

sick to have services of doctor of their own choice, approved as above, and payment therefor is a legal charge against the poor fund.

3. The Board must retain supervision over such services and may pay only such claims therefor as have been ordered and approved by it.

July 18, 1938.

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

My dear Mr. Brandjord:

You have requested an opinion relative to the following question submitted in your letter:

"There appears to be considerable difficulty in a number of the counties respecting medical and/or surgical patients who are receiving federal aid in whole or in part, namely, WPA workers and their families, employables and their families on direct relief, and all those receiving Social Security Aid or benefit, inclusive of old-age pensioners, widows, dependent children and the blind. Must the county board of commissioners, sitting as a County Welfare Board, direct that all of such groups and classes of persons resort to, and be attended by the County Physician? Or are such persons free to seek medical and/or surgical services from any physicians or surgeons of their own choice and have such physicians or surgeons any recourse to county funds for payment of services rendered?"

"May the Board of County Commissioners, sitting as the County Welfare Board, fix a fee schedule, agreeable to physicians and surgeons, for payment of necessary medical services and care, funds to be paid out of the so-called "mandatory fund?"

"May the County Physician be required to look after the above classes of persons, whether they are not properly catalogued as sick or indigent county poor?"

Section VI of Part II, Chapter 82, Laws of 1937, makes it the "legal and financial duty and responsibility," of the board of county commissioners to

Opinion No. 301.

Public Welfare—County Commissioners—Indigent Sick—Physicians and Surgeons—Fees.

HELD: 1. The Board of County Commissioners has power and authority to provide for medical and surgical care and hospitalization for indigent sick as is approved by state board of health or state medical association, in addition to that provided by County Physician and County Hospital.

2. The Board may fix a fee schedule agreeable to physicians and surgeons, and permit relief clients and indigent

provide medical aid and services and hospitalization "for persons unable to provide such necessities for themselves." This section further declares that, "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 state medical association." The section further provides that the cost thereof shall be "payable from the county poor fund."

Section VII of the same Part makes it the "primary legal duty and financial obligation of the board * * * to make such tax levies and to establish such budgets in the county poor fund * * * as are necessary to provide adequate institutional care for all such indigent residents as are in need of institutional 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."

Prior to the enactment of our Welfare Act (Chapter 82, Laws 1937), and in obedience to the mandate of Section 5 of Article X of our Constitution, the legislature made provision for the care and maintenance of the poor and indigent sick and infirm of the several counties. Under the provisions of Sections 4525, 4526, and 4527, Revised Codes of Montana, 1935, two methods were authorized, viz., by letting contracts for the same, or by appointment of a superintendent of the poor farm. As to the sick, it was provided that the county commissioners let a contract to a resident physician, at a salary, to provide such services. Other than the above provisions, there was no specific procedure provided. However, our Supreme Court, in the case of *Jones v. Cooney, et al.*, reported in 81 Mont. at 340, after reviewing the history of legislation in our state regarding the poor, made the following pertinent observation:

"When the character of the legislation enacted by territory and state with relation to the care of the poor is considered and analyzed as a whole, one is led inevitably to the conclusion that it has been and is the policy of the law-making body to repose in the county commissioners a wide discretion in the care of the indigent sick and infirm of their respective counties."

Chapter 82 in many respects changes the whole theory of care of the poor, needy and indigent sick, and places the duty and responsibility therefor upon the board of county commissioners acting as a board of county welfare, in conjunction with the state and federal government. However, this new act outlines no specific procedure for the board to follow. I think, therefore, that the observation of the Supreme Court in the *Cooney* case is pertinent and applicable now. Prior to this new act, and under the old provisions of our statutes, aid and assistance was extended by the counties alone to those persons who were classed as paupers. However, in addition to this class, under the modern legislation, our law makers have extended assistance to a wider group of needy who cannot be classed under the old use of the terms "poor" and "pauper." This additional class compose all those who, through no fault of their own, but due to economic conditions, are unable to secure employment to provide themselves and dependents with the necessities of life. They are not paupers in the sense that term has come down to us. Society has recognized the duty and obligation of the government to provide for those who are unable to provide for themselves because of economic conditions or other causes over which they have no control.

While Chapter 82 circumscribes to some extent the powers and duties of the board of county commissioners as to certain classes of poor and needy, such as aged, blind, and dependent children, yet there is still imposed in them a wide discretion in the care of all those who do not come within these classifications.

The provisions of Section VII, *supra*, clearly indicate that the legislature intended two separate and distinct budgetary items to be set up within the poor fund, viz., (a) To provide adequate institutional care * * * for all those indigent residents in need of such form of care, and (b) To provide for medical aid and services and hospitalization for all indigent county residents. The first item composes those expenditures which have been dominated "mandatory items," such as county hospital and poor farm, County Physician, Tuberculosis Sanitarium, Insane Hospital, etc. While the second

item composes those expenditures for medical and surgical care and hospitalization for all those indigent sick who do not need institutional care.

It is therefore my opinion that the board of county commissioners, within their sound discretion, may budget within the poor fund for medical and surgical care and services and hospitalization in addition to those furnished by the county physician and county hospital, and may likewise, within their discretion, fix a fee schedule, agreeable to physicians and surgeons, for the payment of such services. Such budgetary item to be separate and distinct from the so-called "mandatory item."

It is further my opinion that medical and/or surgical patients who are receiving federal aid in whole or in part, namely, WPA workers and their families, employables and their families on direct relief, and all those receiving Social Security Aid or benefit, inclusive of old age pensioners, widows, dependent children and blind, if in need of services and unable to provide the same for themselves, are legally entitled to receive such assistance and care, either from the county physician, or from a physician of their own choice, at the expense of the poor fund. However, such medical and surgical care and hospitalization, so furnished, must be such as is approved by the state board of health or the state medical association, and must be under the direct supervision of the board of county commissioners.