

**County Physician, Contract for Care of Poor. "Medical Attendance" Defined.**

Contract of physician with county construed, and held that the term "medical attendance" includes necessary surgical operations and medicines. Held, further, that mileage or expenses could not be claimed under the contract.

January 5th, 1914.

Hon. G. O. Johnson,  
Chairman Board of County Commissioners,  
Big Sandy, Montana.

Dear Sir:

Under date of the 17th ultimo you wrote to this office for an opinion upon questions of law pertaining to the contract made recently by your board and Dr. J. F. Murphy for the furnishing of medical attendance to the poor of Chouteau County during the year 1914. The questions submitted are:

"1. Does the general term 'medical attendance,' as used in the contract, include surgical services?

"2. Who are paupers, or who constitute the poor, sick and infirm within the meaning of the law, and who determines this question?

"3. What cases must a doctor attend under his contract?

"4. May a local physician attend in the absence of the county physician, and if so who pays for such service?

"5. Is a doctor entitled to traveling expenses necessarily incurred by him in attending to his duty?

"6. Are persons, rich or poor, afflicted with contagious diseases proper and lawful charges against the county during their quarantine?

"7. Must the county physician attend cases at the county pest house without further compensation than that allowed by contract?"

A copy of your contract with Dr. J. F. Murphy is before me, and it specifies:

"That the said party of the first part (Mr. Murphy), in consideration of the covenants and agreements of said party of the second part (Chouteau County), hereinafter contained, has covenanted and agreed, and by these presents does covenant and agree to and with the said party of the second part, to furnish all medical attendance to the sick, poor and infirm persons of the County of Chouteau, State of Montana, and to the inmates of the county jail of said Chouteau County, which said medical attendance shall be furnished to the sick, poor and infirm persons who are or may be lawfully a charge upon said Chouteau County, from and after the 1st day of January, A. D. 1914, to and including the 1st day of January, A. D. 1915."

In answer to the first question, I am of the opinion that this contract does contemplate necessary surgical services; for "medical attendance" or "medical services" in the enlarged sense include surgery, though in a restricted sense, as applied to medical parlance, they may mean a division of the curative art, exclusive of surgery. Here the contract is with a county, and the law contemplates that the poor, sick and infirm who are county charges shall be properly cared for and provided with necessary treatment, whether surgical or strictly medical, and when a physician undertakes to furnish necessary medical attendance, he undertakes to furnish proper treatment, whether that treatment consists in the administration of a drug or in the performing of an operation, unless the contract itself limits service to a particular kind of medical treatment, which is not done in this case, but on the contrary the language used seems to indicate that the term "medical attendance" is not used restrictively, but broadly to cover the legal obligations of the county with respect to the treatment of its charges.

See *County of Clinton v. Ramsey*, 20 Ill. App. 577.

*Boneart v. Lee*, 46 S. W. 906 (Tex.).

*Scott v. Winneshiek Co.*, 3 N. W. 626 (Iowa).

The term "medical attendance" also includes expenditures for medicine used by the county physician in giving such medical attendance.

*Knapp v. Sioux City P. R. R.* 71, Iowa, 41.

32 S. W. 18.

Therefore, Dr. Murphy should be required under his bond to furnish medical attendance in accordance with the foregoing facts even though in submitting his bid he undertook to do this work at an apparently inadequate consideration for when he entered into the contract he must be presumed to have done so with a full understanding of what the law would require of him.

As to the second and third propositions, the answer is found under

Secs. 2050 and 2062, inclusive, of the Revised Codes of 1907, and since the language of these sections is plain and unambiguous, nothing which I may say can shed additional light upon the subject.

Fourth—It is the duty of the county to care for its sick, poor and infirm, and this includes medical attendance (Art. 10, Sec. 5, Constitution; Sec. 2050 et seq. R. C.). The county board is required to "make a contract with some resident practicing physician to furnish" such medical attendance (Sec. 2056) and such physician must execute a bond conditioned for the faithful performance of his contract (Sec. 2058), but the duty still rests with the county to see that the provisions of this contract are complied with. Where the contracting physician is unable to fulfill his contract, it is his duty, with the consent of the county and at his own expense, to employ some other physician until his disability ceases but if he fails to discharge his duties, or to cause them to be discharged, and an emergency arises, the county may employ some other physician, and the reasonable expense thereof is a proper charge by the county against the contracting physician and his bondsmen but in such case, where the county employs an extra physician, it is primarily liable to such physician.

As to the fifth proposition, the county physician is entitled to no traveling expenses in the performances of his duty under his contract, because none are provided by law, and no provision is made therefor in the contract, hence any claim which he might file for such would be clearly illegal, and should be rejected.

As to the sixth and seventh propositions no person is a county charge, whether under quarantine or otherwise, unless such person has become a county charge, pursuant to the provisions of the law referred to under the second and third propositions herein considered, but when a person does become a county charge, it then becomes the duty of the county physician to treat him without extra compensation.

Very truly yours,

D. M. KELLY,  
Attorney General.