

Opinion No. 120.**Counties—County Budget—Appropriations.**

HELD: Section 4613.4, as amended by Chapter 98, Laws of 1937, prohibiting increase in any item in excess of 10% does not apply to new items and a county may employ a county health nurse where none was employed before.

July 20, 1937.

Dr. W. F. Cogswell
Secretary, State Board of Health
The Capitol

Dear Dr. Cogswell:

You have submitted the following:

“This department has had requests from several counties relative to the interpretation of Section 4613.4. It seems that some of the county commissioners are in doubt as to whether or not they have authority under this law to provide for a public health nurse in the county where no appropriation had been made for such a person the preceding year. In some instances, this would raise the amount of their total expenditures more than ten per cent over the preceding year and, therefore, while they have expressed a willingness to make such provision for a public health nurse if it were possible to do so, they are reticent about making such an appropriation. An opinion from your department as to their authority to provide for such nursing service would be very helpful.”

Section 4613.4 R. C. M. 1935, as amended by Section 1 of Chapter 98, Laws of 1937, among other things provides:

" * * * The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; * * * and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than ten per centum (10%) the amount actually expended for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, * * *."

It is apparent that this section, as amended, relates to the increasing of items in the budget for the preceding year. Providing for a county health nurse where none was provided for in the preceding budget is not increasing an item in the preceding budget but is adding a new item and it does not therefore fall within the express prohibition of the statute. If this section applied to new items, no new item for any purpose whatever could ever be added, no matter how urgent the need therefor. It would not be possible to ever provide for a county health nurse where none had ever been provided for before. We do not think the legislature intended to provide such a straight jacket for county expenditures. If they had intended to accomplish such purpose, we think they would have expressly said so.

It is my opinion, therefore, that a county may provide for a public health nurse where no appropriation has been made for such person the preceding year.