

pitalization, refund of poor taxes, interest on poor fund warrants, or expenses of burial of the poor.

4. The county welfare board may use grants in aid for general relief as that term is herein defined, but not for medical care and hospitalization or other institutional care.

5. An emergency, as that term is used in Chapter 82, exists with regard to the poor fund when all accounts set up within the poor fund for the purpose of all parts of Chapter 82 are exhausted, and there is a demand for relief, and there are no surplus moneys in other county funds which, under Section 4470.3, R. C. M. 1935, can be transferred to the poor fund.

6. It being mandatory on the county commissioners to levy the six mills provided by law, this being the statutory limit, there can be no further levies for the poor fund, even in an emergency.

November 22, 1937.

Board of County Commissioners
of Silver Bow County
Butte, Montana.

Gentlemen:

Your Honorable Board has submitted the following inquiries to this office for our opinion:

"Does section 82 of Session Laws of 1937 provide that the poor fund of a county be entirely depleted before the state will grant aid?"

"If the budget allowance provided for the operation of the Public Welfare Act are insufficient to maintain its operation, in what manner are the counties to replenish this fund?"

"Does general relief as provided in Chapter 82 of Session Laws of 1937 include the costs and operation of a county hospital, the salaries and expenses of a county physician, the hospitalization of county patients at the State Tuberculosis Institution at Galen, refund of poor taxes, Industrial Accident Board fees, interest on poor fund warrants, and burial of poor?"

Relative to the same matter, Mr. I. M. Brandjord, Administrator of the State Department of Public Welfare,

Opinion No. 200.

Public Welfare—Poor Fund—Emergency—General Relief—Grants-in-Aid.

HELD: 1. Chapter 82, Laws 1937, does not require that the poor fund be entirely depleted before the state will grant aid, but only that those accounts set up for the purposes of old age assistance, aid to needy dependent children, aid to needy blind, and general relief, be so depleted.

2. If those accounts are depleted, and transfers of surpluses from other accounts of the poor fund cannot be made, and no transfers can be made in accordance with Section 4470.3 and all other conditions requisite are shown to exist, the county is entitled to a grant in aid from the state welfare funds.

3. General Relief, as provided in Chapter 82, does not include expenses of operation of county hospital, salaries and expenses of county physician, hospitalization of county patients at Galen, or other medical care or hos-

on November 10, submitted the following questions:

"Can a county welfare board lawfully use grants in aid received from the State Department of Public Welfare for 'general relief purposes' for medical aid and hospitalization and other institutional care for indigent persons?"

In making the above question more explicit, Mr. Brandjord added the following question:

"The question now arises, when does an emergency exist with regard to the poor funds of a county, and what are the obligations of a county to make additional levies for the poor fund when such emergency exists? Please answer this question also."

Paragraph (b) of Section 11, Part I, of Chapter 82, 1937 Session Laws, 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 purposes. If the six mill levy shall prove inadequate to meet the county's proportionate share of public assistance under any part of this 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 prove 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."

Paragraph 3 of Section 9, Part II, Chapter 82, provides:

"It is hereby also declared to be the legal and financial responsibility of the board of county commission-

ers to provide adequate relief to persons in need of the same according to standards established by the state department of public welfare and to the extent that county funds are available."

The above quoted sections heretofore make it the duty of the board of county commissioners to levy the six mills required by law for the poor fund, and to **budget and expend so much of these funds** for the purpose of this act (Chapter 82) as will enable the county welfare department to adequately meet its proportionate share of assistance provided for under the Welfare Act, according to standards set by the state department, to the extent that such funds are available.

Section VI of Part II of the Act specifically provides that:

"Medical aid and services and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners payable from the county poor fund. It shall be the duty of the board of county commissioners to make provision for competent and skilled medical and surgical services as approved by the state board of health or the state medical association * * *."

The act specifically provides the duties and authority of the state department of public welfare, the county departments, and the county commissioners, with relation to the administration and disbursements from the poor fund, in respect to the specific purposes of Chapter 82 and other purposes for which the poor fund is established. In so far as the purpose of the welfare act is concerned, Section XI (b), Part I, makes it the specific duty of the board of county commissioners to levy the six mills for the poor fund, and to "budget," and "set up an account" within the poor fund, and "expend so much thereof for all purposes of the act as will enable the county welfare department to meet its proportionate share of such assistance under the act." It is further made the "legal and financial duty and responsibility of the board of county commissioners" to provide within the

poor fund for the medical care and hospitalization of the needy. It is also made the duty of the county commissioners to pay burial expenses.

The powers and duties of the county commissioners, as such, and as a county board of public welfare, in regard to the care of the needy, are set forth in chapter 82.

Section VII of Part II, Chapter 82 provides:

"It is hereby declared to be the primary legal duty and financial obligation of the board of county commissioners to make such tax levies and to establish such budgets in the county poor fund as provided by law and as are necessary to provide adequate institutional care for all such indigent residents as are in need of insitutional care and to make such tax levies and establish such budgets in the county poor fund as are necessary to make provision for medical aid and services and hospitalization for all indigent county residents. All such public assistance and services shall be charges against and payable from the county poor fund."

We find that under each part of Chapter, 82, including Part II, General Relief, the applicant, to be eligible, must not be in need of continued care in a public institution because of physical or mental condition. Likewise, under each part of the act, a residence requirement is made for eligibility, except inter-state transients, to whom temporary relief may be granted from either state or county funds. But there is a class of citizens in need of and entitled to assistance who cannot qualify under any part of Chapter 82, and who do not come under the supervision of the state department of public welfare, such as those in need of continued institutional care, and those who do not have the residential requirements. There is thus established two classes of needy who have claims upon the poor fund. The first class comes under the supervision of the state and county departments of public welfare, and assistance to it is paid from both state and county funds. The second class does not come under the supervision of the county commissioners, and assistance to it is paid only from county funds. The county share of payments to the first class is paid

out of the accounts required to be budgeted and set up within the poor fund. The payments to the second class come from other funds budgeted in the poor fund, and are primary obligations of the county commissioners. These two accounts are administered by separate bodies; the first by the board of county welfare; the second by the board of county commissioners. This office has held in a former opinion that these boards are separate and distinct, and their powers and duties, when acting as a county welfare board, cannot be exercised when acting as a board of county commissioners. (See Opinion No. 176.)

Not all of the powers of the county commissioners, as such, in respect to the care of the poor and indigent are taken away, but only those powers as respect the poor and indigent who may qualify under any part of Chapter 82. As to those, their powers and duties are exercised as a board of county welfare under the supervision and regulation of the state department, as to others, as a board of county commissioners. The power to levy the poor tax, and fix and determine the budget, declare emergencies, provide for hospitalization and institutional care, and to provide for the burial of the poor who are unable to pay for the same, is exercised by them as a board of county commissioners; while the power to administer the assistance to those who may qualify under the provisions of Chapter 82, is exercised as a board of county welfare.

General Relief is that form of assistance granted under the provisions of Part II of Chapter 82, and may be said to be of two classes, viz, continuing, and temporary. Continuing general relief is that form of assistance granted to those persons who have a year's state residence and six months' county residence, and are not in need of continued care in a public institution because of physical or mental condition. Temporary Relief is that form of assistance granted to inter-state transients who do not have the required state and county residence. While the assistance granted to those of the first class is paid entirely from county funds (subject to grants in aid), assistance to those of the second class may be paid from either state or county funds. As this form of relief is specifically provided for under

Chapter 82, it is made the duty of the county commissioners to budget and set up an account within the poor fund for this form of assistance as one of the purposes of the act. Institutional care and hospitalization is made a primary duty and obligation of the board of county commissioners, and the cost thereof must be paid from the poor fund, and a budget must be set up within the poor fund to meet this expense. This form of assistance is not provided as a part of Chapter 82.

Therefore, it follows, that grants in aid may only be made from the state funds when the budget accounts set up within the poor fund, as required for each part of Chapter 82, are exhausted. And, inasmuch as the poor fund must also be used for those legal obligations of the county towards the poor who do not come within the provisions of Chapter 82, the responsibility for which is specifically placed upon the county commissioners by the provisions of said Chapter, and other statutes, rather than upon the county and the state, it likewise follows that the state funds may not be used for such purposes, and therefore, there must be established within the poor fund a budget item account, separate and apart from any other item, for this purpose, in which the state does not participate, and assistance to this class and all other classes against the poor fund must be paid out of the second account item.

Chapter 82 provides: "that whenever the counties are unable to meet their **proportionate share of public assistance under any part of the act**, the state department of public welfare shall make grants in aid out of state funds, to such counties in proportion to the financial ability of the county to meet such share." (Sec. XI (b), Part I.) That state funds may be used for general relief as one of the parts of the act is plain from the provisions of Part II, Section XIII, where it is specifically provided:

"The state department shall make grants-in-aid from state public welfare funds to county public welfare departments for **general relief purposes.**"

The statute further provides in Section XI of Part I, that when certain conditions are shown to exist by an

audit of the state examiner, the state must grant aid. The conditions are as follows:

1. That the six mill levy is inadequate to meet the county's proportionate share of public assistance under any part of this act.
2. That the county commissioners are unable to declare an emergency for the purpose of providing additional funds.
3. That the county board has expended its poor fund only for the purposes levied.

This brings us to the question asked, "When does an emergency exist with regard to the poor funds of a county, and what are the obligations of a county to make additional levies for the poor fund when such emergency exists."

The term "emergency" is defined by Webster, as "an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency."

Our statutes grant certain authority to public officials in cases of emergency, and define such emergencies.

Section 4470.3 provides:

"Whenever the Governor of the State of Montana shall issue a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants thereof caused by famine, destitution, conflagration or other public calamity, the Board of County Commissioners of such county is authorized to transfer to the proper fund to be used for purposes of such relief any moneys in any other fund or funds of the county but no moneys belonging to any bond sinking or interest fund or any school fund must be so transferred. The governor shall in his proclamation state the facts upon which such emergency is declared and shall specifically limit the time during which such transfers may be made."

Under this section the emergencies contemplated are set forth, and it is provided that in such events, by proclamation of the Governor, the county commissioners may make transfers from any funds to the fund used for the purpose of relieving the inhabi-

tants, to-wit, the poor fund. But this of course contemplates transfers only of surplus in any funds, and not of the entire fund or funds, or of any part of such funds required for the purposes of that fund.

Therefore, under the conditional requirement of the provisions of Chapter 82 quoted above, if the money within the poor fund budgeted for the purposes of Chapter 82 is exhausted, and an emergency exists such as mentioned in Section 4470.3, and if the commissioners determine that any fund within the county has a surplus, it is required that the county commissioners declare an emergency and call upon the Governor to issue his proclamation, so that they may have authority to make such transfers into the poor fund. However, if the commissioners determine that there are no surpluses which can be transferred, it would be an idle act to call upon the Governor for the issuance of his proclamation. In such event, the county commissioners could not declare an emergency, and all other conditions having been complied with, it would be the duty of the state department to make a grant to such county.

It is therefore my opinion, that Chapter 82 does not require that the poor fund be entirely depleted before the state will grant aid, but only that those accounts set up for the purposes of old age assistance, aid to needy dependent children, aid to needy blind, and general relief, be so depleted.

If those accounts mentioned are depleted, and transfer of surpluses from other accounts of the poor fund cannot be made, and no transfers can be made in accordance with Section 4470.3, and all other conditions requisite are shown to exist, the county is entitled to a grant in aid from the state welfare funds.

General Relief, as provided in Chapter 82, does not include expenses of operation of county hospitals, salaries and expenses of a county physician, hospitalization of county patients at the State Tuberculosis Sanitarium, or other medical care of hospitalization, refund of poor taxes, interest on poor fund warrants, or expenses of burial of the poor.

The county welfare board may use grants in aid for general relief, as that term is herein defined, but not for

medical aid and hospitalization and other institutional care for indigent persons.

An emergency exists with regard to the poor fund as this term is used in Chapter 82, when all accounts set up within the poor fund, for the purposes of all parts of Chapter 82, are exhausted, and there is a demand for relief, and there are no surplus moneys in other county funds, which, with authority of a proclamation of the Governor under Section 4470 3 Revised Codes of Montana, 1935, can be transferred to the poor fund. It being mandatory to levy the six mills, which is the statutory limit for the poor fund, there can be no further levies, even in an emergency.