

## Opinion No. 329.

## Public Welfare—Child Welfare Services—Medical Aid and Treatment—State Hospital for Insane.

HELD: The State Department of Public Welfare, through the Division of Child Welfare, has authority to provide treatment at state hospital for those persons coming within its jurisdiction, and to use funds of the department provided therefor.

August 31, 1938.

Miss Evelyn Rauch  
Assistant Director  
Child Welfare Service  
State Department of Public Welfare  
Helena, Montana

Dear Miss Rauch:

You have requested an opinion on the legality of a voluntary commitment to the State Hospital at Warm Springs. The particular facts you give are as follows: An inmate of the Vocational School for Girls, under court commitment, in your judgment is in need of psychiatric treatment; upon an insanity hearing, the girl was declared sane, but the judge was of the opinion that she was in need of some treatment tending to improve her mental condition. You advise that Dr. Holmes, in charge of women patients at Warm Springs, is a psychiatrist and is willing to take this girl for treatment.

Please be advised that there is no provision in law for what you term, "voluntary commitment" to the state hospital. Chapter 126 of Volume 1, Revised Codes of Montana, 1935, deals with the management and control of the State Hospital and the procedure for the commitment of insane persons, to wit, by order of the Judge of the

District Court, after hearing had before said judge and a commission composed of at least two physicians. The chapter also provides how the expenses of the hearing and the maintenance of the one committed are to be paid.

Section 1430 provides:

"Insane person not indigent must be paid for. None but indigent persons must be received into the insane asylum unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person, and all money received by the contractor for the care and maintenance of such persons must be accounted for in his settlement with the board."

There is no restriction on acceptance of patients for voluntary treatment. However, under the broad powers given the board of commissioners for the insane in Section 1414, Revised Codes of Montana, 1935, I am of the opinion that the board may permit patients to be treated at the state institution who have not been legally committed. I am informed that it has been the practice of the board of commissioners to do so.

The question, therefore, would be raised as to the authority of your department to provide such treatment in the case you mention.

Section IV of Part VI, Chapter 82, outlines the powers and duties of the state department, and subsection (g) of that section provides:

"Enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected and delinquent children where adequate provision therefor has not been made by law; and to use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided by law; and cooperate for the purposes hereof with all reputable child helping and child placing agencies."

It is, therefore, my opinion that under the provisions of Chapter 82, Laws of 1937, and particularly Part VI thereof, the State Department of Public Welfare, through the Child

Welfare Division, has authority to provide such mental treatment for all those persons coming within the jurisdiction of the department as provided for in the Welfare Act, as in its judgment is for the best interest and welfare of the individual, and which tends to rehabilitate such individual, and to use funds provided for child welfare services to meet the expenses of such treatment.