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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

The general statutes relating to Municipal Court Recorders will be found in Section 3 of Chapter 96, R. S. 1944:

> "In the event of the death or resignation or any vacancy in the position of a judge of a municipal court, the recorder shall, as acting judge, receive the salary of the judge in lieu of salary as recorder and shall further be paid for such clerk hire as shall be necessary on account of the additional duties."

When so acting, of course he can try both civil and criminal matters; but the charter of the Biddeford Municipal Court was amended by Chapter 24 of the Private & Special Laws of 1899, which provides that whenever the Judge of said court shall be absent from the court room, shall be sick, or engaged in the transaction of civil business, said Recorder shall have the same powers and perform the same duties that said Judge possesses and is authorized to perform in the transaction of criminal business.

Therefore it is my opinion that the Recorder of the Biddeford Municipal Court can hear only criminal cases, unless there is a vacancy by death or resignation and he is acting as Judge. . . . .

RALPH W. FARRIS
Attorney General

December 21, 1949

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Commitment to State Hospitals for Observation

I have your memo of December 1st in which you enclosed a memo which you had received from Dr. Harold A. Pooler, Superintendent of the Bangor State Hospital, dated October 25, 1949, relative to the lack of information from the law enforcement department and from the courts when a person is sent to a State Hospital on a Superior Court commitment for observation to determine whether or not the person committed is insane. You requested me to offer comments and suggestions as to how this situation could be improved.

When a person charged with a crime is committed for observation to determine whether or not he is insane, this is always done by the attorney for the person charged with the offense. He files a petition with the court, asking for commitment for observation, setting forth the fact that he intends to plead not guilty by reason of insanity at the next term of the Superior Court. When the person is committed to the hospital, the Superintendent should be informed by the attorney for the person being committed of the reason why he intends to plead not guilty by reason of insanity, and he should also furnish a little background to the hospital.

The mode of disposing of insane criminals is not satisfactory to me. I suggested a change at the 1947 Legislature, but the only change the legislature made was to insert the words "or any justice thereof in vacation," in Chapter 94, P. L. 1947. I re-drafted this section with the help of Justice Merrill, who is now on the Supreme Court Bench, but the legislature did not seem to want to change the law or to understand what we were driving at.

The law now provides that when a person is indicted or is committed to jail on a charge, by the Judge of a Municipal Court, which means that he is bound over to the grand jury, any Justice of the court before which he is to be tried, if a plea of insanity is made in court or notice is given that it will be made, may in vacation or term time order such person into the care of the Superintendent of either insane hospital to be detained and observed by him until further order of court, etc., so that the truth or falsity of the plea may be ascertained. The Superintendent of the hospital to which the person is committed shall, within the first three days of the term next after such commitment, and within the first three days of each subsequent term so long as such person remains within his care, report to the judge of the court before which such person is to be tried, whether his longer detention is required for purposes of observation. You can see how awkward that section is in actual practice, and I can see Dr. Pooler's point in calling this to your attention. However, there is no law that requires the law enforcement department or the courts to send any information relating to the subject who has been arrested and committed for observation, because the law enforcement officers do not recommend any such commitment. It is always done, as I say, by the attorney for the person charged with the crime.

The only purpose is to see if the truth or falsity of the plea may be ascertained. In my experience most of the persons who have been committed for observation were charged with homicides, either murder or manslaughter, and the attorneys for the respondents are not required to give any information in regard to their clients which might tend to incriminate them or indicate that they were guilty of any crime.

I am sending a copy of this memo to Dr. Pooler, as I was present at the trial of the Robert Bean case in Bangor and examined Dr. Pooler on the witness stand as to this man's mental condition, the true test being, Did he know the difference between right and wrong at the time of the commission of the crime alleged, to wit, the killing of his mother?

Of course it is possible that many of these men might be able to fake enough symptoms to make the doctors believe that they were insane. That is one reason why they are sent to the hospital, to determine the truth or falsity of the plea of insanity by prolonged observation, and that is a matter that Dr. Pooler and his staff must work out after a man is committed. Of course he is entitled to contact a man's family to get the case history. Many times the County Attorney and the defense attorney know nothing about a man's family and background, when he makes a plea of insanity or indicates that he will make such plea when the Superior Court convenes.

In a recent murder case at Houlton which consumed six actual trial days, the respondent had been committed to the Augusta State Hospital for observation, and Dr. Sleeper reported to the court that the prisoner was a mental case, but that he knew the difference between right and wrong at the time of the commission of the crime. Upon the evidence presented by the State the jury convicted the man of murder. Now in this particular case it is my opinion that this man was clever and cunning on the witness stand and lied concerning his movements on the night of the murder, but that he was a sex maniac. We had a record from the Norwich State Hospital in Connecticut that he had been committed there and that the diagnosis was dementia

praecox, hebephrenic type. He was discharged by order of the Superior Court as improved. Thereupon he proceeded to Maine and killed a woman. Therefore, if this man had been found not guilty by a jury in Houlton, the State would have released him and he is a dangerous man to be at large, according to Dr. Sleeper, with whom I talked his case over.

You can see that this is a problem in my office as well as in the State Hospitals where persons charged with crime are committed for observation.

The only remedy I can see in this matter is by legislation. We should have an institution under your department where persons who are afflicted with sex manias could be confined, for life if necessary, instead of being sent to State Prison.

I have been furnishing Dr. Sleeper with information on the cases that have been committed to his institution for observation, when charged with murder. In this particular case of the Houlton murder, I secured the records of the Norwich State Hospital and the man's criminal record from the Connecticut State Police for Dr. Sleeper to peruse during the period of observation. In the case of the hitchhike murder I furnished evidence procured from New Jersey.

If Dr. Pooler will write me when he has patients committed by the Superior Court for observation, I shall be glad to secure information either from the State Police or from State Hospitals in other jurisdictions.

RALPH W. FARRIS
Attorney General

December 23, 1949

To David H. Stevens, Commissioner of Health and Welfare
Re: Rodney Feyler Application to Sanitary Water Board for License

I have your memo of December 22d enclosing the ballots as they were received from the members of the Sanitary Water Board and your file in connection with this matter.

After studying the statute, I am of the opinion that if the board shall determine that such discharge will not cause or increase pollution of this tidal water in Rockland Harbor to such an extent as to be inconsistent with the public interest, it can issue a conditional license to the applicant as set forth in your memo of December 22d.

The Sanitary Water Board Act was enacted for the purpose of protecting the public health and the health of animals, fish and aquatic life and the board has wide discretion in issuing licenses, as the statute specifically states that it is the duty of the board to study, investigate and from time to time recommend to persons responsible for the conditions ways and means to eliminate from the streams and waters of this State, so far as practicable, all substances which pollute or tend to pollute the same, and also to recommend methods of preventing pollution, etc. Therefore, under the police powers of our State, the board has wide discretionary powers in issuing licenses which control the pollution of our streams and tidal waters. . .

RALPH W. FARRIS
Attorney General