

Opinion No. 80.

Public Welfare—County Commissioners—Duties—Powers—Meetings.

HELD:

No. 1. The County Welfare Board is limited in number of meetings as now provided by law.

No. 2. Special meetings of the County Welfare Board are limited. (Withdrawn—see opinion No. 104.)

No. 3. When County Welfare Board is meeting exclusively as a County Welfare Board, the per diem and expense should be charged to the poor fund.

No. 4. County Welfare Board can pass upon claims and issue warrants while acting as such board.

No. 5. When taking up welfare matters, the Board of County Commissioners should adjourn as a Board of County Commissioners and convene as a County Welfare Board.

No. 6. The minutes of the Welfare Board should be entered in a separate book from that of the minutes of the Board of County Commissioners.

No. 7. The County Commissioners cannot issue warrants while acting as a welfare board.

No. 8. County Commissioners cannot travel about the county investigating relief cases and make a charge of per diem and cost for such service.

No. 9. The Board of County Commissioners cannot travel over the county as a County Welfare Board investigating relief.

No. 10. The County Welfare Board shall draw warrants representing cash on demand.

No. 11. State Examiner is compelled to audit the poor fund and ascertain when the payments shall devolve upon the state, and shall determine:

First: That a six mill levy has been made.

Second: That the county is unable to declare an emergency.

Third: That the county has expended its poor funds only for the purpose levied.

Fourth: And such facts must appear by an audit from the State Examiner's Office.

No. 12. The Board of County Commissioners cannot rearrange increase or decrease the budget except in refer-

ence to the manner by which they may declare an emergency.

April 6, 1937.

Mr. S. L. Kleve
State Examiner
State Capitol
Helena, Montana

Dear Mr. Kleve:

You have submitted to this office a number of questions asking for an opinion on same.

Question No. 1. How many special meetings can the Board of County Commissioners hold during any month, including meetings as a County Welfare Board?

Section 4462, R. C. M., provides:

"The board of county commissioners except as may otherwise be required of them, may meet at the county seat of their respective counties on the first Monday of each and every month of the year, for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least two day's posted public notice, hold an extra session of not over two days' duration; provided, that the limitation as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes."

Section 4463, R. C. M., provides:

"Such other meetings must be held to canvass election returns, equalize taxation, and other purposes as prescribed in this code or provided by the board."

Subdivision (b) of Section 9, of Chapter 82, 1937 Session Laws, provides:

"The Board of County Commissioners, ex officio, shall be the County Welfare Board and shall receive the same compensation for their services when acting as a County Board of

Public Welfare, as they receive when acting as a Board of County Commissioners, and shall be limited as to meetings as now provided by law."

Section 4457, Revised Codes of 1921, which has since been repealed, provides:

"If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the board, a special meeting may be ordered by a majority of the board. The order must be entered of record, and five days' notice thereof must be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting."

Under Section 4462, the Board of County Commissioners is authorized to hold a regular session not exceeding three days, except the December session, which may sit not exceeding eight days. Under this section, the board, upon the giving of two days' posted public notice, may hold an extra session not over two days' duration, excepting in counties of the first, second, third or fourth class.

Section 4457 of the Revised Codes of 1921 provided the manner in which a special session could be called, after the adjournment of a regular meeting, and that section provided that the special meeting might be ordered by a majority of the board upon five days' notice. In other words, individual members of the board, as distinguished from the board as an entity, could convene an extra session under the repealed act.

This section further required the order of notice to specify the business to be transacted and only that business so specified could be transacted at such special meeting.

Section 4457 having been repealed, the only method by which an extra session may be called is as provided in Section 4462.

In other words, the board is a legal entity and has a right to call a special session, whereas under the repealed statute a different method was so provided, and inasmuch as the board, acting as a legal entity, and during a regu-

lar session, has the power to call a special session, it is apparent that only one special session is authorized. The language used in Section 4462 in referring to an extra session is used in the singular and does not specify extra sessions, but only an extra session.

See *Williams v. Commissioners*, 28 Mont. 360, 14 Attorney General Opinions, page 110.

If the Board of County Commissioners was authorized to hold as many extra sessions as they deemed fit, it would be possible for the board to be in almost continuous session. We believe that it is the intent of the law in these smaller class counties to limit the number of meetings, and expenditures which the county would have to incur, to one regular and one extra meeting. In the notice of this extra session, it is not necessary to specify the business to be transacted, but such business may be performed as is provided in Section 4463, which would include any unfinished business or any business as is required by law to be performed.

Section 9 of Chapter 82, 1937 Session Laws, creates a County Welfare Board, independent and separate from the Board of County Commissioners. The County Welfare Board is limited as to meetings as now provided by law.

In other words, Chapter 82 does not allow any additional meetings other than as formerly were allowed the board of county commissioners; and the business as a County Welfare Board must be transacted during such times.

It is the view of this office that Chapter 82 does not add any additional work to that formerly conducted by the Board of County Commissioners. Prior to the enactment of Chapter 82, the Board of County Commissioners was compelled to take care of the Old Age Pensions, the Mothers' Pensions, and various other relief matters that now are being taken care of by the County Welfare Board. In other words, these duties have simply been transferred to another board, and inasmuch as under Sections 9 and 10 of the Act, the County Department of Public Welfare has a staff personnel which will take care of a great deal of the work, it certainly appears that no additional duties have been imposed upon the three members of the Board

of County Commissioners, and by a systematic arrangement of their work they should be able to handle the labor, not only of the Board of County Commissioners, but of the County Welfare Board in the same time and in the same number of meetings as was formerly allowed by law to the Board of County Commissioners.

Question No. 2. How many days may such special meeting be conducted, including meetings as a County Welfare Board?

The answer to Question No. 1 fully answers this question.

Question No. 3. From what fund should Commissioners' per diem and expense be paid while meeting as a County Welfare Board, either at a regular or a special meeting?

Chapter 82 creates in each county a Welfare Board. This Board is separate and distinct from the Board of County Commissioners, except the Board of County Commissioners, ex officio, constitutes the County Welfare Board. Section 10 of said Act refers to the duties of said County Board and those duties are separate from the duties of a Board of County Commissioners. The Board of County Commissioners has no power, as such, to perform duties of the County Welfare Board. Each Board is a legal entity.

It follows, therefore, that when the board is meeting as a County Welfare Board, and is acting exclusively upon matters relating to that board, the per diem, and expense, should come out of the poor fund. However, the Board of County Commissioners should not adjourn as one board and convene as another in any one day. If the board acted in any one day as a Board of County Commissioners, and also as a County Welfare Board, it would be impossible to segregate and allocate the per diem and expense and for that reason the board if acting as County Commissioners should in one day meet exclusively as a Board of County Commissioners, and so likewise when meeting as a County Welfare Board, should act exclusively as such on that particular day.

Question No. 4. Can County Commissioners pass upon claims and issue warrants on any fund while in a special meeting?

Inasmuch as each board is separate and distinct from the other, it follows

that each board could only pass upon claims or issue warrants as may pertain to that particular board while in special meeting. For instance, if the Board of County Commissioners desires to pay salary claims upon the general fund, it should adjourn as a County Welfare Board and re-convene as a Board of County Commissioners.

Question No. 5. When taking up welfare matters, should the Board of County Commissioners adjourn as a Board of County Commissioners and convene as a County Welfare Board, or are both boards the same, with the same powers and duties?

As inferred in Question No. 4, when the Board of County Commissioners takes up matters effecting and relating to welfare, it should convene as a County Welfare Board and vice versa.

Question No. 6. Should the minutes of the Welfare Board be entered in the Commissioners' Proceedings or should they be kept as Welfare Board minutes in a separate book for that purpose?

Section 4461 requires the Board of County Commissioners to keep a minute book, road book, franchise book and a warrant book.

Chapter 82 requires the County Welfare Board to conform to the rules and regulations of the Federal Security Board and the State Department, and such rules and regulations are binding upon the county department.

Inasmuch as the County Welfare Board, and the Board of County Commissioners are separate entities, it follows that the County Welfare Board should keep separate minutes. Unless the State and Federal regulations would so require, the minutes of the County Welfare Board would not have to be published. By virtue of strict State and Federal Auditing, the interests of the taxpayers would be protected without such publication.

Question No. 7. Can County Commissioners issue warrants on the poor or any other fund while sitting as a County Welfare Board, or must they convene as a Board of County Commissioners for that purpose?

This question has already been answered. When the County Welfare Board has convened, they can issue such warrants and pass such claims as properly come under the jurisdiction of such Welfare Board, and the same

situation applies with the County Commissioners.

Question No. 8. Can an individual County Commissioner travel about the county, investigating or looking after relief or poor cases, and charge per diem and mileage for such service?

Section 10 of Chapter 82 provides that the County Welfare Board shall select and appoint a staff, and be guided by the recommendations of the county staff workers. In other words, ample provision has been made for carrying on all the details and duties of the Welfare Board. The Board of County Commissioners has no jurisdiction relating to matters of the Welfare Board, and so the law prohibits individual county commissioners from traveling about the county investigating welfare cases and making charge therefor.

Question No. 9. Can the entire Board of County Commissioners, acting as the County Welfare Board, travel over the county on relief or poor matters, and charge per diem and expense for such service?

This question has been answered in my answer to Question No. 8. As stated therein, the law has imposed upon the staff workers certain duties, and these staff workers are responsible in the carrying out of those duties to the County Welfare Board, which in turn is under the supervision of the State Board. It is not the intention of the law that the County Welfare Board shall attend to field details. Therefore, they, as a Board of County Welfare, are prohibited from traveling over the county on relief matters and making charge therefor.

Question No. 10. Under the provisions of the Social Security Act, all general relief is paid by the county in cash, and in advance, each month. Can the County Commissioners legally pay such relief in advance?

As to whether or not general relief can be paid in advance each month is hardly necessary to answer. The words, "in advance," in this chapter have a relative meaning. Section 5, part 2 of said Act provides that all relief disbursements shall be drawn by warrant or check representing cash on demand, provided, however, that if there is evidence to prove that the recipient dissipates his relief allowance, cash relief will be discontinued to him and relief allowance will be given in

the form of disbursing orders. There is no ambiguity in Section 5, and therefore said section lends its own interpretation. If the Federal Government requires the relief to be paid cash in advance, under said Section 5 and under the procedure followed by the County Welfare Board, the Welfare Board has complied with the Federal requirements. If the said law prohibits relief in advance, then you may not consider this relief in advance and the law has been complied with. In other words, whether or not the relief is in advance is a moot question and not germane to Section 5. The disbursements as provided for in Chapter 82 are actually in cash and it is only necessary to determine that particular point.

Question No. 11. Under the provisions of Section II of Part 1 of the Public Welfare Act, the State Examiner is required to audit the poor fund expenditures to determine whether or not all funds have been spent for the purposes levied.

(a) What period of time should this audit cover?

(b) Does this refer to the cash itself, or does it refer to the budget?

(c) What specific items may legally be paid from the poor fund? (See Attorney General's Opinion No. 282 attached, Nos. 378, 423, 439, 502, 581 and 583 of Volume No. 15 and No. 198 of Volume 16.)

(d) What would be "an emergency for the purpose of providing additional funds," as used in this section of the Social Security Act?

(e) It would appear from this Act that when the county has exhausted its poor fund cash, the State Public Welfare Commission will assume and pay all public assistance expense in said county. Is this correct?

(f) In making the audit required by this Act, should the State Examiner take into consideration anticipated revenue such as levied, but uncollected, current taxes? For instance, if the poor fund cash is exhausted on April first, should the May tax collections be considered?

(g) Under this Act, should poor fund warrants be registered if there is no cash in the fund, or should all assistance payment cease until taken over by the State Welfare Commission?

Section III of Part 1, Subdivision (b) of Chapter 82, makes 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 the funds of the county poor fund for all the 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 the amount shall be used for such purpose. If the six mill levy shall prove inadequate to meet the county's proportionate share, 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 this public assistance as the county is unable to meet shall be paid from the State Public Welfare Fund.

Before the State Public Welfare Fund shall be called upon to assume the county's proportionate share, the following condition must exist:

First. A six mill levy must be made.

Second. The Board of County Commissioners must be unable to declare an emergency.

Third. It must appear that the county board has expended its poor funds only for the purpose levied.

Fourth. And such facts must appear from an audit by the State Examiner's office.

The question then to be determined is, when is it impossible for the county to declare an emergency? Section 4613.6 provides in part:

"In a public emergency, other than such as are hereinafter specifically described, and which may not reasonably have been foreseen at the time of making the budget, the Board of County Commissioners by unanimous vote of the members present at any meet, and the time and place of which all of the commissioners shall have had reasonable notice, shall adopt and enter upon their minutes, a resolution stating the facts creating the emergency."

The first paragraph of Section 4613.6 provides the manner and form in which such emergency shall be declared.

The second paragraph of said section provides:

"Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake epidemic, riot or insurrection, * * * or to meet mandatory expenditures required by law."

The County Commissioners may, upon adoption by unanimous vote of all the members present at any meeting, so declare the emergency.

While the relief expenditures referred to in Chapter 82 are mandatory expenditures required by law, yet this office is of the opinion that those relief expenditures do not come under the second paragraph of Section 4613.6 for the reason that said relief expenditures are indefinite, and more or less undetermined, and not fixed as to each individual case. Said second paragraph has application, when it uses the language, "mandatory expenditures," and fixes expenditures such as the salaries of the county officials, and a similar class of expenditures. The emergency provided for herein shall be the emergency as mentioned in Paragraph 1 of said Section 4613.6. It is the opinion of this office that an emergency, as heretofore referred to, can continue to be declared by the Board of County Commissioners until such time as the county has exhausted its resources, as provided for by law.

Section 4630.30 provides for the investment of sinking and interest funds.

Section 4631 authorizes the County Commissioners to transfer certain funds that may be on hand in any of the several county funds, and to apportion surplus monies to the payment of the outstanding indebtedness of the county.

Section 4639.1 authorizes the county to invest in county warrants. The budget law authorizes the county to transfer excess funds from certain items. It is the view of this office, that when all of these things have been done, then it would be no longer possible for the Board to declare an emergency, and at such point of time the county's obligation would be assumed by the State.

You have asked in Question No. 11, Subdivision (a), as to what period of time should this audit, by your depart-

ment, cover. This office believes that your department, under the facts of each particular case, will have to determine that question. The point for you to determine is whether or not it is possible for the county to declare an emergency, and your department will have to cover such period of time as will enable you to determine that point.

As to the time said audit should cover, it appears to this office that this should also depend somewhat upon the method of auditing that your department may use. The period of time may vary in some counties, depending upon the special conditions existing. Ordinarily, this office would be inclined to think that it would be necessary, at least, for said audit to cover the fiscal year.

You have requested under Subdivision (b) of Question No. 11, information as to whether or not this audit shall refer to cash or to the budget. Again, we think that the answer to this depends upon your method of auditing, and to the particular situation that may exist in each particular county; but ordinarily and generally, it will apply to both cash and budget.

Under Subdivision (c) of Question No. 11, you ask what specific items may legally be paid from the poor fund. Your question is based upon an abstract principle of law, rather than a concrete set of facts. As to what the particular item may be will determine the answer to this question. No particular general rule of law can be stated that would apply to wholly different items, and each item must be separately determined. Your question, as submitted in Subdivision (e), Question No. 11, has heretofore been answered, in other subdivisions of Question 11.

The State Public Welfare Commission cannot assume the obligation of the county until those conditions, as defined in Subdivision (b) of Section II, of Part 2 of the Act, have been complied with, particularly, until it is impossible for the Board of County Commissioners to declare an emergency.

In reference to Subdivision (f) of Question No. 11, we think the reasons given in a former subdivision of this question answers the same. It all depends upon when it is no longer possible for the board to declare an emergency. The same situation applies to Subdivision (g).

Question No. 12. The present fiscal year budget made no provision for many items covered by the Social Security Act. What action should the Board of County Commissioners take with reference to such budget? Should they rearrange, increase or decrease the budget?

This office cannot see where the Board of County Commissioners has any authority by law to rearrange, increase or decrease the budget during the present budget and fiscal year, by reason of the provisions of the Social Security Act, other than as provided for in reference to declaring an emergency as heretofore referred to in the answer to Question 11 of your letter. Whatever alteration is made in the present budget must be made in accordance with the authority to declare emergencies.

As heretofore stated, it appears that in many of your questions, particularly Question No. 11, you have submitted a question in an abstract nature, calling for an abstract statement of law. That many of the matters, particularly referred to in Question No. 11, also relate to the method and manner of procedure and policy of auditing, and as to such opinion, this office feels that any answer would be of little value to you, and rather a matter for your office to determine; that some of these matters do not call for an interpretation of the law, as no ambiguity is involved in the statute, and hence no interpretation of the legal principles involved is needed.