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STATE CAPITOL
PHOENIX, ARIZONA

June 29, 1973

DEPARTMENT OF LAW LETTER OPINION NO. 73-33-L (R-46)

REQUESTED BY: DR. WILLIS H. BOWER
Director
Arizona State Hospital

QUESTION: Is the Director of the Arizona State Hospital authorized to grant a complete discharge to a patient who, while on unauthorized absence from the State Hospital, is being confined in a federal institution outside the State of Arizona?

ANSWER: Yes.

A.R.S. § 36-524 contemplates the granting of complete discharges under two circumstances. When the patient is within the confines of the Hospital, Paragraph D requires a personal examination of the patient to determine his eligibility for complete discharge. When the patient is without the confines of the Hospital, Paragraph B permits an examination of the patient's "case" to determine his eligibility for complete discharge.

Although the language of Paragraph B admittedly deals only with patients outside the Hospital on conditional discharges, it nevertheless is a good indication that, had the Legislature specifically addressed itself to the problem posed by patients outside the Hospital for other reasons, such as those on unauthorized absence, it would have provided for complete discharge upon examination of the patient's "case" rather than upon a personal examination of the patient.

If the patient on unauthorized absence from the State Hospital can be discharged upon examination of the "case", the question then becomes: "What test is to be applied by the Director in deciding whether a complete discharge is warranted?"

A.R.S. § 36-524.D provides for complete discharge when "the conditions justifying hospitalization under § 36-514 no longer obtain." This test is applicable whether the examination is of the "patient" or of his "case". A discharge under this test usually requires a determination by the Director that the patient is no longer dangerous to himself or the persons or property of others.

In the case which prompted your inquiry, however, it appears that this test is not satisfied--indeed, the patient's penchant for malicious mischief probably poses a danger to the "property of others". Referring again to the statutory test for complete discharge, it is noted that if any of the "conditions" justifying hospitalization cease to exist, then a complete discharge is warranted. The statutory reference to "conditions" contemplates, at least, the "material" conditions necessary for the commitment of an individual to the State Hospital. Those material conditions include:

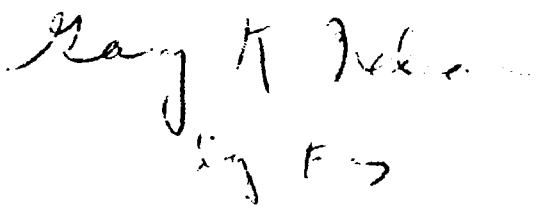
1. Whether the individual is a danger to persons or property.

2. Whether the individual is within the jurisdiction of the committing court.

These factors constitute two of the material conditions precedent to the commitment of an individual to the State Hospital. Under A.R.S. § 36-524.D, if either one of these conditions ceases to exist, the Director is justified in granting the patient involved a complete discharge. It appears that, in this case the patient has permanently left Arizona and the jurisdiction of the Superior Court and, therefore, one of the material conditions justifying his commitment no longer obtains, and you may properly grant him complete discharge.

This case is the type that might well be cited to the Legislature as a basis for revision of the statute in question.

Respectfully submitted,



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The Attorney General

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