

Opinion No. 76

**County Commissioners—Indigent Sick
—Tonsil Operations—County Surveyor
—Incompatible Offices—County Road
Crews.**

HELD: Because of the very nature of the work, the county commission is left with a great deal of discretion as to what may or may not be done for the indigent sick. And, generally it might be said, that they may do whatever is reasonable in the matter of furnishing medical or surgical attendance.

All the powers of a county surveyor and all the rights in regard to compen-

sation and time of employment in counties having a less voting population than 15,000 are set out in the R. C. M. 1921, and are placed under the control and supervision of the board of county commissioners which is authorized to act at discretion.

A member of the board of county commissioners has no legal power to do anything more than make an inspection of the work that is done by other county officials or employees on the highways and bridges and assuming the duties, and drawing the compensation of a foreman by a member of the board is not authorized by law.

February 10, 1933.

We acknowledge receipt of yours of January 25, requesting an opinion from this office on the following matters:

"1. Has the board of county commissioners power to expend any moneys in the poor fund for the purpose of operating on the county poor that are afflicted with tonsil trouble?

"2. What compensation shall be allowed a surveyor in counties in Montana with a voting population of less than 15,000?

"3. What power has the county surveyor in counties that have a less voting population than 15,000 to employ help or assistance without permission of the board of county commissioners?

"4. May a member of the board of county commissioners act as foreman over road crews in general road work in the county in the district assigned to the particular commissioner?

1. The following sections of our statutes contain the provisions relative to the power of boards of county commissioners to supervise and look after the poor:

Section 4521 R. C. M. 1921 reads as follows: "The board of county commissioners are vested with entire and exclusive superintendence of the poor."

Section 4527 R. C. M. 1921 as amended by Chapter 55, Laws of 1927, is as follows: "The board must annually, at their December meeting, make a contract with some resident practising physician to furnish medical attend-

ance to the inmates of the county jail, and must also make provision for the furnishing of medicine to the same; provided, however, that the board may let such contract for the furnishing of medical attendance to the physician appointed by such board as county health officer, and may fix a salary or other rate of compensation to be paid to such county health officer for the furnishing of such medical attendance, which salary or other compensation shall be in addition to the salary of such physician as county health officer."

There are various other sections of chapter 12 of part IV of the Political Codes (1921), and amendments thereto, that relate to other matters concerning the poor but the two sections quoted above are those most material relative to the powers and duties of the boards of county commissioners.

Because of the very nature of the work, the county commissioners are left with great discretion as to what may or may not be done for the indigent sick. And, generally, it might be said that they may do whatever is reasonable in the matter of furnishing medical or surgical attendance.

We are not prepared to assert positively, however, that the removal of the tonsils of several hundred children in a county the size of your county, is reasonable. We think also that the county is authorized to furnish medical attendance, except in case of great emergency, only to the indigent sick. We do not mean to say that we question the power of the board of county commissioners to pay for an operation upon an indigent person where the operation is immediately necessary. The board likewise has a great breadth of discretion in determining whether such an operation is immediately necessary.

It is not the province of this office to advise you to advise your board of county commissioners exactly how they should exercise their discretion but if the writer were a member of the board of county commissioners in this instance, he would move slowly in authorizing a wholesale removal of tonsils.

2. The duties and powers of county surveyors are governed by the following sections of our statutes:

Section 4836 R. C. M. 1921 provides as follows:

"The county surveyor shall work under the direction of the board of county commissioners, but shall have no power or authority to incur any indebtedness on the part of the county without the order or approval of the board of county commissioners being first obtained therefor; he shall make all surveys, establish all grades, prepare plans, specifications, and estimates; he shall report any delinquency or inefficiency of any road overseer or other person employed upon the roads within his county; he shall, from time to time, make progress reports and estimates of all work, and such other facts in relation thereto as may be required by the state highway commission, board of county commissioners, or both."

Section 4838 R. C. M. 1921 reads as follows:

"The county surveyor shall be provided with suitable office, together with necessary equipment, to perform his various duties as prescribed by law."

Section 4843 R. C. M. 1921 reads as follows:

"If a party for whom the county survey is made does not furnish the chainman and markers, the surveyor may employ the necessary chainmen and markers, and receive the reasonable hire of all assistants necessarily employed."

Section 4845 R. C. M. 1921 provides as follows:

"The county surveyor shall also, at the direction of the county commissioners, direct and inspect the work and expenditures of the road supervisors; also furnish plans and specifications for road or bridge work, and he shall be chairman of all boards of road viewers."

All the powers of a county surveyor and all the rights in regard to compensation and time of employment in counties that have a less voting population than 15,000, are set out in the foregoing statutes, and are placed under the control and supervision of the board of county commissioners who are authorized to act at discretion.

3. This question is fully covered by sections 4836 and 4843 as set out above.

4. The only power that a member of

the board of county commissioners has under our statutes to inspect highways or do anything else in connection therewith and receive compensation for it, is set out in section 1632 R. C. M. 1921, as amended by Chapter 176, Laws of 1929.

From this section you will see that a member of the board has no power under the statute to do anything more than make an inspection of the work that is done by other county officials or employees on the highways or bridges; and assuming the duties, and drawing the compensation of a foreman by a member of the board, is not authorized by this statute.