

Opinion No. 177.**Public Welfare—Charities and Reforms—Superintendent Duties.**

HELD: 1. Under the provisions of Part VI of Chapter 82, Laws, 1937, the Superintendent of Charities and Reforms performs the duties and has the authority as provided in Sections 329-333 inclusive, R. C. M. 1935, under the supervision of the State Board of Public Welfare.

2. In the absence of statutory authority requiring the Superintendent to present recommendations to the Board, said Board is not required to, nor has it any authority to act upon any such recommendations, and such recommendations are useless and idle acts.

3. The only function of the State Board of Public Welfare as regards the administration of Charities and Reforms is to make a report to the Governor, with such recommendations as it may deem advisable, so that the Governor may recommend to the Legislature such legislation as he deems advisable or necessary.

4. The State Board has authority to investigate jails, and for that purpose has free access to jails and grounds at reasonable and convenient times.

5. The State Board, or its staff personnel, has no supervisory authority or control over Sheriffs or their deputies.

October 13, 1937.

Honorable I. M. Brandjord
Administrator, State Department
of Public Welfare
Helena, Montana

My Dear Mr. Brandjord:

You have requested an opinion based on the following statements of facts:

“Under Subsection (a) of Section IV of Part VI of the Public Welfare Act, the State Department of Public Welfare is, among other things, required to perform the duties formerly exercised by the State Board of Charities and Reforms. The powers and duties of the State Board of Charities and Reforms are prescribed by Sections 325 to 335 inclusive of the Revised Codes of Montana, 1935. They include investigation and super-

vision of the charitable institutions and correctional institutions supported by the State, also the duty of investigating poor houses and jails in counties and cities.

Under Subsection (c) of Section VII of Part I of the Public Welfare Act, the State Department is also required to 'supervise private institutions providing care for the needy, indigent, handicapped or dependent adults.'

At a meeting held June 21, 1937, the State Board of Public Welfare appointed Rev. Wm. Pippy of Helena to take over all the duties formerly performed by the State Board of Charities and Reforms. He carries the designation of Superintendent of Charities and Reforms.

The question naturally arises of how far his powers extend in specific cases. You will find attached hereto a communication from Rev. Pippy dated August 13, 1937, and relating to the Missoula County Jail. What weight or authority do these recommendations really carry? It is quite important that we have a clear understanding of these matters from the beginning. Your opinion and advice will be appreciated."

Subsection (a), Section 4 of Part VI of Chapter 82 of the 1937 Session Laws provides that:

"The State Department shall perform the duties and have all the powers formerly invested in and exercised by the State Bureau of Child Protection and the Montana Orthopedic Commission and the State Board of Charities and Reforms."

These powers and duties are contained in Chapter 31 of the 1935 Codes, and particularly Sections 329 to 333 inclusive of said Codes.

Subdivision (b) of Section 4 of Part VI of Chapter 82, *supra*, provides that the Board shall "select and appoint, from a qualified list, such personnel as are necessary to efficiently supervise and perform the purposes of this Part."

The William Pippy you refer to is acting under the arbitrary style and designation of Superintendent of Charities and Reforms, under said subdivision (b), and it is his duty to perform such duties as may be required of him by the State Board of Public

Welfare in accordance to Chapter 31, *supra*, and particularly Sections 329 to 333 inclusive. Upon securing such facts as he may be directed to secure by the Board, said Board, in accordance to Section 333, on or before the 15th day of December in each year, shall prepare and make a report to the Governor, together with such suggestions and recommendations as it may choose to present upon the matters involved. The duty of the so-called superintendent, or said member of the personnel staff, is to secure facts as requested and directed by said Board, and there is no statutory authorization for said superintendent to present any recommendations to the Board. If the statute does not require said styled superintendent to make such recommendations, it consequently follows that the Board is not required by law to act upon such recommendations, and such recommendations are useless and idle acts.

Section 8759 provides that:

"That which does not appear to exist is to be regarded as if it did not exist."

Section 8761 provides that:

"The law neither does nor requires idle acts."

LeClair v. School District 38, 74 Mont. 385.

The reason for requiring the Board to make a report to the Governor, with such recommendations it may choose to make, is to place the information in the Governor's possession, so that if he deems it desirable and advisable he may make the proper recommendations to the legislature upon the matter.

The Board, among the duties devolving upon it, has authority to investigate jails, which include county and city. For that purpose it has free access to all parts of the grounds and buildings, which includes the right to go into the jail proper. However, its investigation must be limited to the purposes specifically defined by said Chapter 31, *supra*. If the said styled superintendent makes any recommendations, said recommendations are idle and useless, and the Board is not given any power to execute said recommendations other than reporting such matters to the Governor.

By way of illustration, in your question to us it appears that your superintendent recommended to the Board that a new jail be constructed in a certain county. Such a recommendation is useless, aimless, and lacks force. If said recommendation was passed on by the Board to the Governor, it would still be useless and of no value, for the reason that the Governor could not recommend to the legislature any adequate relief. To obtain such relief, it is necessary for the taxpayers of that particular county to vote bonds for the erection of a new jail.

Section 8739 provides that:

“When the reason of a rule ceases, so should the rule itself.”

In other words, there is no reason why said styled superintendent should make such or similar recommendation. It would be impossible for the superintendent, the Board, Governor, or the State Legislature to carry out such a recommendation or similar recommendations such as contained in the recommendation by William Pippy to your Board on August 13, 1937, in reference to the Missoula County jail, and neither he nor any of the officers, Boards, or Departments named have any control over the erection of a new jail; that control being in the hands of the taxpayers of Missoula County.

Section 8755 provides that:

“No man is responsible for that which no man can control.”

Section 8760 provides:

“The law never requires impossibilities.”

It follows that the Board should direct its personnel to investigate and report upon matters possible and susceptible of being remedied.

Neither can the Board, its styled superintendent, or personnel staff, act in a supervisory capacity over the sheriffs or jailers; the act gives them no such authority; the sheriff is a constitutional officer and derives his powers from independent statutory authority other than Chapter 31, *supra*, or Chapter 82 of the 1937 Session Laws.