

obtain an audit by the State Examiner. The Board has requested such an opinion.

Part I of Chapter 82, Laws of 1937, contains the general provisions relative to the duties, functions and authority of the state and county boards and departments in the administration of the act.

Section XI of Part I, in so far as grants-in-aid are concerned, provides:

“(b) 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 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 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 will be noted that this section authorizes the payment from state funds of “such proportion of its public assistance as the county is unable to meet.” It does not provide that such payment shall be made to the county, but only that it be made “from the state public welfare fund.” All assistance, except general relief, is paid directly from the state fund, and the county thereafter reimburses the state fund for its proportionate share of each kind of assistance, as is provided under Parts III, IV and V of the Act. When a county is unable to meet its proportionate share as required under these parts, then such proportionate share shall be paid from state funds. In other words, the state, in such event, shall pay the entire amount and shall not require re-

Opinion No. 207.

Public Welfare—Grants-in-Aid.

HELD: It is not required that an audit by the State Examiner be made before state department may make a grant-in-aid to a county for general relief purposes.

2. Before the state department may make grant-in-aid to counties for purposes other than general relief, it must require an audit by State Examiner as provided under Section XI, Part I of Chapter 82, Laws, 1937.

December 8, 1937.

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

Dear Mr. Brandjord:

At the last meeting of the State Board of Public Welfare, grants-in-aid to Lincoln and Sheridan Counties for general relief were approved, pending opinion as to whether or not, before making such grants, it is necessary, under the provisions of Chapter 82, to

imbursement from the county. However, before the state is authorized to do this, Section XI requires that certain conditions be made to appear from an audit by the state examiner.

Part II deals with that form of assistance known as general relief. Such assistance is paid entirely from county funds, directly by the county, and no part thereof is paid from state funds. However, in the event a county is unable to meet its financial obligation for such assistance, the state is authorized to make a grant-in-aid to such county. Section IX of Part II, provides:

"The state public welfare department shall have the authority to require as a condition of grants from state funds to counties for relief purposes that the board of county commissioners shall make such tax levies and establish such budgets as are needed in respect to the public assistance situation in the county, not otherwise prohibited by law. The state department of public welfare shall also have the authority to require as a condition of grants from state funds to the counties that the county board of commissioners shall make no transfers from the county poor fund or charges against the county poor fund for purposes other than for which the county poor fund is established by law, and it is hereby made mandatory upon the board of county commissioners that taxes levied and collected for the county poor fund shall be expended only for the purposes levied.

"It shall be within the authority of the state department of public welfare to make grants-in-aid from state funds to the county departments of public welfare for general relief purposes in proportion to the financial inability of the county to provide for relief assistance to its own residents.

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

It will be noted that this section authorizes the state department to make

grants-in-aid from state funds to counties "for general relief purposes in proportion to the financial inability of the county to provide for relief assistance to its own residents." This section, dealing specifically with grants for general relief, sets forth certain conditions which "the state department shall have the authority to require" before making such grant. The language of this section, while making it mandatory upon the state department to make grants-in-aid to counties for general relief, leaves it within its discretion to require certain conditions to be made to appear. However, under Section XI of Part I, the language used would indicate that it is mandatory upon the state department to require that the conditions set forth therein appear from an audit by the state examiner, before the county is relieved of the duty of reimbursing the state.

It is therefore my opinion (1) that it is not mandatory upon the state department to require an audit by the state examiner before making a grant-in-aid to a county for general relief purposes. (2) That only when an audit by the state examiner proves the conditions set forth in Section XI of Part I, to be true, may the state department pay from state funds the proportionate share of a county.

We do not mean by this opinion that a grant for general relief may be made merely upon a request therefor. The state department should be satisfied, from a satisfactory showing made by the county requesting the grant, that the county is financially unable to provide for general relief to its residents.