

pital building, then lease it for a term of five years to an individual for general hospital purposes?"

Every county is a body politic and corporate, and as such has the powers specified in the code, or in special statutes, and such powers as are necessarily implied from those expressed. (Sec. 4441, R. C. M. 1921; *Franzke v. Fergus County*, 76 Mont. 150; *Judith Basin County v. Livingston*, 89 Mont. 438.) Its powers can only be exercised by the Board of County Commissioners or by agents, and officers acting under their authority, or authority of law. (Id., sec. 4442; *State ex rel. Furnish v. Mulendore*, 53 Mont. 109.)

Subdivision 5 of Section 4465, Revised Codes 1921, as amended by Chapter 100, Laws of 1931, declares that the Board of County Commissioners has power "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, and to levy the necessary tax therefor"; and subdivision 9 thereof provides that the board has power "to cause to be erected and furnished a courthouse, jail, hospital, and such other public buildings as may be necessary."

It will be noted that the statute authorizes the board to erect and maintain hospitals for the benefit only of the indigent sick and the otherwise dependent poor of the county. The maxim "*expressio unius est exclusio alterius*" applies (*Sullivan v. Big Horn County*, 66 Mont. 45), and the county, through the board, may not engage in the business of conducting a hospital for revenue. It is without power to admit to the county hospital for treatment persons who are able to pay their way. (*Yegen v. Board of County Commissioners*, 34 Mont. 79; *Tollefson v. City of Ottawa*, 81 N. E. 823, 11 L. R. A. (N. S.) 990.)

Subdivision 30 of Section 4465, Revised Codes 1921, as amended by Chapter 100, Laws of 1931, authorizes the Board of County Commissioners "to lease county buildings, equipment, furniture and fixtures for hospital purposes, with full power of lessor, upon such terms and conditions

Opinion No. 127.

County Commissioners—County Hospital—Hospital—Lease of Hospital—Patients.

HELD: 1. The county, through the Board of County Commissioners, may not engage in the business of conducting a hospital for revenue, and is without power to admit to the county hospital for treatment persons who are able to pay their way.

2. Under its power to lease the county hospital, the Board of County Commissioners may go no further than to lease so much of the hospital as may not in the ordinary course of events be required for public service.

June 27, 1935.

Mr. Walter T. Murphy
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You have requested our opinion upon the following questions:

"May a county construct, maintain, and operate a hospital to which the wealthy as well as the indigent poor may gain admittance, charging the well-to-do for their care?"

"May the county construct a hos-

as it shall decide upon. The rentals received under such lease shall be paid into the general fund of the county. No lease shall be made for a longer period than five years, nor shall the board enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for five weeks that said buildings and equipment are for lease for hospital purposes." The section is very broad, but it must be given a reasonable construction. The legislature having conferred on the board the power to build a hospital for the care of the indigent sick, it can hardly be claimed with any force that at the same time it intended to make it possible for the board to deprive the county of all use thereof when constructed and equipped. It must never be forgotten that "the poor are always with us." Under the circumstances, we believe the board may go no further than to lease so much of the hospital as may not in the ordinary course of events be required for public service. Subdivision 28 of Section 4465, by analogy, lends support to this view. (State ex rel. Hurley v. District Court, 27 Mont. 40; State ex rel. Riddell v. District Court, 33 Mont. 529; Boone v. Clark, 214 S. W. 607; Jackson v. Ball, 100 South 327; Henry v. Grainger County, 290 S. W. 2; State v. Mills, 20 Ohio N. P. (n.s.) 427; 15 C. J. 537.)