

Opinion No. 106**County Commissioners—Powers—Poor—Medical Aid—Tonsils—Adenoids—County Physician.**

HELD: The board of county commissioners has no authority to advertise for bids for the removal of diseased tonsils and adenoids from indigent children.

March 8, 1933.

You have requested my opinion on the right of the county to pay for operations on children suffering from diseased tonsils and adenoids, and you submit to this office for an opinion, the following questions.

"1. Is the board of county commissioners authorized to expend county funds under authority of subdivision 5 of Chapter 100 of the 1931 Session Laws amending Section 4465 of the Revised Codes of 1921?

"2. If the said board has such authority is it necessary to advertise for bids?"

Subdivision 5 of Section 4465 as amended by Chapter 100 of the Laws of 1931 is as follows:

"To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the coun-

ty; erect and maintain hospitals therefor, or otherwise provide for the same, and to levy the necessary tax therefor per capita, not exceeding Two (\$2.00) Dollars and a tax on property not exceeding three-fifths (3-5) of one per cent (1%) or either of such levies when both are not required, and to expend not to exceed five per cent (5%) of any such levy for the collection of said tax, or of any part thereof."

Sections 4521 to 4541, R. C. M. 1921, relate to the various phases of the duties of the board of county commissioners in caring for the indigent poor.

Section 4522 is as follows:

"Every person without means, who is unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, must be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such poor person, if they, or either of them, be of sufficient ability, in the order named; and every person who fails or refuse to support his or her father, grandfather, mother, grandmother, child, sister, or brother, in the order named, when directed by the board of county commissioners of the county where such poor person is found, whether such relative reside in the county or not, must pay to the county, for the use of such person, the sum of thirty dollars per month, which may be recovered in the name of the county."

A poor person, or one entitled to public aid, has been described by statutes of almost all the states and the definition given below is about the concensus of the various opinions that have been rendered on this point: "The phrase 'poor person' as used in the statute has a settled legal signification, and is applied to those who may rightfully claim alms from the public bounty. Its meaning is the same as that of pauper or indigent person." *Warren County v. Osborn*, 4 Ind. App. 590; 31 N. E. 541.

With these laws as a guide, the board of county commissioners should be able to determine who is a poor person. (See also Opinion No. 76, this volume).

Section 4527, R. C. M. 1921, provides that the board in its December meeting must make a contract with some physician for the care of the indigent sick. We find no other provision which we think is applicable.

You will observe that the section refers to "medical" attention but does not mention "surgical" attention. However, you will find an opinion in Volume 5, Reports and Official Opinions of the Attorney General, page 385, holding that "medical attention" includes "surgical operations". I am inclined to agree with that opinion. As a matter of administrative interpretation we note that county physicians constantly do minor surgery and now and then a minor operation as a part of their contract.

If your contract with the county physician is not broad enough to cover the operations you have in mind we think it can be modified or amended so as to make it broad enough. However, we cannot advise you upon the extent of the contract without having it before us.