

Opinion No. 198.

Relief—Poor—Counties—County Commissioners—Poor Fund, Use of—Transfers—Budget Law.

HELD: The County Poor Fund is in a sense a trust fund and the county commissioners are not authorized to use it for any purpose except for "The care and maintenance of the indigent sick, or otherwise dependent poor of the county."

November 4, 1935.

Montana Relief Commission
Helena, Montana

You have submitted for my opinion the questions hereinafter listed. These questions are general and do not present any specific case or problem. In answering them, it should be understood that we are dealing with general rules and their application. It is difficult, if not impossible, to make a general statement which will be applicable to every set of facts arising.

"1. Are the commissioners bound by law to expend Poor Fund monies only for the purposes for which they are levied?"

The poor fund is raised by a levy authorized by Subdivision 5, Chapter 100, Laws of 1931, amending Section 4465, R. C. M. 1921, as previously amended. Its purpose is "to provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; to erect and maintain hospitals therefor, or otherwise provide for the same." It authorizes the levy, for that purpose, of a \$2.00 per capita tax and a tax on property not exceeding three-fifths of one per cent. Such fund is in a sense a trust fund and its expenditure should be carefully limited to the purpose stated. This is also required by the budget law, Chapter 148, Laws of 1929.

"2. Are the commissioners bound by law to expend the Poor Fund for the items budgeted within the Poor Fund?"

If the items budgeted are within the purpose of the levy authorized

by statute then the county commissioners are bound by law to expend the poor fund for these items, where it is necessary. The commissioners have the power and the consequent duty of using the poor fund, when necessary, for the benefit of those for whom such fund is established. The commissioners, of course, have the power and duty to determine the necessity in each case but in so doing, should not act arbitrarily.

"3. Are the commissioners prohibited by law from transferring monies from the Poor Fund for purposes other than actual poor relief?"

For the reasons given in our answer to your first question, this question should be answered in the affirmative. The commissioners are not authorized to use the poor fund for any purpose except for "the care and maintenance of the indigent sick, or the otherwise dependent poor of the county." Such transfer is also prohibited by the budget law, supra.

"4. If the budgets and obligations set-up within the Poor Fund would completely exhaust the Poor Fund within the fiscal year may the commissioners divert monies from the Poor Fund and claim a deficit in this fund?"

My answer to this question is "no" for the reason that to permit it would not only defeat the purpose of the levy for the poor fund but would violate the county budget law. (See Section 5, Chapter 148, Laws of 1929.)

"5. Since the institutional poor, the aged and the infirm, the blind, dependent children and all persons who may be regarded as unable to help, or support themselves are regarded as the moral and legal obligation of the county and if the care of all such people would obligate the entire Poor Fund, are not the commissioners bound to consider these people their primary obligation?"

For the reasons heretofore given, my answer to this question is "yes."