

Opinion No. 507**County Commissioners—Relief—Poor
—Emergency Operations,
Liability for.**

HELD: The county is liable to a physician who performs an emergency operation where the facts show that delay to first obtain authority from the county officials would have caused extreme suffering and probably endanger the life of the patient.

April 10, 1934.

Supplementing our opinion No. 497, dated March 13, 1934, relative to the duty of the board of county commissioners to care for the poor, you will note the fact that the statutes vest in the county board liberal discretionary powers in all such matters. No hard and fast rule can be laid down. It is for the board, in its sound discretion to determine the merits of each case. (Jones v. Cooney, 81 Mont. 340).

In vesting such discretionary power in the county board we do not think it was the intent of the legislature that the board should draw fine distinctions at the expense of human suffering nor employ technicalities of the law to evade its duty.

The obligation of a county to care for the poor is purely statutory, there being no obligation to do so at common law. Court decisions are, of course, based upon the statutes, but the general trend of courts may be gathered from the following decisions.

In *Board of Commissioners of Garfield County v. Enid Springs Sanitarium*, 244 Pac. 426, the Supreme Court of Oklahoma held a physician may hold the county liable for emergency attendance on a pauper although the physician acted without the request or consent of the officials. See also *Board v. Dowdy*, 270 Pac. 836.

In *Newcomer v. Jefferson Tp., Tipton County*, 181 Ind. 1, 103 N. E. 843, the court held the township liable for medical attendance rendered a pauper in an emergency case where there was no opportunity to communicate with the overseer of the poor. See also *Board v. Dennebrink*, 89 Pac. 7, 15 Wyo. 342.

In *Redwood County v. City of Minneapolis*, 148 N. W. 469, a woman working as a domestic in Redwood County was injured, and required immediate medical attention which was furnished by the county. She had formerly been cared for by Hennepin County as a feeble minded person but at the time of her injury she was caring for herself, working in Redwood County, but with no means to pay for medical services. The court upheld Redwood County's claim against Minneapolis for the care and medical attention to deceased, and for her burial expenses. It also held that such temporary relief need not be given by the county physician.

We think Phillips county is liable to the physician who performed the emergency operation if the facts show that delay in order to first obtain the authority of the county officials would have caused extreme suffering or probably endangered the life of the sick persons. The board must, in the exercise of its discretion, determine each application for relief upon the facts and circumstances surrounding it.