

Counties—County Commissioners—Hospitals.

A county has no authority to purchase or rent a hospital to be operated by it for profit, and to be open to the rich as well as the poor. The authority of the county is limited to furnishing a hospital for the indigent sick and dependent poor.

Joseph C. Tope, Esq.,
County Attorney,
Terry, Montana.

My dear Mr. Tope:

You have submitted to me the following questions, and ask my opinion thereon:

“1st. Under the laws of Montana may a county lawfully purchase a hospital which is to be used for the general public and be open for the care of the rich, as well as for the indigent poor?”

“2nd. Is it lawful for a county to rent or operate a general hospital, which would be operated for profit, to which would be admitted any person whether rich or indigent poor needing medical attention?”

You have stated in your letter that it is your opinion that both of the questions must be answered in the negative. I concur with you in your views.

A county has only such powers as are conferred upon it by law. In matters of this sort, it acts through its Board of County Commissioners, whose powers are limited and whose every act must find its justification in the law granting those powers.

State ex rel. Gillette v. Cronin, 41 Mont. 293;
State ex rel. Lambert v. Coad, 23 Mont 131;
Morse v. Granite County, 44 Mont. 78.

With relation to the subject of hospitals, the Board of County Commissioners has the following powers:

"5. To provide for the care and maintenance of the indigent sick or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same; * * *"

"9. To cause to be erected and furnished a courthouse, jail, hospital, and such other public buildings as may be necessary."

Chapter 95, Laws 1923.

It will be observed, under Subdivision 5, supra, it is only for the indigent sick that the county may erect and maintain hospitals. Subdivision 9 is not so specific in terms, but it has been construed to confer the power of erecting and furnishing hospitals only for the indigent sick. Speaking of both of these subdivisions, the Supreme Court of this state in the case of Yegen v. Board of County Commissioners, 34 Mont. 79, said:

"It is therein declared (Subdivision 5) that these boards have power to provide for the care and maintenance of indigent sick or 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. * * * Under this latter provision (Subdivision 9) 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 people, namely, the indigent sick. * * *"

It is evident from your letter that the Board does not feel that the necessity exists for the purchase of the hospital for the care and maintenance of the indigent sick alone, but that its purchase would only be warranted if it could be operated by the county in such a manner that the indigent sick would be cared for at the expense of the county, and all others would pay therefor as though it were run by a private individual, and the revenues thus derived from non-indigent patients would, to the extent of their amount, be applied to the cost of operation and maintenance, and by thus making the cost of care and treatment of non-indigent patients payable by the patients themselves, the county would have the benefit of the hospital at no greater cost to the county than if a hospital were maintained by it for its indigent sick alone, and possibly the charges to the non-

indigent patients might even be sufficient to pay a part of the cost of care and treatment of the indigent patients. However this might be, the fact is that in the purchase of the hospital the county would be spending a greater amount of money than would be necessary for a hospital sufficient in size and equipment only to take care of its indigent sick. As to this excess, it is no justification to say that the anticipated revenues from the non-indigent patients might, or would, in time pay it back into the county treasury together with an annual income which might make the excess represent a profitable investment. However certain this result might be, and however laudable might be the purpose of the proposed purchase, authority for the Board's action must be found in the law. As none exists, save only as to indigent sick, the Board has no authority to spend money out of the county treasury in any amount greater than is necessary for a hospital sufficient in size and equipment to maintain and care for that class of patients. And the same may be said as to operating expenses. It is, of course, true that the expense of operating a general hospital would be greater than the expense of operating a hospital for the indigent sick alone. This additional expense would be a primary charge upon the county, even though it might subsequently be recovered from the revenues derived from the non-indigent patients.

What is said hereinbefore applies also to your second question. If there is no authority for the county to purchase or erect a general hospital under the statutes above cited, there is certainly no authority to rent one, as the statutes are utterly silent as to any such power. To rent such a hospital, and operate it, would be doing by indirection that which cannot be done directly, and, of course, this is prohibited.

It is, therefore, my opinion that a county has no authority to purchase or rent a hospital to be operated by it for profit, and to be open to the rich as well as the poor, but that the authority of the county is limited to furnishing a hospital for the indigent sick and dependent poor.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.