathic cases, as the only help we have is our Medical Supervisor and a part-time Prison Physician.

"Replying to your question as to whether or not the hospital has been receiving persons charged with a felony and are acquitted because of insanity, I will advise that such cases have not been received."

Article 6203e, V. A. C. S., referred to in your letters, is Senate Bill No. 170, passed by the 42nd Legislature and insofar as pertinent, is as follows:

"Section 1. That there shall be built, established and maintained, as a part of the Prison System of Texas, an Institution for the examination, observation, treatment and incarceration of all persons who have been convicted of felony, and who have been duly adjudged insane by any competent Court at law in the State of Texas; and, who have been acquitted by a Court of Competent Jurisdiction upon the grounds of insanity; said institution to be known as the State Prison Psychopathic Hospital.

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"Section 2. The construction, support and maintenance of said institution shall be made by appropriation to the Prison System of Texas for that purpose. Said institution shall be located on any land adjacent to, or within the walls of the prison system at Huntsville, Walker County, Texas.

"Section 3. The Texas State Prison Manager or other person in charge of the management of said prison shall, upon the advice of any prison physician send any prisoner to said Hospital for observation, care and treatment for thirty (30) days, and upon final examination he shall either be returned to confinement or an affidavit of insanity shall be filed against him as provided by law.

"Section 4. When any person shall be confined in any jail, asylum or other institution of confinement, who is charged by indictment and has been convicted of felony in this State and who has been duly adjudged insane by a Court of Competent Jurisdiction, upon the grounds of insanity shall be confined in said institution and all persons who are now confined in the State Hospital for the insane who are classified by the superintendents of said different Hospitals for the insane as originally insane shall upon proper certificate from the superintendent be transferred from said Hospital for the insane to the State Prison Psychopathic Hospital."

"Section 6. The State Prison Board shall appoint with the advice of the General Manager of the State Prison System a Superintendent for said Hospital or institution, a regularly licensed physician well qualified in the science of psychiatry who shall receive a fixed salary to be fixed by the Legislature not to exceed the sum of Three Thousand Three Hundred (\$3,300.00) Dollars per year, with provisions for himself and family not to exceed Five Hundred

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(\$500.00) Dollars per year with water, lights, fuel, laundry and housing. The General Manager of the State Prison shall appoint such assistant physicians, well qualified in psychiatry as he may deem best, and said assistant physicians shall receive a salary to be fixed by the Legislature not to exceed Two Thousand Seven Hundred (\$2,700.00) Dollars per year with provisions for board and laundry for himself and family. The manager of the Prison System shall supply the necessary guards."

"Section 8. The fact that the provisions for caring for prisoners of unsound mind are inadequate, and that a great many insane prisoners have been committed to the various State Hospitals for mental diseases and have escaped, and that escaped insane prisoners are a menace to the people of this State creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and that this Act shall take effect and be in force from and after its passage and it is so enacted." (Emphasis added)

Article 3186a, V. A. C. S., is House Bill No. 140 also passed by the 42nd Legislature and is quoted below:

"Section 1. When any prisoner confined in the State Penitentiary becomes insane, he shall be treated by the prison physician at Huntsville and shall be observed by said physician and the Warden of the Penitentiary; and when, in the judgment of said physician or Warden, such convict is insane and should be transferred to one of the State Hospitals for treatment of the insane, then either said prison physician or said warden shall go before the County Judge of Walker County, Texas and make affidavit to said fact, and the County Judge shall forthwith proceed to try said convict in the same manner as other persons and under the same rules of procedure as apply to the trial of citizens who become insane. Upon trial, if said convict is found to be insane, the County Judge before whom he is tried shall issue his warrant for transfer of said convict

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to one of the State Hospitals for the treatment of the insane or other place provided hereafter by law, provided the provision of this law shall not apply to prisoners under sentence of death and confined within the State Penitentiary.

"Section 2. When a State Convict, located on any of the prison farms, becomes insane, he shall immediately be transferred to the main prison at Huntsville for observation and treatment.

"Section 3. The County Judge and Officers trying said convict shall receive the same fees as allowed by law for the trial of such cases in the County Court; but all costs and expenses incident thereto including Court costs and fees, and the costs of providing the necessary clothing for the admission of said convict to a State Hospital for the treatment of the insane, together with the expense of transferring said prisoner to such an institution shall be paid by the manager of the Prison System out of funds allowed for management and operation of the Prison System.

"Section 4. The headquarters and main offices of the Texas Prison System, being located at Huntsville, in Walker County, that County is given exclusive venue in the trial of insane convicts who are inmates of the Texas Prison System.

"Section 5. The fact that there is now no law providing for the trial of insane convicts and the further fact that there are several insane convicts confined in the Prison System at this time who should be tried and transferred for treatment to one of the State Hospitals, creates an emergency and an imperative public necessity that the Constitutional rule requiring Bills to be read on three several days in each House be suspended and that this Act shall take effect and be in force from and after its passage, and it is so enacted." (Emphasis added)

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We believe a consideration also of Article 932a, Vernon's Code of Criminal Procedure, will afford help in arriving at the intent of the Legislature. Article 932a was passed in 1937, six years after Article 286a and 5203e, and is as follows:

"Section 1. In any case where insanity is interposed as a defense and the defendant is tried on that issue alone, before the main charge, and the jury shall find the defendant insane, or to have been insane at the time the act is alleged to have been committed, and shall so state in their verdict, and further find the defendant:

"a. To have been insane at the time the act is alleged to have been committed, but sane at the time of trial, he shall be immediately discharged;

"b. To have been insane at the time the act is alleged to have been committed and insane at the time of trial, or sane at the time the act is alleged to have been committed and insane at the time of trial, the Court shall thereupon make and have entered on the minutes of the Court an order committing the defendant to the custody of the sheriff, to be kept subject to the further order of the County Judge of the county, and the proceedings shall forthwith be certified to the County Judge who shall at once take the necessary steps to have the defendant committed to and confined in a State hospital for the insane until he becomes sane.

"Section 2. When the defense on the trial of the main charge is the insanity of the defendant the jury shall be instructed, if they acquit him on that ground, to state that fact with their verdict, and if they further find the defendant:

"a. To have been insane at the time the act is alleged to have been committed, but sane at the time of trial, he shall be immediately discharged;

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"b. To have been insane at the time the act is alleged to have been committed and insane at the time of trial, or sane at the time the act is alleged to have been committed and insane at the time of the trial, the Court shall thereupon make and have entered on the minutes of the Court an order committing the defendant to the custody of the sheriff, to be kept subject to the further order of the County Judge of the county and the proceedings shall forthwith be certified to the County Judge who shall at once take the necessary steps to have the defendant committed to and confined in a State hospital for the insane until he becomes sane.

"Section 3. When the defendant so committed to a hospital for the insane becomes sane, the superintendent of the hospital shall give written notice of that fact to the Judge of the Court from which the order of commitment issued. Upon receipt of such notice the Judge shall require the sheriff to bring the defendant from the hospital and place him in the proper custody until the hearing may be had before a jury in such Court to determine defendant's sanity, and if he be found sane, he shall be discharged, unless he had been previously found to be sane at the time at which he is alleged to have committed the offense charged, in which event, unless previously acquitted, he shall be tried for the offense charged."

Although Article 932a, V. C. C. P., deals with the question of insanity, when interposed as a defense, to a crime, and does not cover the set of facts before us, still we think it significant, because it provides for commitment in a state hospital of (1) all persons who are found to have been insane both at the time the act is alleged to have been committed and at the time of trial, and (2) all persons sane at the time the act is alleged to have been committed and insane at the time of trial.

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The additional information supplied in your second letter leads us to the conclusion that there is in effect no State Prison Psychopathic Hospital as provided for in Article 6203e. You state that a prison hospital was constructed out of money appropriated by the 43rd Legislature, but that it is used principally as a general hospital, is equipped to handle but a limited number of psychopathic patients, and that no appropriation has ever been made to pay a Superintendent as called for in Section 6 of Article 6203e.

The appropriation for the construction of the above hospital is found in the General Appropriation Bill of the 43rd Legislature and is as follows;

"Hospital (to be used also for criminally insane) to be built with convict labor within the prison walls at Huntsville, Texas . . . \$50,000"

A search of the appropriation bills since 1933 discloses that no appropriation has ever been made to pay a Superintendent as called for in Section 6 of Article 6203e.

It is the opinion of this department that until the deficiencies already mentioned in connection with Article 6203e are met, Article 3186a, V. A. C. S., and Article 932a, V. C. C. P., will control. Although there may be a hospital within the prison walls suitable for the housing of insane, it is not properly staffed as called for in Article 6203e, and therefore for all practical purposes it is not the State Prison Psychopathic Hospital as contemplated by Article 6203e.

It is the further opinion of this department that until the hospital is properly staffed and equipped all insane persons should be sent to a State Hospital in accordance with Article 3186a, V.A.C.S., and Article 932a, V.C.C.P.

We trust this satisfactorily answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Clarence Y. Mills*
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Assistant

APPROVED DEC 20 1946
Harris Tolson
FIRST ASSISTANT ATTORNEY GENERAL

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APPROVED
OPINION
COMMITTEE
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