

Hospital, County, Construction Of — County Commissioners, Powers Of—County Board of Health—Taxes—Election.

Under Chap. 106, Session Laws 1919, County Commissioners have power upon recommendation from County Board of Health to provide for the purchase of a site, the construction and furnishing of a hospital for the treatment of venereal and contagious diseases.

Under Sec. 5, Art. 13, of the Constitution, the County Commissioners cannot incur a liability exceeding \$10,000 for the purchase of a site and construction and furnishing of a hospital without submitting the question to the people.

When an expenditure for a particular purpose is authorized, the County Commissioners do not have to wait until the taxes therefor are collected before taking action.

The County Commissioners have no authority to construct a hospital for the treatment of contagious and venereal diseases.

Aug. 9th, 1919.

Mr. W. F. Cogswell,
Sec'y State Board of Health,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date inclosing a letter from Dr. A. W. Deal, County Health Officer of Fergus County, relative to the construction of a hospital for venereal and contagious diseases.

In Dr. Deal's letter he states that the Board of County Commissioners is perfectly willing to build such a hospital, if they can do so, but that the County Attorney of Fergus County has advised him as follows:

First, that not more than \$10,000.00 could be expended for such purpose without a general election for a bond issue for such purpose.

Second, that it could not be built until next year as the tax money would not be available until November.

Third, that there is no authority granted to a Board of County Commissioners to build a hospital for such purposes but only for the care of the county poor.

With reference to the first proposition the County Attorney has correctly advised Dr. Deal. The Constitution, Section 5, Art. 13, prohibits a county from incurring any indebtedness or liability for any single purpose to an amount exceeding \$10,000.00 without the approval of a majority of the electors thereof, voting at an election to be provided by law. It has also been held by our Supreme Court that the acquiring of a site, the construction of a building and the furnishing of the same is a single purpose, all of which must not exceed the sum of \$10,000.00 unless approved by the

electors at an election provided by law. Consequently, even though the Board of County Commissioners might have the power to construct such a hospital they could not expend more than \$10,000.00 for acquiring a site, building the hospital and furnishing the same, without first obtaining the approval of a majority of the electors at an election at which such question was submitted to the electors.

With reference to the second proposition I do not know just what the County Attorney means. There is no provision in our laws requiring taxes to be actually collected and in the county treasury before the same can be expended for any purpose, but the county may, and in fact nearly all of the counties do, anticipate the collection of taxes by issuing warrants which are registered and called in for payment when the taxes are collected. If the Board of County Commissioners have the power to construct such a hospital, and the acquiring of the site, construction and furnishing does not exceed \$10,000, or if it does exceed that amount and the electors have approved the incurring of the indebtedness, there is no provision requiring the board to wait until the taxes have been actually collected before acquiring the site, constructing and furnishing the hospital, but they may proceed to do so, issuing warrants in payment thereof which will be registered and called in for payment whenever there are funds available for that purpose.

With reference to the third proposition there may be some question whether the Board of County Commissioners has power and authority to construct a hospital for venereal and contagious diseases. Subdivision 5 of Section 2894, Revised Codes, as amended by Chapter 15, Session Laws 1919, grants to the Board of County Commisisoners the power to provide for the care and maintenance of the indigent sick and otherwise dependent poor of the county; to erect and maintain hospitals therefor, or otherwise provide for the same. Subdivision 9 of the same section as so amended, grants such board the power to cause to be erected and furnished a court house, jail, hospital and such other public buildings as may be necessary. These two subdivisions of this section are identical with subdivisions 5 and 9 of Section 4230, Political Code of 1895, and, in the case of Yegen vs. Board of County Commissioners of Yellowstone County, 34 Mont. 79, 85 Pac. 740, these two subdivisions were construed by our Supreme Court. In that particular case the question before the court was whether or not the Board of County Commissioners of Yellowstone County had the power to construct a hospital for ablebodied and not dependent persons suffering from contagious or pestilential diseases, and the court held that the board has no such power or authority, saying:

“Nor do we think that under their general powers, as defined in Section 4230 of the Political Code, supra, the Board of Commissioners have power to build and maintain detention hospitals for contagious or pestilential diseases at the expense of their counties. It is therein declared (subdivision 5) that these boards have power to provide for the care and maintenance of indigent and otherwise dependent poor, and that they may erect and maintain hospitals for that purpose. However desirable it may be that they should have the power to provide separate hospitals for able-bodied

and not dependent persons suffering from contagious or pestilential diseases, they are not here empowered to erect and maintain them at the expense of the taxpayer. So, they may, under subdivision 6, acquire farms for the dependent poor—not others. So, again, they have the power to provide necessary county buildings under subdivision 7. But what are necessary county buildings? Manifestly such as are required for ordinary county purposes, as, for instance in subdivision 9. Under this latter provision they may cause to be erected a courthouse, jail, hospital and such other buildings as may be necessary. The word 'hospital' evidently does not mean one or more hospitals for all classes of persons; but for that class of persons for whom the board may provide at the expense of the public, namely, the indigent sick. The phrase 'such other buildings as may be necessary' has no wider meaning, nor does it enlarge the class of purposes for which these boards may erect and maintain buildings so as to include others not of the class already mentioned."

Section 4 of Chapter 106, Session Laws 1919, provides that the County Board of Health of each county *shall provide* an isolation hospital for the care and treatment of all persons within the county suffering from venereal diseases, and that such board may, in its discretion, if no isolation hospital has been established in such county, contract for the care and treatment of persons suffering from such diseases, with any county maintaining an isolation hospital for the care and treatment of such diseases, or may contract with any private institution for the care and treatment of any such persons.

That the word "provide" as used in Section 4 of Chapter 106, Session Laws 1919, is sufficiently comprehensive to include the power to construct or purchase a hospital seems beyond question. Under an Indiana statute the Board of County Commissioners of each county was granted the power to "provide" a suitable and convenient place for the holding of the superior court, and the Supreme Court of that state, in the case of *Swartz vs. Board of County Commissioners*, 63 N. E. 31, held that under such statute the board had the power to acquire a site and construct a building for such purpose. Under a statute granting a city council the power "to provide for and regulate the lighting of the streets," it has been held that the council has the power to acquire a site and to construct an electric light plant for such purpose. *State ex rel. Means vs. Hiawatha (Kans.)* 36 Pac. 1119; *Christensen vs. City of Fremont (Neb.)* 63 N. W. 364.

If, therefore, said Section 4 of Chapter 106, Session Laws 1919, granted to the Board of County Commissioners the power to provide an isolation hospital for the care and treatment of persons suffering from venereal diseases, I am of the opinion that such Board of County Commissioners would have the power to acquire a site for and build and construct a hospital for such purposes. The County Board of Health is composed of the Board of County Commissioners, and one physician legally authorized to practice medicine and surgery in this state, who must be appointed by the Board of County Commissioners (Section 1492, Revised Codes). By Section 9 of Senate Bill 104, Session Laws 1901, a County Board of Health

was created in each county to consist of the three County Commissioners and one physician to be appointed by the Board of County Commissioners. With reference to this section the Supreme Court, in the case of Yegen vs. Board of County Commissioners, supra, held that the Board of County Commissioners and the County Board of Health were separate and distinct bodies, saying:

“If, under the law as it stood at the time of the passage of the act in question, the necessity arose for a place of temporary detention of persons suffering from contagious and infectious diseases, the County Boards of Health had power to make provisions therefor at the expense of their respective counties (Political Code, Section 2864); but the power thus given to these boards is not a power given to the Boards of County Commissioners to acquire land on their own motion and to erect permanent buildings thereon. It must not be overlooked that the two boards, though closely associated, have distinct and separate powers, and the two must not be confounded, as the Attorney General seems to have done in his argument in support of the order of the district court refusing to issue the injunction; for he insisted that the power conferred upon Boards of Health under Section 2864 of the Political Code is an authority conferred upon the Boards of County Commissioners as such by which they might purchase sites and erect detention hospitals.”

And here, while the power to provide an isolation hospital is granted by Section 4 of Chapter 106, Session Laws 1919, it is not granted to the Board of County Commissioners as such, but is granted to the County Board of Health. It seems clear, therefore, that a Board of County Commissioners cannot, on its own motion, acquire a site and construct and furnish an isolation hospital for persons suffering from venereal diseases.

The power being granted to a County Board of Health to provide an isolation hospital for such purposes, and the power to provide, including the power to acquire a site, construct and furnish a hospital for such purposes, the statute being silent as to the manner or method of exercising such power, how is the same to be exercised by a County Board of Health? The control and management of the finances of a county are placed in the Board of County Commissioners, and they must approve all claims against the county and order all warrants drawn against its funds, and manifestly if the Board of Health should proceed to the acquiring of a site and the construction and furnishing of such a hospital, without any action by the Board of County Commissioners, the Board of County Commissioners would be divested of certain of its powers, retaining the sole power to examine and allow or disallow claims in connection therewith and to order warrants drawn in payment of claims allowed. Special elections can only be called by the Board of County Commissioners, and questions to be submitted to the electors can only be submitted by the Board of County Commissioners. A County Board of Health having no power to call a special election or to submit a question to the electors, it is apparent that if the cost of acquiring a site, constructing and furnishing the hospital will exceed \$10,000, so that the same will have to be sub-

mitted to and approved by the electors, such question will have to be submitted by the Board of County Commissioners, and if the question is to be submitted at a special election such special election will have to be called by the Board of County Commissioners.

I am, therefore, of the opinion that if the County Board of Health determines that it is necessary to acquire a site and construct and furnish such a hospital, it should adopt a resolution to such effect and embody therein a request that the Board of County Commissioners proceed to take the steps necessary for acquiring such site and constructing and furnishing such hospital, and present the same to the Board of County Commissioners. On receiving such resolution the Board of County Commissioners should adopt a resolution reciting therein the fact that it has received a resolution from the County Board of Health, setting forth such resolution, and that in compliance therewith the Board of County Commissioners deems it necessary and proper to grant the request contained therein. The Board of County Commissioners may then proceed in the same manner as it would proceed for acquiring a site, constructing and furnishing any other building for the use of the county, submitting the question, if the estimated cost will exceed \$10,000, to the electors at either a general election or at a special election called for that purpose.

If the cost exceeds \$10,000 and the electors authorize a bond issue for such purpose, of course the cost will be paid out of the proceeds derived from the sale of the bonds, but if no bond issue is authorized, but simply the incurring of the indebtedness is authorized the same should be paid by warrants drawn against the general fund of the county. At first blush it might be thought that such expense, if the incurring of the indebtedness is merely authorized without issuing bonds therefor, should be paid out of the poor fund of the county, but it must be remembered that such a hospital is not for the care of the indigent sick, but for the care of all classes of persons, whether indigent or not, suffering from any such diseases, consequently it is not a proper charge against the poor fund but against the general fund.

Respectfully,

S. C. FORD,

Attorney General.