

Opinion No. 130.

County Physician—County Commissioners—Poor—Medical Services of Specialist.

HELD: 1. Under the contract involved, the county physician may not employ additional medical or surgical help, or the services of a specialist, and bind the county to pay for such services.

2. The county commissioners have the right, in cases of grave emergency, to employ a specialist or one having unusual qualifications.

June 22, 1935.

Mr. J. W. Lynch
County Attorney
Fort Benton, Montana

You submit a question as to whether or not the Commissioners can secure and pay for medical and hospital services where a county physician under contract with the county is not able personally to give such services as would produce the best results, or where a specialist's services are required. A copy of the contract is submitted with your letter.

Section 5, Article X, of the Constitution, places the liability for the care of such persons upon the several counties of the State. The authority for their care is vested in the Boards of County Commissioners. R. C. 4521. The County Commissioners are required to make a "contract with some resident physician to furnish medical assistance to the indigent sick, poor and infirm of the county and to the inmates of the county jail." R. C. 4527.

The authority for these contracts has existed for many years in the State of Montana. No decisions of the Supreme Court of this State have construed such contracts. The contract in question requires the physician to perform all medical and surgical treatment for the indigent, and contains the following provisions: "In case the said party of the second part cannot give his personal attention to said duties for any cause, he shall procure the services of another competent, skillful practising physician and surgeon, duly licensed as such, to perform said duties in his stead and without cost, charge or expense to the said party of the first part or to said Chouteau County but entirely at the expense of said second party."

A similar contract was interpreted in 5 Attorney General Reports 386, which opinion is in part as follows: "Where the contracting physician is unable to fulfill his contract, it is his duty, with the consent of the county and at his own expense, to employ some other physician until his disability ceases but if he fails to discharge his duties, or to cause them to be discharged, and an emergency arises, the county may employ some other physician, and the reasonable

expense thereof is a proper charge by the county against the contracting physician and his bondsmen but in such case where the county employs an extra physician, it is primarily liable to such physician."

To this statement very little can be added. The same principle is recognized in Board etc. v. Osborn, 4 Ind. Appeals 590; see also Perry County v. Lomax, 5 Ind. Appeals 567.

We agree with Attorney General Kelly, whose opinion is quoted above. His opinion recognizes the right in cases of grave emergency for the commissioners to employ a specialist or one having unusual qualifications. Generally speaking, the contract is plain in its terms and the liability to furnish the necessary medical and surgical attention was upon the physician who has entered this contract. A reasonable interpretation of the contract certainly precludes the conclusion that the county physician may employ additional medical or surgical help, or the services of any specialist and bind the county to pay for such services. (See: Vol. 15, Report and Official Opinions of Attorney General, Opinion No. 106.)