

No. 266

**SILICOSIS—PUBLIC WELFARE—APPROPRIATIONS—
EMERGENCY, what is**

Held: When facts presented to the Board of Examiners by any department of the state show an unforeseen and unanticipated emergency to exist, as contemplated by Chapter 40, Laws of 1937, and the appropriation made to said department will be insufficient, said board may—under said Chapter 40—permit said department to expend an amount in excess of the appropriation made, in an amount the board may deem sufficient for the fiscal year.

October 11, 1941.

State Board of Examiners
State Capitol
Helena, Montana

Gentlemen:

You have requested my opinion as to the authority of the board under the provisions of Chapter 40, Laws of 1937, on facts presented to the board by the Administrator of the Public Welfare Department.

The Legislative Assembly of 1941 appropriated the sum of \$40,000 for payments to those persons qualifying as having silicosis under the provisions of Chapter 5 of the Laws of 1941. It is now found by the State Board of Public Welfare, which is charged with the administration of Chapter 5 and the expenditure of this appropriation, that said appropriation is insufficient to make payments as provided in said act to all those who have been found eligible. The State Board of Public Welfare, through its Administrator, has requested from your board the declaration of an emergency under the provisions of Chapter 40, Laws of 1937.

As a basis for the request, the State Board of Public Welfare has presented the following figures:

**STATE OF MONTANA
DEPARTMENT OF PUBLIC WELFARE**

Estimated Additional Appropriations Needed to
Make Monthly Payments of \$30.00 to Persons
Having Silicosis for the Fiscal Year Ending
June 30, 1942

Estimated Requirements		
Monthly Payments of \$30.00	\$77,053.50	
Examination fee of \$7.50 for each of 428 applicants approved for payments	3,210.00	1/
Transportation Costs of Applicants to Galen for examination—222 x \$10.00	2,220.00	2/
Administrative Costs	2,000.00	
	\$84,483.50	
Appropriation (House Bill No. 354, 1941 Session)	40,000.00	
	\$44,483.50	

**BASIS FOR ESTIMATED COSTS OF THE
MONTHLY PAYMENTS**

Month	Number Applicants for Payments	Denied ^{4/}	Ap- proved	Pend- ing	No. Rec. Pay- ments	Total Pay- ments
July Actual	110	12	33	65	33	\$ 990.00
August Actual	90	16	46	93	79	2,370.00
Sept. Actual	63	20	57	70	136	4,003.50
Oct. Estimate	40	12	38	69	174	5,220.00
Nov.	25	10	30	54	204	6,120.00
Dec.	20	10	30	34	234	7,020.00
Jan.	20	20	30	4	264	7,920.00
Feb.	15	8	11	0	275	8,250.00
March	15	6	9	0	284	8,520.00
April	10	4	6	0	290	8,700.00
May	10	4	6	0	296	8,880.00
June	10	4	6	0	302	9,060.00
	428	126	302			\$77,053.50

- 1/ Actual cost of X-ray films and supplies used in making the examinations.
- 2/ Transportation costs are paid for all persons granted Silicosis payments. Approximately 80 of the estimated 302 applicants granted payment will not require transportation as they reside at Galen.
- 3/ Payments of \$30.00 to 136 persons is \$4,080.00, but 4 of these persons were receiving Old Age Assistance and their Silicosis payment was the difference between the amount of the Old Age Assistance payment and \$30.00.
- 4/ Applicants denied estimated at 25% during the first 6 months of the program and 40% thereafter. There will be more denials on the late applicants as they will be marginal cases. A greater number of them will not have Silicosis to the extent of being totally disabled to do manual labor as required before payments can be granted.

Prepared by:
Division of Auditing & Finance
Oct. 6, 1941.

These facts definitely show there will not be sufficient funds of the amount appropriated to pay the number now determined eligible. One of two solutions must be adopted. The Board must either pro-rate the appropriations, that is, reduce the amount of each payment, or provide further funds. According to the facts presented, those found eligible have been paid the sum of \$30.00 each for the months of July, August and September. Hence, should the payments now be reduced, those receiving payments hereafter will receive a sum less than \$30.00, contrary to the specific direction of the legislature.

A determination of this question must necessarily depend upon the construction to be given to Chapter 5, Laws of 1941, as well as Chapter 40, Laws of 1937. Statutes should be construed to carry out the legislative intent.

Brown v. Roberts, 78 Mont. 301, 254 Pac. 419;

Mitchell v. Banking Corp. of Montana, 83 Mont. 581, 273 Pac. 1055;

Murray Hospital v. Angrové, 92 Mont. 101, 10 Pac. (2nd) 577.

Chapter 5, Laws of 1941, was an original enactment by the 1941 Legislature and has for its purpose, as expressed in its title, "to provide payments to persons having silicosis as herein defined." Section 3 of the act sets forth the eligibility requirements and provides specifically that "payments shall be made to any person who . . ." meets such requirements. Section 4 of the act provides:

"Amounts of Payments. Any person who has silicosis as defined in this Part, and who has, subject to the regulations and standards of the state and county departments, been determined by the state department to be entitled to a payment under this Part for silicosis, shall be granted a payment by the said state department of thirty dollars (\$30.00) per month, subject to such appropriations as may from time to time be made."

It is clear, from a reading of this act, it was the intention of the legislature that every person who had silicosis as defined in the act and who qualified under the provisions thereof should receive a payment from the state in a specific sum, to-wit, \$30.00 per month. Although Chapter 5 is made a part of the Welfare Act, it is quite clear payments thereunder are not based upon need. Unlike the Welfare Act, payments under Chapter 5 are a specific and set sum, and not such amount as "will maintain the recipient in decency and health." To this extent, it is a departure from the idea of public assistance as embodied in the Welfare Act. Its purpose is to compensate persons who—through laboring in certain industries of our state—have contracted this disease. The legislature has determined such compensation shall be a definite and fixed sum, no less and no more. So far as we know, the sum appropriated by the legislature was not based on any definite figures as to the exact or probable number who could or would qualify for such payment. It is only reasonable to suppose that the legislature, inasmuch as it intended every person qualifying should receive payment of a definite sum, anticipated the appropriation made would be sufficient therefor. It now develops, after several months of operation, that the amount appropriated is insufficient; that a far greater number have qualified than was anticipated by the legislature would qualify. There is, therefore, an "unforeseen and unanticipated emergency." In view of these facts, we may not say that, contrary to the legislative intent, eligible applicants must be paid a smaller sum, if, under Chapter 40 or otherwise, funds can be provided.

Section 2 of Chapter 40, Laws of 1937, provides:

"If it shall at any time appear to the state board of examiners that due to . . . any unforeseen and unanticipated emergency . . . the amount appropriated for any state . . . department . . . would be insufficient

for such purposes during the year for which the appropriation was made, on written application to such state board of examiners, setting forth in detail the reasons therefor, said board of examiners by an order made and entered at length, with such application, in its minutes, may authorize an expenditure to be made during such year for such purposes in such an amount in excess of such income for said year as said board of examiners may deem necessary and required . . .” (Emphasis mine.)

The legislature must have had some purpose in enacting Chapter 40. The obvious purpose was to provide a means for obtaining funds to carry out the will of the legislature expressed in its enactments, when the legislature in any instance appropriated insufficient funds to do so. It recognizes the fact an appropriation made by the legislature might for some reason or another prove insufficient; and, hence, so that government might function and the legislation will be carried out until the next meeting of the legislature, this means was provided.

It therefore follows that since an unforeseen and unanticipated emergency is shown to exist in the State Department of Public Welfare, the board may permit expenditures for payments under Chapter 5 in excess of the appropriation, in an amount which the board of examiners may deem necessary and required.

In arriving at this conclusion, we are not unmindful of the case of *State ex rel. Dean v. Brandjord, et al.*, 108 Mont. 447, 92 Pac. (2nd) 273. However, the facts there presented and the language of the court fortifies our conclusion. In the *Dean* case it was alleged in the Answer of the Board that the State Board of Public Welfare had presented to the legislature an estimated amount which they deemed would be necessary for the purposes during the period covered by the appropriation, but the legislature—regardless of this knowledge—appropriated a smaller amount. The Court, speaking through Justice Stewart at page 453 of the Montana citation, in disposing of the contention Chapter 40 did not apply, said:

“In the light of these factual allegations, we must construe the question of unforeseen and unanticipated emergency. It does not seem reasonable to believe that the legislature in enacting Chapter 40, intended that the same facts and estimates presented to a legislature in session and upon which it refused to act to the full extent requested, could possibly form the basis of the unforeseen and unanticipated emergency mentioned in the Chapter as necessary to invoke action on the part of the Board of Examiners. Clearly, under the showing made, no additional funds could be made available by means of Chapter 40 on the ground of unforeseen and unanticipated emergency.”

It is therefore my opinion that, under the facts here presented to the Board of Examiners, “an unforeseen and unanticipated emergency,” as contemplated by Chapter 40, exists—and the board may permit the expenditure in excess of the appropriation of a sum which the board deems will be sufficient to pay each eligible silicotic \$30.00 per month during the present fiscal year.

Sincerely yours,

JOHN W. BONNER
Attorney General