



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

(501) 371-2007

OPINION NO. 85-34

January 29, 1985

Ray Scott, Director
Arkansas Dept. of Human Services
Donaghey Building
Little Rock, Arkansas 72201

Dear Mr. Scott:

This is in response to your opinion request wherein you submitted the following facts and attendant question:

The Division of Mental Health Services, as a part of its proposal for a program for the chronically mentally ill, is considering proposing a fourth category for involuntary civil commitment (Ark. Stat. Ann. § 59-1401 et. seq.). This fourth category would read as follows:

...A person who suffers from a mental illness, disease or disorder and as a result of the mental illness, disease or disorder will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of previous ability to function on his own.

My question to you is, would the involuntary commitment criteria listed above violate the Memorandum and Order of Judge Eisele entered in Wessel v. Pryor, 461 F. Supp. 1144 (E.D. Ark. 1978)?

For the following reasons, it is the opinion of this office that the decision entered in Wessel v. Pryor, supra, would not prevent any amendment to Ark. Stat. Ann. § 59-1401 et seq.

In Wessel v. Pryor, supra, the District Court approved "modified civil commitment procedures" which were, in effect,

an agreement between the parties necessitated by the Court's determination that prior procedures were unconstitutional in their application but not unconstitutional on their face. In addressing this, the Honorable G. Thomas Eisele reminded that:

It is important to again take stock of what the Court and the parties have been doing in this proceeding. The policy of the State of Arkansas with respect to involuntary commitments of mentally ill persons and the procedures to be followed with respect thereto are, in the first instance, issues of legislative concern and matters of legislative prerogative, which should be resolved by the General Assembly of the State of Arkansas. The State has, in fact, already acted in this area. This Court has, however, determined that the legislation which resulted was not being applied in accordance with minimum federal constitutional standards. But the Court also concluded that it was not necessary to strike down such involuntary commitment statutes because the language of such statutes did not prevent their implementation in accordance with acceptable constitutional standards. Subsequently the parties have agreed to certain constitutionally acceptable procedures to be followed until the legislature acts. It is the intention of the parties and the Court that the agreed procedures will remain in effect only until the effective date of legislation (enacted by the General Assembly) covering the subject matter. The result will be that the legislature may, if it desires, study and reflect upon the difficult and important issues raised and make its own determination as to the policy of the State of Arkansas without the pressure or the urgency which would result in the absence of the existence of interim, constitutionally acceptable procedures.

The Arkansas General Assembly acted and is therefore no longer constrained by the decision in Wessel v. Pryor, supra, but must, rather, analyze any contemplated amendments in light of contemporary procedural and substantive due process standards.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General C. Randy McNair.

Sincerely,


STEVE CLARK
Attorney General