Opinion No. 117

Public Welfare—General Relief—Wages, Prevailing Rate.

HELD: 1. County department may require applicant for general relief to perform work for the county at prevailing rate of wages, which wages must be paid for by warrant or check unless applicant dissipates his allowance.

2. "Prevailing Rate" of wages defined as that wage as paid for similar work at the place where performed.

August 16, 1939.

Mr. Claude A. Johnson
County Attorney
Red Lodge, Montana

Dear Mr. Johnson:

I have your letter enclosing copy of opinion rendered to your county commissioners with reference to the provisions of Section 13, Chapter 129, Laws of 1939. I note that you advise that under this section, the commissioners may require an applicant for general relief to perform work for the county, which he is capable of performing at the prevailing rate of wages, and if he refuses they may deny him relief.

In so far as your opinion goes, we agree with the conclusions therein. However, in view of the fact that this is a new provision of the Welfare Act and one that has been causing more or less confusion, I deem it advisable to enlarge somewhat upon your opinion.

It will be noted that the statute provides, "that if the county has work available which an applicant for general relief is capable of performing * * * ." It is my opinion that by the use of these words, it was the intention of the legislature that such work must be work which will be of benefit to the county, and not private employment secured by the commissioners from some private individual. That this was the legislative intent is further evidenced by the provision requiring payment for such work to be made from the poor fund.

Again, the statute provides that the commissioners may require the applicant to perform such work as he "is capable of performing." In my opinion, under this provision, the work must be such work as the applicant is physically able to perform, and in so far as possible is such work as the applicant has generally performed in private industry, such as common labor, mechanical or professional labor. In other words, the applicant should not be required to perform work for which he is not fitted, or which would be degrading or obnoxious to him.

It might be further noted that the statute provides that such work must be paid for at the "prevailing rate of wages." This office had occasion to interpret this phrase as used in Section 1 of Chapter 102, Laws of 1931, (Secs. 3043.1-3043.3, R. C. M., 1935), with reference to wages paid to workmen on state highway contracts. In Opinion No. 246, Volume 16, Opinions of the Attorney General, this office held that the term "prevailing rate of wages," means the rate equal to the charge for or valuation of the daily toil of a laborer, workman or mechanic, as the case may be, at a given labor, in a given industry, according to the scale or standard of money compensation generally received or established by common consent or estimation at the place where the work is performed.

It is therefore my opinion that the county commissioners may require an applicant for general relief to perform labor for the county on such work as will benefit the county, and must pay such applicant the rate of wages commonly paid for similar work at the place where the work is to be performed, but that they may not deny relief assistance to an applicant who refuses to perform labor for the county which he is unable to perform, or which he is incapable of performing, or any work for which he does not receive the prevailing rate of wages. It is further my opinion that such wages must be paid by warrant or check, unless the applicant comes within the other provisions of Section 13.