

Opinion No. 176.**Public Welfare—County Commissioners, Authority of—Employment of Personnel—General Relief.**

HELD: 1. A Board of County Commissioners, as such, has no authority to administer or supervise public assistance, including general relief, under Chapter 82, Laws, 1937, but only as a board of public welfare may it act.

2. A Board of County Commissioners may not employ a person to assist in the administration or supervision of general relief and pay him from any funds of the county.

3. All personnel employed to administer or supervise public assistance in the county must be appointed from a list qualified by the State Department.

October 14, 1937.

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

My Dear Mr. Brandjord:

Beg to acknowledge receipt of your request for opinion as to whether or

not Custer County may lawfully employ a person to assist in general relief work of Custer County and pay his salary solely from funds of Custer County, although such person has been found by the State Board of Public Welfare to lack the necessary qualifications for case worker?

Authority to supervise or administer public assistance is derived from the provision of the Public Welfare Act, Chapter 82, Laws of 1937.

Section III (b) (c) of Part I of the act under the title "Powers and duties of the State Board," provides:

"(b) Within six months after the adoption and approval of this act it shall be the duty of the state board to establish and maintain minimum standards of service and personnel and to formulate salary schedules for the classified personnel, based upon training, experience and ability, for employees selected for positions in the state office of the state department and in county departments.

A merit system when practical but not later than one (1) year from and after the effective date of this act shall be established and maintained pertaining to qualifications for appointments, tenure of office, annual merit ratings, releases, promotions and salary schedules and the state board shall cause examinations to be held from time to time throughout the state for the purpose of establishing an available qualified list in order of merit of persons eligible for appointment. Personnel standards shall conform in so far as possible with general standards as established or required by the federal social security board.

(c) The state board is charged with the authority and duty to exercise general supervision and control over all activities and agencies as provided for in each part of this act.

The state board shall be limited in function to that of general policy and rules and regulations and all administrative and executive authority, functions and duties shall be vested in the state administrator, subject to the authority of the state board.

The state board shall be responsible for the adoption of such general policies, rules and regulations as are

necessary for the government of the state department, county departments or any of its agencies. All such policies, rules and regulations shall conform to the federal social security act, the rules and regulations issued by the federal social security board and also shall conform to the state welfare act and all policies, rules and regulations so adopted by the state board shall be binding upon the several county departments and county boards of public welfare."

Section VII, Part I, under the title "Authority and Activities of the State Department," provides that:

"The state department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act. The state department shall:

(a) Administer or supervise all forms of public assistance including general relief, old age assistance, aid to dependent children, aid to needy blind, child protection and child welfare and the supervision of agencies and institutions caring for dependent, delinquent or mentally or physically handicapped children and adults.

(f) Prescribe and maintain minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment. Insofar as possible such personnel shall be residents of the county."

It will thus be seen from the above statutes that the State Department is charged with authority over and administration or supervision of all forms of assistance under Chapter 82, including general relief. The department is charged with the duty to establish minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment.

Section X (b) Part I, under the title "Powers and Duties of the County Board," provides:

"(b) Each county board shall select and appoint, from a list as qualified by the state department, such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary by the county board. If conditions warrant, the county board, with the approval of the state department, may appoint one of the local staff of public assistance workers in a supervisory capacity. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. Public assistance staff personnel attached to the county board shall be paid from state public welfare funds. One-half of the administrative cost of the county department shall be reimbursed to the state treasurer by the county in accordance with the terms of this act."

Under these provisions of Chapter 82, it is clear that only such persons as are qualified by the state department may be employed in the administration of assistance, including general relief. The Board of County Commissioners as such board has no authority to administer general relief in the counties. Only as a Board of Public Welfare has it any authority in the administration or supervision of public assistance.

It is, therefore, quite obvious, and is my opinion that a board of county commissioners as such board has no powers or authority in the administration of assistance under any part of Chapter 82, but as a board of Public Welfare only can it function. As a board of county commissioners it has no authority to employ or permit any person to assist in general relief or any other assistance under Chapter 82. Not having such authority, it may not legally pay for such services out of any funds of the county.

As a Board of Public Welfare, it can only employ such persons as are qualified by the State Department and only such persons so employed may legally be paid.