

**County Commissioners—Duty to Provide Detention Home for Children—Statutory Construction—Warrants for Maintenance—Upon Whom Drawn.**

Chapter 251 of the Laws of 1921 makes it mandatory upon counties having a population of over 30,000 inhabitants to establish the detention home provided for therein.

Warrants in payment of the compensation and maintenance of the home should be drawn on the County Treasurer in the same manner as other warrants are drawn.

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County Attorney, Cascade County,  
Great Falls, Montana.

My dear Mr. Bennett:

You have requested my opinion and interpretation of Section 22, Chapter 251, Laws of 1921, which is amendatory to Section 22, Chapter 122, Laws of 1911, relative to the duty of the County Commissioners to provide a detention home for delinquent, dependent and neglected children.

An examination of the two sections above discloses that the only change made by the amendment is to change the population of the counties required to provide such detention home from 40,000 to 30,000. The law, in so far as it applies to your question, reads as follows:

"The county' commissioners of all counties to which this Act applies are hereby authorized, empowered, *and required* to provide the necessary funds and to make all needful appropriations to carry out the provisions of this Act; and in counties with a population of over thirty thousand (30,000) inhabitants, the county commissioners *shall provide* and in other counties *may provide*, by purchase, lease or otherwise, a place to be known as a detention home, within convenient distance of the court house, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, or neglected children may be detained, until final disposition, which place shall be maintained by the county as in other like cases. And in counties having a population in excess of thirty thousand (30,000) the judge having jurisdiction may appoint a Superintendent and matron subject to ratification of the Juvenile Improvement Committee, who shall have charge of such home and of the delinquent, dependent and neglected minors detained therein."

It is clear that the Legislature intended to make it mandatory upon counties having a population of over 30,000 inhabitants to establish the detention home provided for. The language of the Act, that the Commissioners of such counties "shall provide and in other counties may provide," indicates legislative intent beyond question to require such action in counties of the first-named class and leave it optional with the others.

The law goes on to provide that:

"The compensation of such superintendent and matron shall be fixed by the County Commissioners, such compensation and the maintaining of such home shall be paid out of the county treasury, upon a warrant of the county auditor, which shall be issued upon the itemized vouchers sworn to by the superintendent and certified by the judge.

"When such detention home is provided for by the county commissioners, the said commissioners shall enter an order on their journal, transferring to the proper fund, from any other fund or funds of the county, in their discretion, such sums as may be necessary to purchase or lease said home and properly furnish and conduct the same and pay the compensation of the superintendent and matron."

You will note the language of the Legislature throughout this section is mandatory as to the duties of the Commissioners. Having established the home, they *shall* fix the salary of the superintendent and matron, and *shall* provide the fund therefor.

Our Supreme Court, in the case of Montana Ore Purchasing Co. v. Lindsay, 25 Mont. 24, has held that the word "may," whenever the permission granted thereby is to the interest of the public or some person other than the one to whom the permission is of benefit, must be construed to mean "must" or "shall." Here the Legislature did not content itself with using the word "may," but used the more forceful word "shall." From this it appears that the intention of the Legislature was to have these detention homes established as soon as possible and in operation.

While the provisions of the law requiring the salaries and expenses of maintaining the detention home to be paid "upon a warrant of the county auditor," which is in apparent conflict with Section 3045, Revised Codes of 1907, requiring the County Clerk to draw all warrants on the county treasury, I do not think it affects the working of the law at all. If the Auditor approves the claim and the County Clerk draws the warrant, as with other claims against the county, the law will be sufficiently complied with in my opinion.

Therefore, it is my opinion that Section 22, Chapter 251, Laws of 1921, is mandatory and requires the establishment of the detention homes in all counties having a population of over 30,000 people as soon as is conveniently possible and the condition of the county treasury will allow, and that warrants in payment of the compensation and maintenance of such home should be drawn on the county treasury in the same manner as other warrants are drawn.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.