

No. 134

**COUNTIES—COUNTY COMMISSIONERS—COUNTY
PHYSICIAN—CONTRACTS—MEDICAL CARE AND
HOSPITALIZATION**

Held: Terms of contract between county commissioners and county physician for medical care and hospitalization of poor interpreted, and held not exclusive as to Old Age Assistance recipients.

June 2, 1941.

Mr. Bert I. Packer
County Attorney
Teton County
Choteau, Montana

Dear Mr. Packer:

I have your letter enclosing a copy of the contract between the county commissioners of Teton County and the county physician, relative to medical care and hospitalization of county charges. You request my opinion as to whether or not, under the terms of this contract, the provision—"That the Board of County Commissioners reserve the right to apply the provisions of this agreement to recipients of Old Age Assistance in Teton County"—is exclusive to the extent that, if said reservation is exercised, it must be exercised as to all such recipients.

The contract, I assume, was entered into under authority of and in pursuance to Section 4527, Revised Codes of Montana, 1935.

Chapter 82, Laws of 1937, known as the Public Welfare Act, was enacted by our legislature in order to take advantage of the provisions of the Federal Social Security Act of 1935, and its provisions were drafted in conformity to the Federal Act. The whole policy and aim of the Federal Social Security laws, and consequently of the state laws enacted in conformity therewith, is to remove as far as possible the stigma of pauperism from those unable to provide the necessities of life for themselves, especially the aged and infirm. By Sections VI and VII of Chapter 82, the Act makes it the primary legal duty and obligation of the county commissioners to provide for adequate medical care and hospitalization for all indigent county residents, including old age recipients. Under these provisions of the Welfare Act, a former Attorney General held old age recipients unable to provide medical care and hospitalization for themselves were entitled to have the same furnished by the county, either by the county physician, or by a physician of their own choice, provided the same was first approved by the county commissioners. (See Opinion No. 301, Vol. 17, Official Opinions of Attorney General. See also Opinion No. 10, Vol. 19.)

The history of legislation in this state with respect to the care of the indigent is outlined in the opinion in the case of *Jones v. Cooney, et al.*, 81 Mont. 340, 263 Pac. 429. In that decision the court reviews the changes in these statutes from the enactments in the Bannack Code by the First Legislative Assembly and traces them down to the time of the decision. In summarizing, the court says,

"It will be seen that none of the Acts above referred to has contained therein a mandate requiring the county commissioners to

commit any certain person or persons to the poor farm. The language is permissive rather than mandatory. **Nor in any enactment with respect to the letting of contracts is there any inhibition against the commissioners' affording relief to those who may not come within the terms of the contract; . . .**" (Emphasis mine.)

In the light of the legislation and the modern trend with respect to public relief since the decision in the Cooney case, *supra*, it is only reasonable to assume the discretion reposed in the commissioners is extended to authorize them to make such a contract as would permit them to exclude from the provisions thereof Old Age Assistance recipients. This they have sought to do.

Prior to the amendments to the Social Security Act in 1939, no part of federal grants could be used for medical care, hospitalization or burial. However, since these amendments, federal regulations permit the use of federal funds for this purpose. To conform to these regulations, the Legislature of 1941 adopted an amendment to the Public Welfare Act (Chapter 117, Sections VI and VII of Part II) as follows:

"It is provided, however, that the cost of medical aid and services and of temporary hospitalization for recipients of old age assistance, of aid to dependent children, and of aid to needy blind may be added to each one of these forms of assistance so long as the total monthly grant to any person does not exceed the amount in which the federal government will participate; and provided further, that necessary expenditures for these purposes, in excess of the amounts in which the federal government will participate, shall be paid from the county poor fund."

In interpreting a contract, the intention of the parties must be gathered from the language used in the light of existing circumstances surrounding the making thereof. It was said in the case of *Alywin v. Morley*, 41 Mont. 191, 108 Pac. 778:

"We cannot avoid the conclusion that the contract on its face is ambiguous and uncertain; that its meaning is not clear. This being the case, it was the duty of the district court to construe it in the light of all the surrounding facts and circumstances bearing upon the transaction."

The contract in question here provides in one part "that the hospitalization of all county charges is exclusive except in emergency cases." Then in the next paragraph it is provided, "that the Board of County Commissioners reserve the right to apply the provisions of this agreement to recipients of Old Age Assistance in Teton County." These provisions are somewhat ambiguous and uncertain. However, when we consider the whole subject concerning which the contract was made, in the light of all the circumstances, it is clear the parties recognized the fact recipients of Old Age Assistance were in a different class from the other county charges and therefore intended the terms of the contract should apply to them in a different manner so as to permit the commissioners to have those recipients who desired the services under the contract to accept them; and for those who did not so desire, the commissioners were free to make other arrangements, such as permitting them to choose their own physicians and hospital services in accordance with the opinion of the Attorney General referred to herein, or to add to their grant sufficient for this purpose, as provided under the amendment to Sections VI and VII, *supra*.

Our Court has said:

"In the interpretation of a contract the court may consider the relationship of the parties, their connection with the subject matter of the contract, and the circumstances under which it was made, and determine the intention from the entire agreement."

Alywin v. Morley, 108 Pac. 778, 41 Mont. 191.

"A contract must receive such interpretation as will give effect to the intention of the parties at the time of contracting and such intention must be gathered from the entire agreement."

State Elevator Co. v. Farmers Elevator Co., 27 Pac. (2d)
743, 95 Mont. 557.

It is therefore my opinion that, under the reservation clause of this contract, the parties intended the benefits thereof be extended only to those recipients of Old Age Assistance as requested the same, and, insofar as such recipients were concerned, the provisions of the contract are not exclusive.

Sincerely yours,

JOHN W. BONNER
Attorney General