

No. 349

PUBLIC WELFARE—GRANTS-IN-AID, when county is entitled to—COUNTY COMMISSIONERS—EMERGENCY

- Held: 1. It is not required a county invoke the provisions of Section 4470.3, Revised Codes of Montana, 1935, before it is entitled to a grant-in-aid under the provisions of Section IX, Part II, Chapter 82, Laws of 1937, as amended.
2. Section 4470.3, Revised Codes of Montana, 1935, should only be used in very extreme emergencies, not contemplated under the Public Welfare Act.

January 29, 1942.

Mr. J. B. Convery
Administrator
State Department of Public Welfare
Helena, Montana

Dear Mr. Convery:

You have requested my opinion as follows:

To be entitled to a grant-in-aid from state funds, must a county first have availed itself of the procedure under Section 4470.3, Revised Codes of Montana, 1935, in addition to requirements of Section IX, Part II, Chapter 82, Laws of 1937, as amended?

Section IX, supra, provides that when a county has exhausted its regular income to the poor fund from the six mill levy and other sources of revenue, before it is entitled to receive a grant from state funds it must show (1) that "warrants upon the county poor fund can no longer lawfully be issued," (2) that the board is "unable to declare an emergency for the purpose of providing additional funds," and (3) that the board cannot "provide additional funds from any other source."

It is clear that (1) refers to anticipatory warrants, that is, registered warrants issued to the extent of the anticipated revenue when no cash is available, (2) refers to declaration of an emergency under Section 4613.6, Revised Codes of Montana, 1935. As to the reference under the third condition, it would seem this refers to any lawful means other than (1) and (2), such as, for instance, transfers as authorized under Section 4613.5 or Section 4631, Revised Codes of Montana, 1935.

In determining this question it is well to have in mind the following cardinal principles of law to be observed in interpreting statutes.

The fundamental rule of construction is to ascertain and give effect to the intention of the Legislature as expressed in the statute.

State v. Stewart, 161 Pac. 309, 53 Mont. 18;

State v. Callow, 254 Pac. 187, 78 Mont. 308;

State v. Board of Comm'rs. Cascade County, 296 Pac. 1, 89 Mont. 37.

Statutes should be given an interpretation best calculated to carry out the actuating thought in the minds of the Legislature at the time of their passage.

Reeve v. City of Billings, 189 Pac. 768, 57 Mont. 552.

The safest rule of construction is to take the entire provisions of the statute, and thereby ascertain, if possible, what the legislature intended. The meaning must depend upon the context, and be ascertained from the occasion and necessity of the law, the mischief felt and the object and remedy in view.

Massachusetts Loan and Trust Co. v. Hamilton, 88 Fed. 588, 32 C. C. A. 46. (Cited in Montana Digest, under "Statutes," page 184.)

Reasonable construction of statutes should be adopted if possible.

State v. Mills, 261 Pac. 885, 81 Mont. 86.

Statutes in pari materia should be construed together so as to give effect to each if possible.

State v. Mills, 261 Pac. 885, 81 Mont. 86.

With these rules of construction in mind, we may construe the provisions of Section IX, Part II, Chapter 32, Laws of 1937, as amended, and Section 4470.3, Revised Codes of Montana, 1935.

Section 4470.3, *supra*, provides:

"Whenever the governor of the state of Montana shall issue a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants thereof caused by famine, destitution, conflagration or other public calamity, the board of county commissioners of such county is authorized to transfer to the proper fund to be used for purposes of such relief any moneys in any other fund or funds of the county, but no moneys belonging to any bond sinking or interest fund or any school fund must be so transferred. The governor shall in his proclamation state the facts upon which such emergency is declared and shall specifically limit the time during which such transfers may be made."

This section was enacted by the Legislative Assembly of 1933 as Chapter 43, Laws of 1933. At the same session there were also enacted other laws designed to cooperate with the federal government in extending assistance to needy persons who, because of the depression and consequent growing lack of employment, were unable through their own efforts to provide the necessities of life for themselves and their dependents. (See: Chapter 44, Laws of 1933, authorizing county commissioners to appropriate money from the general fund of the county to employ help and provide expenses in administering relief funds provided by the Reconstruction Finance Corporation; Chapter 45, creating the first Montana Relief Commission, whose function was the distribution to the counties of relief funds, provided by the RFC.)

Prior to the 1933 Session of the Legislature no state or local governmental agency existed for the alleviation of distress. All relief was provided by private organizations. Each local community attempted to provide relief for its own citizens. Outside of private donations in local communities and federal funds, the only other funds available for this purpose were those provided through the poor fund tax levy. As the needs increased, the combined funds so provided proved inadequate. In addition to lack of employment, another condition frequently occurred which called heavily upon relief. This was drought and failure of crops.

Federal, state and local governments were striving to find means to cope with the situation and many schemes or plans were tried. Emergencies were constantly appearing to meet which added funds were immediately required. Considering these existing conditions, apparently only temporary, it is only reasonable to suppose the Legislature of 1933 sought to enlarge the powers of the county commissioners to take care of such temporary emergencies and enacted Chapter 43 as an emergency measure.

First introduced in the House of Representatives as House Bill No. 127, Chapter 43 was an act to amend Chapter 148 of the Session Laws of the Twenty-first Legislative Assembly of 1929, the County Budget Act (Sections 4613.1 to 4613.10, Revised Codes of Montana, 1935), by the addition of a new section to be designated "Section 9A." A substitute bill was offered in practically the same language; but, instead of an amendment to the Budget Act, this substitute bill was a separate act. The substitute bill was enacted and became Chapter 43, Laws of 1933, and carried into the 1935 Revised Codes as Section 4470.3, under Chapter 346, Volume 2, entitled "Special Powers and Duties of County Commissioners."

After trial of many schemes and plans, designed to cope with the relief situation, and with the knowledge gained by past experience that the state and local governments were unable to cope with the situation without federal aid, Congress in 1935 enacted the Social Security Act. This act is based upon the theory government is responsible for the welfare of its citizens and has the duty of providing material assistance in times of national distress and calamity. It recognizes this responsibility and duty, however, rests upon state and local governments as well as the federal government and each must contribute its proportionate share. The Social Security Act, therefore, is designed to provide federal funds to those states and counties who comply with conditions set forth in said act. One of such conditions is that a plan be adopted by the state under which each county of the state contributes a portion of the funds from its own resources and in proportion to its ability. Desiring to avail itself of the benefits to be derived, this state adopted a plan conforming to the requirements of the Social Security Act. Under this plan, the Public Welfare Act, the state and county provide specified shares of grants of assistance to which the federal government contributes, viz., old age assistance, aid to needy dependent children and aid to the needy blind.

For those citizens who cannot qualify for either of the above services, the state plan provides the county shall be primarily responsible by furnishing from its own funds, in addition to its proportionate share of other forms of assistance, assistance in the form of general relief to the extent of its ability within limits of the law. Recognizing that, because of such legal limitations, county funds will in some instances prove inadequate to carry the whole burden of general relief, our legislature has provided that, in such event, state funds may be granted the county to supplement its funds under certain conditions. These conditions are embodied in Section IX, Part II, Chapter 82, supra, and specifically referred to above.

It will thus be seen that Chapter 43, Laws of 1933 (Section 4470.3, Revised Codes of Montana, 1935), was enacted at a time when no unified plan for federal, state and county co-operation was in existence. At the time it was enacted there was no law under which the state could contribute state funds to counties. However, with the adoption of the Public Welfare Act, under which the federal government, state and counties co-operate in providing funds for relief purposes, the same need for such an extreme measure as Chapter 43 no longer existed.

It is, therefore, only reasonable to assume the legislative intent in retaining Section 4470.3 is that it should be resorted to only in extreme emergencies, when the cooperative funds are unable to cope with a condition present in any county.

It is significant to note that, at the time Chapter 43 was enacted by the legislature, Section 4613.6, Revised Codes of Montana, 1935, was in force and effect as Chapter 148, Laws of 1929. Chapter 148 authorized the county commissioners to declare emergencies in contingencies similar to those specified in Chapter 43. There would seem, therefore, to be no reason for Chapter 43. However, when the two statutes are compared, it will be seen that under Section 4613.6 the additional revenue to be provided is limited to an amount which can be provided for the specific fund by levies authorized for such fund—while, under Chapter 43, every fund of the county except the bond sinking, interest and school funds may be used. It is possible, therefore, under the provisions of Chapter 43 to exhaust every fund of the county (with the noted exceptions) for purposes of the poor fund. In such event the business of the county could be jeopardized and halted. Resort to such extreme measures could only be intended for extreme emergencies.

Under the rules of statutory construction referred to above, these statutes must be given a reasonable interpretation. Construing them, therefore, "to give effect to the intention of the legislature best calculated to carry out the actuating thought in the minds of the Legislature at the time of their passage," and bearing in mind "the occasion and necessity of the

law," it would seem that the legislature, in adopting the provisions of Section IX, Part II, Chapter 82, supra, did not intend the county commissioners should invoke the provisions of Section 4470.3, Revised Codes of Montana, 1935, as a condition of receiving a grant-in-aid.

It is therefore my opinion it is not required a county invoke the provisions of Section 4470.3, Revised Codes of Montana, before it is entitled to a grant-in-aid under the provisions of Section IX, Part II, Chapter 82, Laws of 1937, as amended, and Section 4470.3, Revised Codes of Montana, 1935, should only be used in very extreme emergencies, not contemplated under the Public Welfare Act.

Sincerely yours,

JOHN W. BONNER
Attorney General