

**State Tuberculosis Sanatorium, Who Entitled to Admission.
Board of County Commissioners, Duty of to Give Relief.
Tuberculosis, Persons Afflicted With.**

It is not discretionary, but a matter of duty with the local authorities to request admission to the State Tuberculosis Sanatorium for poor patients, and to pay for their care and treatment while at the Sanatorium.

The charges for patients who are able to pay for their care and treatment in the Sanatorium are to be fixed by the executive board of such institution.

April 24th, 1913.

Hon. T. D. Tuttle,
President Montana State Tuberculosis Sanatorium,
Warm Springs, Montana.

Dear Sir:

I beg to acknowledge receipt of yours of the 8th inst., relative to the meaning of Sec. 10, Chap. 125, of the Session Laws of 1911.

In answer to your first inquiry, I will say that Sec. 10 of the said law provides for treatment of persons at the sanatorium who are unable to pay for their care and treatment themselves; and it puts the expenses of transportation, care and treatment upon the county or municipality which would be "otherwise chargeable with the support and care of such indigent or poor person." Secs. 2051 and 2053, Revised Codes of Montana, prescribe the duties of county commissioners in regard to the superintendence of the poor, and no board is chargeable with the care of indigent poor except as provided in those sections. It is these two sections which make the local boards "otherwise chargeable" as mentioned in Sec. 10 of Chap. 125, Laws of 1911. These two sections make it the duty of the board of county commissioners to give relief to every person without means or who is unable to earn a livelihood on account of bodily infirmity, idiocy, lunacy, or other cause, when such a person does not have relatives who are able, or who will take care of him.

Since the board of county commissioners is limited to giving relief to the persons mentioned in Secs. 2051 and 2053, it is my opinion that they can apply for treatment at the sanatorium for only such persons as are contemplated by Secs. 2053 of the Revised Codes.

This, however, does not necessarily mean that the persons so applied for must be actual inmates of a county workhouse, or poor farm, or declared paupers, but also such persons who, on account of poverty, bodily infirmity, etc., are unable to earn a livelihood, and on that account would soon become county charges.

In answer to your second question, as to whether the sending of poor persons to the sanitarium is compulsory, or merely discretionary with the board of county commissioners, I will say that Sec. 10 of Chap. 125, Laws of 1911, does not seem to provide for the sending by the county commissioners of any persons, their duties being limited to making application for such persons, and paying for the expenses of transportation, care and treatment while at the sanitarium. However, Sec. 2053 of the Revised Codes of Montana provides that a person unable to earn a livelihood in consequence of bodily infirmity, etc., and without relatives who are able or whose relatives fail and refuse to maintain him, must receive relief from the county. Sec. 10 of the Laws of 1911 requires that the local board shall, when application is made upon them, issue a written request to the president of such sanitarium for the admission and treatment of such persons, and it further provides that:

"Every person who is declared, as herein provided, to be unable to pay for his or her care and treatment, shall be transported," etc.

Sec. 11 provides that preference shall always be given to the indigent. These expressions, together with the provisions of Sec. 2053 of the Revised Codes, would seem to indicate that the intent of the Legislature in providing for the sanitarium was to establish it primarily for the relief of the indigent sufferers from tuberculosis. Therefore, it is my opinion that the matter of requesting admission for poor patients and the paying of their expenses by the local authorities is not a matter of discretion with them, but a matter of duty.

In answer to your third inquiry, I will say that it seems to me that Sec. 13 of the law, which is as follows:

"The executive board shall have power and authority to fix the charges to be paid by patients who are able to pay for their care and treatment in said sanitarium, or who have relatives bound by law to support them, who are able to pay therefor,"

In my opinion gives to the executive board the authority to admit patients not supported and maintained in the institution by some local authorities of counties, towns or municipalities, upon such terms as the executive board may see fit.

Very truly yours,

D. M. KELLY,
Attorney General.