

## Opinion No. 229.

Counties — County Commissioners —  
Poor—Hospitals.

HELD: 1. County commissioners may lease county buildings and equipment for hospital purposes in the manner provided by Section 4465.29, and not otherwise.

2. County commissioners may contract for hospitalization of the poor in the manner provided by sections 4525, 4526, and 4527, and not otherwise.

January 7, 1938.

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

Gentlemen:

You have submitted to this office the following statement of facts, asking for our opinion thereon:

"The Valley County Hospital during the months of June and July had all expenditures paid directly by the county. The manager of the hospital was paid a direct salary of \$120.00 per month. All expenses such as salaries for nurses, food, medicines, bedding, heat, lights, building up-keep, were paid entirely and directly by the county from the poor fund.

"The expenditures for June are as follows: Salaries, \$538.00; maintenance, \$407.80; drugs and hospital expenses, \$229.91; Total—\$1,175.71. For July: Salaries, \$519.00; maintenance, \$510.18; drugs and hospital, \$142.63; Total—\$1,162.81.

"Starting with August the county let a contract for the care and man-

agement of their county hospital to Mrs. Mabel Ferguson as follows: The county is to pay her \$2.25 per patient day. The county is to furnish heat, lights and building up-keep, provide any medicines as requested by prescription by one of the county doctors. Mrs. Ferguson was not to request the county to pay for any patient who was not placed in the hospital by order of one of the county physicians, county commissioners, the county clerk or any person authorized with such authority by the county commissioners. Mrs. Ferguson in return for the \$2.25 per day patient care was to provide food, sufficient care by competent nurses and any other needs that should arise, such as a special nurse, etc.

"The expenditures for the hospital for August, September and October are as follows: August: Maintenance, \$1,074.95; drugs and hospitalization, \$250.38; Total—\$1,325.33. September: Maintenance, \$1,062.64; drugs and hospital \$227.55; Total—\$1,290.19. October: Maintenance, \$947.18; drugs and hospital, \$211.31; Total—\$1,158.47.

"Mrs. Ferguson was paid during August \$939.50 for patients' care, during September \$827.25 for patients' care, and during October \$715.50 for patients' care. During the month of October the hospital showed 439 patient days; 318 of these days were paid for by the county, the balance, 121 days, were paid for by the individual patients. There was nothing in the contract allowing or prohibiting Mrs. Ferguson from taking outside patients or patients who were able to pay for their care. Mrs. Ferguson charges these people for hospital care at the rate of \$3.00 per day.

"All cases are tended to by one of the county physicians, there being three in this county. These physicians are paid as follows: The resident physician in Glasgow, \$250.00 per month; the other two, both in outlying districts receive \$100.00 per month. During the month of October the report showed twelve major operations, eight minor operations and seven maternity cases. These were all handled by the physician who lives in Glasgow."

The main complaint seemingly is, that the county, in a county owned and maintained hospital, is allowing patients not of relief status, to be cared for. The question you have submitted principally resolves itself into whether or not a county may own and maintain a county hospital and admit patients therein able to pay for the service, and to otherwise permit the county hospital to be operated as a hospital for revenue, and of course the further question is involved herein as to whether or not the facts stated constitute the hospital as a county hospital.

Section 4464.4, Revised Codes of Montana, 1935, provides that the board of county commissioners has jurisdiction and powers to provide for the care and maintenance of the indigent sick or otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and to levy the necessary tax for the support of the same.

Section VI of Part II of Chapter 82 of the 1937 Session Laws provides:

"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 or surgical services as approved by the state board of health or the state medical association. 'Medical' or 'medicine' as used in this act refers to the healing art as practiced by licensed practitioners."

*Yegen v. Board of County Commissioners*, 34 Mont. 79.

It is elementary that the county commissioners have only such powers as are expressly provided by statute or necessarily implied therefrom. The statute expressly authorizes the county to maintain hospitals, or otherwise provide for the same, for the indigent sick or the otherwise dependent poor of the county. The county is without power to admit patients within said county hospital who are able to pay. The county hospital cannot engage in the business of operating a hospital for revenue.

Sections 4465.27 and 4465.29 provide:

Section 4465.27: "Lease of county property. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such lease shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare, and all revenue derived therefrom, except as otherwise provided, shall be paid into the county treasury. On the tenth day of January and the tenth day of July in each year the county treasurer shall distribute such revenue to the several county and trust agency funds on the basis of the tax levy for the preceding calendar year. All such property must be leased subject to sale by the board, and no license shall be for a period to exceed three (3) years."

Section 4465.29: "Lease of county property for hospital purposes. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To lease and demise county buildings, equipment, furniture and fixtures, for hospital purposes, with full power of lessor, except as hereinafter limited, upon such terms and conditions as the board shall decide upon. The rentals received under such lease or leases shall be paid into the general fund of the county.

"No such lease and demise shall be made for a longer period than five years, nor shall said board enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for five weeks and that the said buildings and equipment are for lease for hospital purposes."

Section 4465.27 permits the leasing of only that county property which is not needed by the county, while Section 4465.29 is an additional power reposed in the board, and is not circumscribed by Section 4465.27, and the

county may lease county buildings and equipment for hospital purposes subject to the limitations provided for in Section 4465.29. It will be noted that in addition to the conditions required by Section 4465.29, the requirement is made that rentals to be paid are to be placed in the general fund of the county. This requirement necessarily assumes that the rentals are to be in cash. The facts submitted by you do not disclose competitive bids were made, and that other conditions were performed as required by said section.

Sections 4525, 4526, and 4527 provide:

Section 4525: "Care of county poor and indigent sick and infirm—letting of contracts by commissioners. The board of county commissioners may, at its regular meeting in August of each year, make an order directing the clerk of the board to publish a notice in a newspaper inviting sealed proposals for the care, support and maintenance of the poor of the county per capita by the week for a period of one year, said proposals to include the entire cost of feeding, clothing and maintaining the county poor; and inviting sealed proposals for the care, support and maintenance of the indigent sick and infirm of the county for a period of one year, said proposals to include the entire cost of feeding, clothing, hospital care and nursing for such indigent sick and infirm and Christian and respectable burial expenses. Such notice must be published once a week for four successive weeks in the official newspaper of the county."

Section 4526: "Contracts for care of poor and indigent sick and infirm. Separate proposals may be made for the care, support and maintenance of the county poor, and for the care and maintenance of the indigent sick and infirm of the county, and such proposals shall be addressed to the clerk of the board. The board may annually, at its September meeting, award a contract for the care, support and maintenance of the county poor for the ensuing year to the lowest responsible bidder or bidders therefor, and may also award a contract for the care and maintenance of the indigent sick and infirm of the county for the ensuing year to the lowest responsible bidder or bidders therefor; provided, that if the lowest re-

sponsible bidder or bidders for the care and maintenance of the indigent sick and infirm of the county, both of such contracts may be awarded to such bidder or bidders; and provided further, that if a county owns a county poor farm, with suitable buildings of sufficient size to care for the poor and indigent sick and infirm of the county, the county commissioners of such county may employ some suitable person as superintendent of such poor farm, and the county may maintain the said poor and indigent sick and infirm at said farm at the expense of such county. Such superintendent shall at all times be under the control of and subject to the orders of the board of county commissioners, and may be removed by them at any time."

"Section 4527: "Contract for medicines and medical attendance. The board must annually, at their December meeting, make a contract with some resident practicing physician to furnish medical attendance to the sick, poor, and infirm of the county, and to the inmates of the county jail, and must also make provision for the furnishing of medicines to the same; provided, however, that the board may let such contract for the furnishing of medical attendance to the physician appointed by such board as county health officer, and may fix a salary or other rate of compensation to be paid to such county health officer for the furnishing of such medical attendance, which salary or other compensation shall be in addition to the salary of such physician as county health officer. Said board may also, when in its judgment the best interests of the county require, appoint a deputy county health officer who need not be a resident of the county but who shall be located at a point where he can serve people living in a portion of said county adjacent to his point of residence. The boards of county commissioners of two or more adjacent counties may also, when in their opinion the needs of the county poor living at a distance from the residence of the county health officer, will be better served by such an arrangement, unite in employing a special deputy county health officer whose duty it shall be to attend to the needs of the county poor in any

designated part of said adjacent counties.”

“The county commissioners of the several counties uniting in such an arrangement shall fix the compensation of such special deputy and such several counties shall bear the cost of same on some equitable division.”

Any contract entered into for the hospitalization of county patients must not exceed a term of one year, and all other requirements in entering into said contract must be complied with as provided for in the above quoted statutes. From the facts you have submitted to us this does not appear to have been done. If the county is jointly engaged with Mrs. Ferguson in the hospitalization of county patients, then the contract is invalid, as patients who are able to pay for their care are being accepted in said institution, and the county cannot jointly or separately operate a hospital for revenue or accept patients who are able to pay. The facts you have submitted are incomplete and insufficient in many necessary phases, and it is therefore impossible to formulate a definite conclusion upon the specific question propounded; that is, whether or not the contract between Mrs. Ferguson and Valley County is invalid. Therefore, in summary, we are submitting the following rules, and you will apply said rules to the facts and conditions existing. These rules are as follows:

1. Any lease made of the county building and equipment for hospital purposes must comply with all of the conditions set forth in Section 4465.29, which requires that the rentals shall be paid into the general fund of the county; that the lease shall be made for no longer period than five years; that advertising for bids be published in a newspaper in Valley County at least once a week for five weeks; and that said building and equipment be leased for hospital purposes.

2. Any contract for hospitalization of the poor of Valley County shall not exceed one year, and shall be let in the manner as provided for in the above quoted section. This contract need not be let to the lessor of the county buildings, but to the lowest responsible bidder, who may be some other person.

3. No county hospital operated by the county, jointly, or separately, can accept patients who are able to pay for the services rendered.