



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 2, 1978

ATTORNEY GENERAL OPINION NO. 78- 155

Mr. Thomas E. Osborn
Attorney at Law
434 Brotherhood Building
Kansas City, Kansas 66101

Re: Mentally Ill Persons--Emergency Hospitalization--Authority
Of Peace Officers

Synopsis: A physician on duty at K.U. Medical Center has no authority to order a patient to Osawatomie State Hospital.

The Wyandotte County Sheriff has the authority to transport patients outside his territorial jurisdiction where the K.U. Medical Center refuses to admit the mentally ill person or there are no other treatment facilities in Wyandotte County.

Where there are no treatment facilities or other suitable places in which to house a mentally ill person, a jail would be a suitable place in which to house said person pending his hearing.

The sheriff as custodian of a mentally ill person under K.S.A. 1977 Supp. 59-2908 has the ultimate authority of deciding what constitutes a "suitable place" and whether such a place exists in any particular area.

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Dear Mr. Osborn:

As the legal advisor for Wyandotte County Sheriff, you inquire concerning K.S.A. 1977 Supp. 59-2908. You state that persons taken

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into custody pursuant to the abovementioned statute, as a matter of local practice, are taken to the K.U. Medical Center. If the physician on duty determines that the person should be detained pending a hearing, the usual practice is that K.U. Medical Center refuses to admit said person, thus requiring the Wyandotte County Sheriff to transport said person to another available treatment facility. It has been determined in practice that Osawatomie State Hospital is the only suitable place to detain such persons. You further state that the Wyandotte County Sheriff, without any court order, has been transporting said persons to Osawatomie State Hospital, in Miami County, where said persons are detained until a hearing can be held. The Wyandotte County Sheriff per court order subsequently returns said person to Wyandotte County for the hearing:

The questions you ask regarding the fact situation you describe can be categorized as follows:

- (1) Can a physician on duty at K.U. Medical Center order the patient to Osawatomie State Hospital?
- (2) Does Wyandotte County Sheriff, without a court order, have authority to transport patients outside his territorial jurisdiction to Osawatomie State Hospital which is in Miami County?
- (3) If no other suitable treatment facility is available in Wyandotte County, can a patient be held in jail pending a court hearing?
- (4) Who has the ultimate authority in deciding whether a suitable place exists?

A review of the provisions of K.S.A. 1977 Supp. 59-2908 indicates that the physician on duty at a treatment facility is authorized to make a preliminary examination of the person to determine whether said person is mentally ill. The physician may make a written statement that he believes the person to be mentally ill or may state that he does not believe the person to be mentally ill.

We find no other provisions within the statute authorizing the physician on duty to do anything more. The physician is authorized to examine the patient and make his conclusions. Therefore, it is our opinion that the physician on duty at K.U. Medical Center has no authority to order a patient to Osawatomie State Hospital.

Secondly you inquire as to the authority of the Wyandotte County Sheriff to transport patients in his custody to Osawatomie State Hospital which is in Miami County without a court order.

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Pursuant to the provisions of K.S.A. 1977 Supp. 59-2908 any peace officer who has reasonable belief upon observation that a person is mentally ill and said person is either harmful to himself or others if allowed to remain at liberty may take such person into custody without a warrant. If when said person is taken into custody during the time the court is open for the transaction of business, then the peace officer shall present to the court an application for an order of protective custody pursuant to K.S.A. 1977 Supp. 59-2912. However, if when the person is taken into custody the courts are not open for business, the peace officer must transport the mentally ill person to a treatment facility where said person will be examined by a physician on duty at the treatment facility.

As mentioned earlier in our response to your first question, the physician is authorized to make a preliminary examination of the person to determine whether said person is mentally ill. The physician can then either prepare a written statement stating that he believes the person to be mentally ill or he can state that the person examined is not mentally ill.

If it is determined that the person is not mentally ill, he is to be released by the peace officer. If, however, it is determined that the person in custody is mentally ill, then the treatment facility where the person was examined can either agree to accept said person as a patient or the facility can refuse to do so. In the latter situation the peace officer in custody of said mentally ill person is faced with the question of where to house said person until the court is again open for the transaction of business.

The provisions of K.S.A. 1977 Supp. 59-2908 provide that in the situation where the examining physician finds the person to be mentally ill and the treatment facility refuses to accept him as a patient, or within the peace officer's territorial jurisdiction there are no other treatment facilities to house the mentally ill person, the peace officer may detain such person in any other suitable place.

Faced with this situation you state that the Wyandotte County Sheriff without any court order has been transporting the mentally ill person to the Osawatomie State Hospital which is located in Miami County. You thus inquire as to his authority to make such transports outside his territorial jurisdiction.

This particular question arises because of possible interpretations given to a pertinent part of K.S.A. 1977 Supp. 59-2908 which states:

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"If the physician on duty at the treatment facility states that said physician believes such person to be a mentally ill person but the treatment facility is unwilling to admit such person, or if there is no treatment facility available to receive such person within the territorial limits of the peace officer's jurisdiction, the peace officer may detain such person in any other suitable place "

In effect, the abovementioned statute can be interpreted two ways. First, it can be read to mean that a peace officer may detain a patient in any suitable place including any such place outside his territorial jurisdiction. Obviously the other interpretation would limit such suitable places to those which are within the peace officer's jurisdiction.

To help determine which interpretation will best comply with the intention of the legislature a review of the definition of peace officer will shed some light. K.S.A. 1977 Supp. 59-2902(14) defines peace officer as follows:

"The term 'peace officer' shall mean any sheriff, regularly employed deputy sheriff, state highway patrolman, regularly employed city police officer or a law enforcement officer of any county law enforcement department."

Applying the more restrictive interpretation to a city police officer, that is, limiting other suitable places to those which are within the peace officer's jurisdiction, would mean that a city police officer would not be authorized to transport a patient to a suitable place within the county in which his respective city lies, but only to a suitable place within the city where he is employed. This result in our opinion is much too restrictive and is not what the legislature intended. This is further evidenced by the language used in the statute. If a person is found by a physician to be mentally ill but that particular treatment facility refuses to accept the person as a patient, or there is no other treatment facility within the territorial limits of the peace officer's jurisdiction, the peace officer in those two instances is authorized to house the patient in any other suitable place. If the legislature had wished to restrict other suitable places in which to house the patient to within the territorial limits of the peace officer's jurisdiction,

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they could have so stated in the statute, just as they did regarding treatment facilities which might be used to house a patient.

Thus we are of the opinion that the legislature intended that a peace officer, faced with the situation where a person is found to be mentally ill by the examining physician and the treatment facility is unwilling to admit the person as a patient or there are no other treatment facilities within the territorial limits of the peace officer's jurisdiction, would be authorized to house the mentally ill person in any other suitable place, regardless whether that place is within the territorial limits of his jurisdiction.

Therefore, in answer to your second question, it is our opinion that the Wyandotte County Sheriff has the authority to transport mentally ill persons to Osawatomie State Hospital in the instance where K.U. Medical Center has refused to admit said person or there are no other treatment facilities in Wyandotte County.

The third question you raise is in regard to when no other suitable treatment facilities exist within Wyandotte County in which to house the patient, whether the Sheriff may house the patient in the Wyandotte County Jail pending his hearing. The answer to your question depends on whether the Wyandotte County Jail may be considered a suitable place. We are of the opinion that the legislature intended the term "suitable place" to mean a place where the mentally ill person will be properly supervised. Proper supervision is essential in our opinion since by definition a mentally ill person is mentally impaired to an extent that he is dangerous to himself or others.

As mentioned earlier in this opinion, when a peace officer takes into custody a person believed to be mentally ill and the court is open for the transaction of business, said peace officer is to present to the court an application for a protective order pursuant to K.S.A. 1977 Supp. 59-2912. Subsection (g) of that statute authorizes a health officer, physician, peace officer or other person to take the person against whom the application has been filed into custody and to transport and place such person in a designated treatment facility or other suitable place willing to receive such person and may designate the place of detention, but no person shall be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime unless other facilities are not available.

Therefore, where there are no treatment facilities or other suitable places in which to house the patient, a jail would be a suitable place in which to house a mentally ill person pending his hearing.

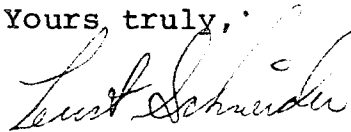
We cannot conclude as a matter of law that a county jail is never a suitable place for the temporary and emergency detention of a mentally ill person under K.S.A. 59-2908. Whether the jail is a suitable place must be determined in each instance by the sheriff or

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persons acting under his authority, based upon the facilities available therein, the condition of the mentally ill person, and any other circumstances which may appear to be relevant. Generally speaking, as indicated above, the county jail should probably not be used except as a last resort.

Lastly, you ask who is authorized to determine what in fact constitutes a "suitable place." The responsibility for that determination rests, in my judgment, upon the sheriff, as custodian of the mentally ill person, based upon all the pertinent facts and circumstances of each particular case.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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