

Opinion No. 5

STATE BOARD OF EXAMINERS; Contracts; execution of on behalf of state—STATE TUBERCULOSIS SANITARIUM; Admission of out of state patients — CONSTITUTION AND CONSTITUTIONAL LAW; Interstate agreements and contracts — Sections 80-210.1 and 80-213, Revised Codes of Montana, 1947.

- Held:**
- 1. Tubercular patients of other states may be treated at the Montana State Tuberculosis Sanitarium subject to the preference on admission of Montana residents.**
 - 2. Montana may contract with other states for the care of their tubercular patients.**

April 24, 1961

Honorable Donald G. Nutter
Governor of Montana
Capitol Building
Helena, Montana

Dear Governor Nutter:

You ask whether the state of Montana may contract with South Dakota for the care of tubercular patients.

The correspondence accompanying your opinion request shows that the South Dakota Board of Charities and Corrections is interested in placing tubercular patients in the Montana State Tuberculosis Sanitarium.

I find no statutory or constitutional objection to such an arrangement.

Section 80-210.1, RCM, 1947, provides in part:

“ . . . An applicant for admission to the sanitarium need not be a citizen or resident of the state of Montana for any length of time before he can be admitted as a patient. . . ”

Section 80-213, RCM, 1947, empowers the executive board of the sanitarium to fix charges for patients who are able to pay.

These code sections do not expressly provide for the execution of contracts or agreements covering payment of non-resident patients. However, a contract is a usual method of carrying out a statutory duty (*Oklahoma Tax Commission v. Fortinberry Co.*, 207 Pac. 2d 301) so the implied power to execute a contract relating to payment for the care and treatment of patients exists (*Guillot v. State Highway Commission*, 102 Mont. 149, 56 Pac. 2d 1072).

The state has the power to contract with another state (81 CJS, States §112) provided the contract does not violate Article I, Section 10, Clause 3 of the Federal Constitution.

I find no such violation in the proposed agreement. The constitutional provision prevents agreements between states without congressional consent. It is well established, however, that this does not apply to agreements that do not affect state or federal political sovereignty. It has reference to political compacts, alliances or treaties. (*Dixie Wholesale Grocery v. Martin*, 129 SW 2d 181). Plainly the agreement proposed here is not of that nature.

The State Board of Examiners has general control and supervision of the sanitarium and should execute the agreement on behalf of Montana. Montana residents, of course, have a preference on admission (Sec. 80-210.1, RCM, 1947) and non-resident admission must yield to that preference.

For the reasons given above it is my opinion that subject to the preference rights of Montana residents the State of Montana through the State Board of Examiners may contract with South Dakota for the care and treatment of its tubercular patients.

Very truly yours,
FORREST H. ANDERSON
Attorney General