

Opinion No. 147.

**Public Welfare—Counties—Grants
in Aid.**

Held: 1. Before a county is entitled to receive a grant in aid from state welfare fund under Chapter 82, 1937, it must appear from an audit by the state examiner's office that the six mill levy has been made and proved inadequate to meet the county's proportionate share of public assistance under any part of the act, that no transfers can be made, and that legal warrants cannot be issued against the poor fund.

2. It is not required that all items of the poor fund budget be exhausted before the state may make a grant in aid.

September 1, 1937.

Hon. I. M. Brandjord
Administrator State Department
of Public Welfare
Helena, Montana

My Dear Mr. Brandjord:

You have submitted to this office two questions, formulated by the delegation from Musselshell County, at a conference with your Board on August 30th, and request an opinion thereon.

The questions are as follows:

1. Is your Board going to compel Musselshell County to expend all of its cash in the Poor Fund before a State Grant will be made?
2. If so, after all of the county Poor Fund cash has been expended, will the grant include sufficient funds to pay the county's portion of old age assistance, aid to dependent children, needy blind, welfare office expense and salaries, institutional care, county physician and hospital expense, in addition to the General Relief?

It appears to this office that these questions may be answered by a solution of the question as to what is required of a county before it is entitled to receive a grant in aid from state funds. We will therefore determine this question in answering the questions propounded by the Musselshell County Board.

Paragraph (b), Section 11 of Part 1 of Chapter 82, Laws of 1937, provides:

"It is hereby made the duty of the board of county commissioners in each county to levy the six mills required by law for the poor fund and to budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to meet its proportionate share of such assistance granted in the county, and the county budget shall make provision therefor and an account shall be established for such purpose. **If the six mill levy shall prove inadequate to meet the county's proportionate share of public assistance under any part of the act, and if the county board of commissioners is unable to declare an emergency for the purpose of providing additional funds, and if an audit by the state examiner's office proves this condition to be true and the county board has expended its poor fund only for the purposes levied, then such proportion of its public assistance as the county is unable to meet shall be paid from the state public welfare fund.**"

It may be observed that the above quoted statute does not require that the six mill levy for the poor fund be exhausted. It only requires that the levy prove inadequate to meet the county's proportionate share of public assistance under any part of the act, and the county board of commissioners be unable to declare an emergency for the purpose of providing additional funds, and if this condition is proved to exist by an audit by the state examiner's office, then, under the provisions of this section, "such proportion of its public assistance as the county is unable to meet shall be paid from the state public welfare fund."

This office has held, in a former opinion, that when a county has levied up to six mills for its poor fund, and has made transfers from other funds as provided by law, and is then unable to meet its share of public welfare disbursements, it is entitled to receive aid from the state fund. It is also held in that opinion that it is not required that a county be compelled to bond itself before it is eligible for aid from the state fund. See Opinion 91, of the Opinions of the Attorney General, Vol. 17.

It is, therefore, our opinion, that when it is proved by an audit made by the state examiner, that: (a) the six mill levy has been made; (b) such levy is inadequate to meet the county's proportionate share; (c) there are no surpluses in any other fund, or in any item within the budget of the poor fund, which may legally be transferred; (d) that legal warrants cannot be issued and that the money in the poor fund has been used only for the purposes for which levied; then the proportionate share of the county for public assistance, under any part of Chapter 82, which it is unable to meet, must be paid by the state department from the state welfare fund.

We do not wish to be understood by this opinion as holding that the state may make a grant in aid to any county in advance of the time such audit shows the county is in need thereof.

If, therefore, an audit by the state examiner shows that Musselshell County has levied the six mills, and has used the poor fund for the purposes intended; and also if it appears that there remains cash in the poor fund in certain items only sufficient to meet the needs of those items for the fiscal year, and consequently no surplus funds that can be transferred, then you shall make such grants, in the manner and form as specified in Opinion 146 of the Opinions of the Attorney General, Vol. 17, as will meet the necessary needs of such items in said poor fund, and said grant shall be made at the time needed.