

**OPINION
64-162**

July 13, 1964 (OPINION)

The Honorable W. J. Austin, Judge

Burleigh County Court of Increased Jurisdiction

RE: Mentally Ill - Emergency Commitment to State Hospital - Jurisdic
County Board

This is in response to your request for an opinion on the administrative procedures to be followed where a person committed to the State Hospital under the emergency provision makes application for release. More specifically, a person was committed to the State Hospital under the emergency procedure, section 25-03-08 of the North Dakota Century Code. At the State Hospital he was examined by the authorities who found him mentally ill and in need of observation and treatment. The County Health Board at Jamestown at the request of the superintendent of the State Hospital conducted a hearing as specified in section 25-03-11 and committed the young man. It is now claimed that the Mental Health Board of Stutsman County had no authority to proceed and that judicial determination of the matter should have been conducted by the Mental Health Board of Burleigh County, the residence of the patient.

Your letter does not state that the patient or someone on his behalf applied for release under the provisions of section 25-03-10. However, we are assuming that the patient or someone on his behalf applied for release under section 25-03-10 of the North Dakota Century Code.

The answer to your question is to a great degree found in the statutory provisions of section 25-03-10 of the North Dakota Century Code, which as is material here provides as follows:

"RIGHT TO RELEASE - APPLICATION FOR JUDICIAL DETERMINATION.
Any patient involuntarily hospitalized under the provisions of section 25-03-08 who requests to be released or whose release is requested in writing by his legal guardian, spouse, or adult next of kin shall be released within five days after the receipt of such request. It is provided, however, that upon application by the superintendent of the state hospital, or the county judge who consented to the emergency admission, to the mental health board of either the county in which the patient is hospitalized or of the county of the patient's residence, within five days from the time of such request for release, supported by a certification by the superintendent of the state hospital or a county judge that in his opinion such release would be unsafe for the patient or others, release may be postponed for a period not to exceed seven days as the chairman of the mental health board may determine to be necessary for the commencement of proceedings for a judicial determination

pursuant to section 25-03-11. * * *

It is to be observed that the foregoing statutory provision concerns itself primarily with the procedure employed where a request for release has been made by a patient who was committed under the emergency provisions of section 25-03-08. Paraphrasing the provisions of section 25-03-10, the following would result:

Where a patient or someone on his behalf requests to be released, such patient must be released within five days after the receipt of such request, unless the superintendent of the State Hospital or the County Judge who consented to the emergency commission makes application to the mental health board of either the county of the patient's residence or the county in which the patient is hospitalized within five days after the request for release by the patient. Such application must set forth the reasons why the patient should not be released. Upon receiving an application, the chairman of the health board may postpone the release for a period not to exceed seven days for purposes of commencing proceedings for a judicial determination under section 25-03-11.

It is also observed that the language of the statute provides that "upon application by the superintendent of the State Hospital, or the County Judge who consented to the emergency admission, to the Mental Health Board of either the county in which the patient is hospitalized or of the county of the patient's residence within five days from the time of such request for release. * * *" (Emphasis supplied.) "The expression 'either' - 'or' in a statute is a coordinate conjunction and must be followed by identical or similar grammatical construction." 82 C.J.S. 335, Pg. 675. The same authority continues by saying: "Where two clauses or phrases of a statute are expressed in the disjunctive they are coordinated and either is applicable to the situation to which its terms relate."

The term "either" as used in the foregoing section is an unqualified alternative, particularly where it is followed by the word "or" in the subsequent clauses. The sentence in which the term "either" is found is clear and unambiguous and such is not subject to construction. The term "chairman of the mental health board" as used in section 25-03-10 of the North Dakota Century Code necessarily must refer to the mental health board of either the county in which the patient is hospitalized or the county of the patient's residence.

The provisions of section 25-03-10 are not available for initial commitment, but are only applicable in determining whether or not a person committed under the emergency provision should or should not be released. However, in your specific instance if the procedure before the Stutsman County Mental Health Board was employed to determine whether the person should be committed, there is a serious doubt that the individual was properly committed. However, as indicated earlier, we are assuming that the question really was whether or not the patient should be released.

Therefore, based upon the foregoing, it is our opinion that where a patient was committed to the State Hospital under the emergency procedure as set forth in section 25-03-08 and makes application for release, and where the superintendent of the State Hospital or County

Judge makes application to the mental health board of either the county in which the patient is hospitalized or the county of the patient's residence, that the subsequent proceedings under section 25-03-11 may be had by the Mental Health Board of Stutsman County or by the Mental Health Board of the patient's residence, and that the proceedings had by either would be valid and proper. In your specific instance, assuming the patient was committed under the emergency procedure and requested to be released, and application was made to the Mental Health Board of Stutsman County by the County Judge or the superintendent of the State Hospital to the Mental Health Board of Stutsman County, that such patient was subject to a hearing as provided for in section 25-03-11. The Stutsman County Mental Health Board would have had authority to proceed to make a judicial determination pursuant to section 25-03-11 whether or not such patient should be released or retained by the State Hospital.

We also wish to call your attention to section 25-03-26, which was amended in 1961, and provides as follows:

"* * * All expenses of the mental health board of Stutsman County involving patients in residence at the State Hospital shall be paid by the State Hospital under the direction of the State Board of Administration."

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