Opinion No. 122

County, Power of—County Hospital

Held: Chapter 56, Laws of 1947, which grants permission for the use of the county hospital by the non-indigent sick does not authorize the county to construct hospitals in size in excess of the present and future needs for the care of the indigent sick.

June 30, 1948

Mr. J. F. Fennessy, Jr.
County Attorney
Lincoln County
Libby, Montana

Dear Mr. Fennessy:

You have requested my opinion concerning the power of a county to erect a couty hospital for the use of the indigent and non-indigent sick.

Chapter 56, Laws of 1947, and Chapter 238, Laws of 1947, both amended Section 4465.8, Revised Codes of Montana, 1935, and neither made reference to the other. Section 4465.8, prior to amendment provided for the erection and furnishing of county buildings which were designated as "a courthouse, jail, hospital, and such other public buildings as may be necessary." Chapter 56 amended the section, so far as we are concerned here, by authorizing the use of the county hospital by non-indigent sick who would pay a reasonable fee for such services.

The amendments of Section 4465.8 by Chapter 238 were not directed toward the county hospital or its use, but were concerned with the erection, furnishing and maintenance of a "civic center, youth center, park buildings, museums, recreation centers, and any combination thereof" and also their administration.

While the amendment of one statute by two acts of the same legislature without reference in the last enacted to the first raises a problem in statutory construction, in the present situation a case decided by our Supreme Court offers a solution. In State ex rel. Hay V. Hindson, 40 Mont. 353, 106 Pac. 362, the Court considered two acts of the legislature passed at the same session which amended the same statute. The case held that repeals by implication are not favored and that the presumption against an implied repeal is stronger where the provisions were enacted at or about the same time. The Court said in regard to this problem:

> "The question before us is not a new one. It has arisen in many states, and it is quite uniformly held that, where two amendatory statutes are passed at the same session of the legislature, neither of which refers to the other, they will both be held to be effective, unless the amendatory portions are irreconcilable."

Applying the above quoted rule to the two chapters under consideration leads to the conclusion that each may be given effect. Chapter 56 provided for the use of the county hospital by non-indigent patients and Chapter 238 provided for the erection of enumerated additional county buildings. It is apparent that the legislative intent in each was concerned with a different problem and there is nothing irreconcilable in permitting both to be operative. The use of a hospital by non-indigent sick is far removed in relationship from the question of erecting youth centers and similar buildings.

In your letter you ask if Chapter 56, by authorizing the use of the county hospital by the non-indigent sick permits the construction of a hospital or hospitals in size sufficient for both classes of patients. In other words, may hospitals for all patients be built with the proceeds from county bond issues?

This office, in Opinion No. 225, Volume 21, Report and Official Opinions of the Attorney General, written prior to the enactment of Chapter 56, Laws of 1947, held that a county hospital shall not be constructed in size in excess of the present needs with reasonable provision for future requirements for the care of the indigent sick. The opinion also held that space not immediately necessary for indigent could be leased to non-indigent sick. Chapter 56 in amending Section 4465.8 gave statutory sanction to the use of the county hospital by the non-indigent, but did not enlarge the original purpose of the county hospital as being for the use of the poor and indigent sick. The underlying principle that the county hospital is for the use of the indigent was recognized in Chapter 56 by the following limitation:

> ". . . providing, said non-indigent sick pay a reasonable fee for such hospitaliziation and providing there are no indigent sick needing hospitalization who would be deprived of said hospitalization by reason of the use of said hospital facilities by non-indigents."

To hold that permission for paying patients to use the hospital is a grant of greater authority in constructing county hospitals would violate the meaning of the language used in the above quoted. This office held in opinions No. 51 and 225, Volume 21, Report and Official Opinions of the Attorney General, that county hospitals were to be used for the care of the indigent and the present and future needs of such patients fixed the size of the hospital, and the use of the hospital by paying patients authorized by Chapter 56 does not vary the original purpose of the hospital. Chapter 56 merely permits the non-indigent to use the facilities of the hospital constructed for the indigent when the latter do not need the space.

It is, therefore, my opinion that Chapter 56, Laws of 1947, which grants permission for the use of the county hospital by the non-indigent sick does not authorize the county to construct hospitals in size in excess of the present and future needs for the care of the indigent sick.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General