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May 15, 1979

ATTORNEY GENERAL OPINION NO. 79- 83

Nick A. Tomasic, Esq.
District Attorney
29th Judicial District
Wyandotte County Courthouse
710 North 7th Street
Kansas City, Kansas 66101

Re: Criminal Procedure -- Commitment of Persons Acquitted Because of Insanity to State Security Hospital -- Hearings to Review Commitment

Synopsis: K.S.A. 1978 Supp. 22-3428 and 22-3428a both provide for hearings to determine the status of any person committed to Larned State Security Hospital as a result of being adjudicated not guilty of a crime by reason of insanity. However, these statutes are not duplicitous and may be read together in harmony.

K.S.A. 1978 Supp. 22-3428 establishes procedures for judicial review of a decision to grant any such person convalescent leave or conditional discharge, and the forum for such hearing is the district court of the county from which such person was committed. This statute does not provide for relitigation of decisions of the district courts rendered pursuant to K.S.A. 1978 Supp. 22-3428a, which provides annual judicial review for any person so committed.

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Dear Mr. Tomasic:

You have raised several questions regarding district court hearings relating to persons acquitted of a crime, by reason of insanity, and

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committed to Larned State Security Hospital. Initially, you have inquired as to which district court is to hold the hearing contemplated by K.S.A. 1978 Supp. 22-3428. Subsections (2) and (3) of this statute provide in pertinent part as follows:

"(2) . . . Any person committed under this section may be granted convalescent leave or discharge as an involuntary patient after thirty (30) days notice shall have been given to the district or county attorney, sheriff and district court of the county from which such person was committed.

"(3) Within fifteen (15) days after the receipt of the notice provided for in subsection (2), the district or county attorney may request that a hearing on the proposed leave or discharge be held. Upon receiving any such request the district court shall order that a hearing be held on the proposed leave or discharge, giving notice thereof to the state hospital where the patient was transferred, and the court shall order the involuntary patient to undergo a mental evaluation by a person designated by the court." (Emphasis added.)

It is apparent from the foregoing that the hearing held pursuant to subsection (3) is occasioned by action taken pursuant to subsection (2), that is, giving notice of an involuntary patient's convalescent leave or discharge. Such notice must be given to the district court of the county from which such patient was committed, as stated in the emphasized portion of subsection (2) above. While subsection (3) does not specifically designate which district court is to hold the hearing on the proposed leave or discharge, the only antecedent to the emphasized reference to "the district court" in the foregoing quoted language is the district court designated in subsection (2), i.e., the district court of the county from which the person was committed. Therefore, in our judgment, all references to "court" or "district court" in K.S.A. 1978 Supp. 22-3428 are references to the district court of the county from which the patient, for whom leave or discharge is proposed, was committed.

You also inquire whether or not the hearings authorized by the above statute are in conflict with those authorized pursuant to K.S.A. 1978 Supp. 22-3428a, and whether after a ruling by the district court of the county where the person is hospitalized pursuant to this statute, a separate hearing may be requested pursuant to K.S.A. 1978 Supp. 22-3428.

K.S.A. 1978 Supp. 22-3428a(1) and (2) provide in part:

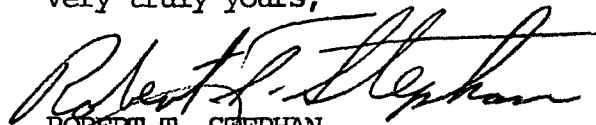
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"(1) Any person found not guilty because of insanity who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 1978 Supp. 22-3428 shall be entitled annually to request a hearing to determine whether or not such person continues to be dangerous to himself, herself or others. . . .

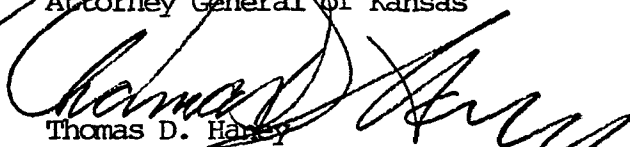
"(2) Upon receipt of the report provided for in subsection (1), the court shall set a date for the hearing, giving notice thereof to the county or district attorney of the county where the person is hospitalized, the county or district attorney of the county in which the person was originally ordered committed, the committed person and such person's counsel."

While the two questioned statutes deserve legislative review in order to clarify potentially confusing provisions, in our opinion they may be read in harmony with one another. K.S.A. 1978 Supp. 22-3428(3) establishes procedures for judicial review of a decision by the chief medical officer to grant convalescent leave or conditional discharge. K.S.A. 1978 Supp. 22-3428a establishes procedures entitling persons hospitalized pursuant to a commitment under K.S.A. 1978 Supp. 22-3428 to annual judicial review by the district court of the county where hospitalized. The release provisions of K.S.A. 22-3428 are operative only after the chief medical officer of the state security hospital recommends specific action, while K.S.A. 22-3428a provides annual reviews when requested, regardless of a change in the status of the patient. In that the hearings pursuant to the two statutes arise from different circumstances and conditions, they are not duplicitous, even though they possibly may "compete" with each other under unique circumstances. Additionally, it should be noted that K.S.A. 1978 Supp. 22-3428 does not provide for relitigation of issues raised pursuant to K.S.A. 22-3428a, and in our view such litigation would appear to be res judicata.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Thomas D. Haney
Deputy Attorney General

RTS:TDH:may