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Gen
STATE OF MAINE

Inter-Departmental Memorandum Date *JS2* 15 May 1972

To William J. Deering, Director of
Psychological Services
From William J. Kelleher, Ass't Atty. Gen'l.

Dept. Bangor State Hospital
Dept. Mental Health and Corrections

Subject Effects of Title 34, § § 2334, 2376 and Title 15, § 2211-A

SYLLABUS:

At its discretion, the probate court could, in appropriate cases, dismiss proceedings under Title 34, § § 2376 and 2334, i.e. upon receipt of a request by the applicant for leave to withdraw the application under § 2376 or withdrawal of certificate by the superintendent of the state hospital or upon receipt of notice from the patient that he has withdrawn his request for release under § 2376. In addition, the hospital could make the whole proceeding moot by discharge of the patient and notification of this action to the court.

Under Title 34, § 2331, the superintendent is only required to accept patients committed under Title 34, § 2334. The exclusive procedure by which a county jail resident is admitted to a state hospital is by the procedure authorized in Title 15, § 2211-A. That section states that procedure is for all purposes to be treated the same as a Title 34, § 2333 commitment and consequently, the superintendent is under no mandate to accept a county jail resident.

FACTS:

Confusion has arisen as to the effects Title 34, § § 2376, 2334. There is also confusion as to the effects of Title 15, § 2211-A. This office has been contacted by the Bangor State Hospital for clarification.

QUESTIONS:

1. May the probate court proceedings which arise under Title 34, § § 2376 and 2334 be terminated at either the patient's or hospital's request?
2. Is Title 15, § 2211-A the exclusive means by which a county jail resident may be admitted to the state hospital?

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3. Under Title 15, § 2211-A may the hospital be cited for contempt for refusal to admit such a resident?

ANSWERS:

1. Yes.
2. Yes.
3. No.

REASON:

It should be emphasized at the outset that any opinion of this office is just that. A judge of probate is under no obligation to follow the opinion of the Office of the Attorney General. While it is true that he may wish to consider other opinions, he is under no obligation to do so. Whether he might dismiss a proceeding or not is entirely within his discretion.

Title 34, § 2376 is almost entirely self-explanatory. Title 34, § 2334 comes into consideration only at someone's application, supported by a certificate by the head of the hospital that in his opinion the release of the patient would be unsafe for the patient or for others. Under normal rules of procedure, if the party applying for the § 2334 proceeding requests leave to withdraw, the probate judge, at his discretion could terminate the proceeding and the patient could be discharged. In most proceedings, if the moving party requests leave to withdraw, the judge would usually grant that request. Additionally, if the head of the hospital decides he wishes to withdraw his certificate because his opinion has changed, the court could again dismiss the proceeding. Since all the requirements of § 2376 would not be met if the head of the hospital did this, it would seem that the dismissal of the § 2334 proceeding and the discharge of the patient would almost be mandated by the first part of § 2376. Then too, the patient could notify the court that he no longer requests his discharge under § 2376 and the court could again, at its discretion, dismiss the § 2334 proceeding. If the head of

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the hospital decided he no longer opposed the patient's discharge, under Title 34, § 2334, he could simply discharge the patient, notify the court, and render any § 2334 proceeding moot. In applicable situations, this seems the simplest and most direct action.

Title 15, § 2211-A is the exclusive means by which a person confined in the county jail may be hospitalized for mental illness. While Title 34, chapter 191, sub-chapter III, as enacted in 1964, deals generally with the hospitalization of the mentally ill, the legislature by enactment in 1965 of Title 15, § 2211-A clearly indicates this to be the sole means by which a person confined in the county jail may be hospitalized in a state mental hospital. Section 2211-A provides that the admission of such a person shall have the same effect as if his admission were applied for under Title 34, § 2333. It is because of this specific wording, that the conclusion is reached that the head of a public hospital is not subject to contempt if he decides not to accept such an individual. Title 34, § 2331 deals with his authority to receive involuntary patients. That section indicates the only occasion where head of a public hospital is required to accept a patient is in the instance of a commitment under § 2334 which is by court order. The Title 15, § 2211-A admission is not by court order. That procedure is almost the same as the emergency procedure as provided for in Title 34, § 2333. Under both these sections, the application is made by someone other than the court. There is no role at all for the court under § 2211-A although under Title 34, § 2333 a court may endorse the certificate of the licensed physician that the individual is mentally ill and by such endorsement, he authorizes any health or police officer to take the individual into custody and transport him to the hospital. Even under Title 34, § 2333 that court action is a purely ministerial act in ordering the custody and transportation. Sukeforth v. Thegen, 256 A. 2d 162, 163 (1969), commenting on this District Court function, states "His role is not unlike that of the clerk of court who in a criminal case issues a mittimus pursuant to the judgment and decision of the court."

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By way of explanation, contempt of court generally arises in two ways. Either a direct court order is disobeyed or disrespect for the court is demonstrated while in the court's presence. Refusing to accept a patient under Title 15, § 2211-A would not be contempt of court.



William J. Kelleher
Assistant Attorney General

WJK/vv