

Opinion No. 35**Counties—Poor—Medical Aid and Hospitalization—Publication of Proceedings of County Commissioners' Meetings.**

HELD: The county must give medical aid and hospitalization to poor persons, even though such persons reside in an incorporated town, since the poor of a city are a county charge.

It is mandatory upon the board of county commissioners to publish the proceedings of their meetings in the county newspaper.

February 18, 1933.

You have requested an opinion of this office on the following questions: "1. Is a county compelled to give medical aid and hospitalization to anyone living in an incorporated town? 2. Would the poor of a city become a county charge? 3. Is it compulsory for a county to have minutes of commissioners' proceedings published in a local newspaper?"

In reply to the first question, your attention is called to Section 4465, R. C. M., 1921, as amended by Chapter 95 of the Session Laws of 1923. The foregoing provisions of the Codes and the Session Laws relate to the general powers of the board of county commissioners, and subdivisions 5 and 9 of such powers are as follows:

"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 court house, jail, hospital, and such other public buildings as may be necessary."

Every city within any county is, of course, a part of that county and as the law places the care of the poor and their hospitalization under certain circumstances entirely upon the county, there is no duty imposed upon the city to look after or care for the poor.

In regard to question No. 2, the answer to No. 1 practically covers this, but a further reason why the city is exempted and the county is made responsible for the care of the poor is that there is no provision for, and no levy made by the city for the poor fund.

Replying to your question No. 3, we call your attention to an opinion in Volume 9 page 400, Opinions of the Attorney General, where the law was discussed as it appeared prior to amendment. This opinion indicates that some kind of publication is mandatory and we are inclined to agree with that conclusion.

I think that subdivision 21 of Section 4465, as amended (Chap. 100, Laws of 1931), though perhaps permissive in form, is mandatory in effect. The power granted in this instance implies a positive duty in the public interest and mandamus will lie to enforce its performance. Black on Interpretation of Laws, 341, 342; 2 Lewis Sutherland Stat. Const. Secs. 637-640; Mayor of Havre, etc. v. Fletcher, 77 Atl. 114; State of Maryland v. Miller, 194 Fed. 775; George v. Board of Revenue, etc. 92 So. 269; State, etc. v. Jones, 220 Pac. 275; 38 C. J. 696; "Power" in Words and Phrases, 1st and 2nd series; 59 C. J. 1072-1087. It is not without significance that the words "or otherwise" were omitted from the subdivision as amended.