

Opinion No. 92.

Public Welfare—County Commissioners—County Board of Public Welfare—Compensation, from what fund paid.

HELD: The compensation and mileage of county commissioners when acting as a county board of public welfare must be paid from the general fund.

June 30, 1939.

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

Dear Mr. Brandjord:

You have requested my opinion as to whether or not the compensation and mileage of county commissioners when acting as a board of public welfare should be paid from the poor fund.

Subsection (b) of Section IX, Part I, Chapter 82, Laws, 1937, as amended by Section 4 of Chapter 129, Laws, 1939, provides as follows:

“The board of county commissioners, ex-officio, shall be the county welfare board and is hereby authorized to devote such additional time for public welfare matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners, but shall in no case receive compensation for more than one day's work for all services performed on the same calendar day.” (The words emphasized are the amended portion.)

It will be observed that the board of county commissioners ex officio, that is by virtue of their office as com-

missioners, are designated as the welfare board. The salary and mileage as a welfare board is fixed as the same as commissioners and it is specifically provided that such compensation be paid from county funds. They are authorized as commissioners to devote such additional time as a welfare board as is necessary, and may transact business of both boards on the same day. The members of the county welfare board, although acting separately from a board of county commissioners, are in both capacities acting as county officers, as distinguished from appointive officers. The duties performed by them as a welfare board in the administration of the poor fund are no different, except as to formality and detail, than were such duties prior to the Welfare Act. Many of their duties under the provisions of the Welfare Act are as county commissioners. Examples are found in Section XI (b) of Part I, when as commissioners they must levy taxes for the poor fund; Section IX (a), Part II, adopt an emergency budget upon receipt of grants-in-aid; Section VI, Part II, charged with the legal responsibility as a board of county commissioners to provide medical aid and hospitalization for relief recipients, etc. This demonstrates clearly that the county commissioners under the provisions of the Welfare Act, act as public officials.

Prior to the amendments of Chapter 82, there was no provision as to what fund should be charged with the compensation and mileage of members of the board, but it was provided that "public assistance staff personnel attached to the county board shall be paid from state public welfare funds." It was also provided that "one-half the administrative costs of county departments shall be reimbursed to the State Treasurer by the county * * *." Section X, Part I, Chapter 82, Laws 1937.

The Supreme Court had occasion to interpret these provisions in the case of *State ex rel. Broadwater County, et al., vs. Peter Potter, et al.*, 107 Mont. 284, 84 Pac. (2d) 796. This was Mandamus brought by the commissioners against the State Board of Public Welfare to compel the State Board to pay the compensation of the members of the board of county commissioners while acting as a board of public welfare from state funds.

The relators contended that under the provisions of Section X, and particularly the last sentence thereof, such compensation should be paid from state funds, otherwise there would be no necessity for reimbursement by the county. In disposing of this contention the Court held, "But the administrative cost therein referred to has to do with the cost of the staff personnel attached to the county board, which that section specifically provides shall be paid from state public welfare funds." In effect, the Court held that the compensation of the county commissioners was not a part of the administrative costs of the county welfare board.

To clear this question the legislature of 1939 adopted an amendment to Section X of Part I, which now reads as follows:

"Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, **both their salaries and their actual and necessary traveling expenses, and their necessary subsistence expenses when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department of public welfare, from county poor funds, one-half of the payments so made to its public assistance staff personnel. All other administrative costs of the county department shall also be paid from county poor funds.**"

It will be seen that by this amendment it is specifically provided that one-half the salary and mileage of the staff personnel shall be paid from the **county poor fund**. However, in amending Section IX, dealing with compensation and mileage of the county welfare board, the legislature provided that such shall be paid from **county funds**.

It is reasonable to suppose, in view of these two specific amendments, that the legislature did not intend that the compensation and mileage of the county commissioners while acting as a welfare board should be paid in any other manner than as county commissioners. Had the legislature intended it to be paid from the poor fund, they could so have specifically provided as they did with regard to compensation of the staff personnel.

Section 4868, Revised Codes of Montana, 1935, provides:

“The salaries of the several county officers and their assistants must be paid monthly out of the general fund of the county, * * *.”

The board of county commissioners while acting as a welfare board being county officers, it is my opinion, in the absence of a specific provision to the contrary, that compensation and mileage of members of the board of county commissioners while acting as a board of public welfare shall be paid from the general fund.