

## No. 442

**STATE HOSPITAL FOR INSANE—INSANE PERSONS—  
PUBLIC WELFARE—NON-RESIDENT INSANE, Expense  
of Transportation of**

**Held: Expense of transportation non-resident insane persons to place of origin outside state may not be paid from county funds or from State Public Welfare Funds.**

July 8, 1942.

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

Dear Mr. Convery:

You have requested my opinion whether the cost of transporting to places of original residence non-resident patients at the State Hospital, who have been committed as indigent persons from the various counties, can be paid from State Welfare funds, or from county funds. You call my attention to Subsection (d) of Section 2, Part II, Chapter 82, Laws of 1937. (The Public Welfare Act.)

If authority for the use of either welfare funds or county funds exists, it must be found in some statutory provision specifically dealing with the subject, or be reasonably implied therefrom.

Chapter 126, Political Code of Montana, 1935, comprising Sections 1413 to 1439, inclusive, Revised Codes of Montana, 1935, as amended by Chapter 117, Laws of 1939, and Chapter 145, Laws of 1941, deals with the management and control of the State Insane Asylum, the commitment, maintenance, care and control of insane persons. Under these provisions of our laws, care and maintenance of inmates are at state expense provided by appropriation from the general fund. The cost of commitment, that is, trying and transporting the person, is paid from the general fund of the county from which committed. Section 1429, Revised Codes of Montana, 1935, provides no insane person, non-resident of this state, must be received into the asylum unless he became insane within this state. It is therefore apparent the legislature intended non-resident persons, becoming insane while within the state, could be committed to the asylum. Section 1430 provides none but indigent persons may be admitted, unless their care and maintenance are paid or guaranteed by the parent, children, or guardian of such persons. It would therefore appear—from these statutes—a non-resident, becoming insane while within this state, may be received into the asylum and, if indigent, maintained at the expense of the state while in the asylum.

The only statute pertinent to the question here considered is Section 1418, Revised Codes of Montana, 1935, which provides:

“The board may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.”

It will be noted this section authorizes the State Board of Commissioners for the Insane to send any insane persons to friends outside the state, “at state expense.” I think it reasonable to suppose the legislature intended such expense to be paid from the appropriation made to this institution. At the time this section was enacted, the Public Welfare program was not in existence. Since the inauguration of the Public Welfare program, two sessions of the legislature have convened—and no statute was enacted specifically making this expense a charge against welfare funds.

Funds appropriated from the Department of Public Welfare are earmarked for specific purposes, such as old age assistance, aid to needy dependent children, aid to needy blind, child welfare and general relief. It cannot be implied the legislature intended any of the welfare appropriation be used for the purpose of transporting non-resident insane outside the state.

Subsection (d) of Section 2, Part II, Chapter 82, Laws of 1937, provides as follows:

“Interstate transients, without legal Montana residence, shall not be eligible for continued assistance from state funds, but may, if in distress, receive temporary relief from either state or county funds until such time as such transients may be returned to their state of legal residence or state of origin. If transient families are stranded and without means of return, their transportation may be paid from state funds.”

This provision is part of the Public Welfare Act (Chapter 82, Laws of 1937, as amended). It is specifically a part of that section providing the eligibility requirements for general relief. It is pertinent here to note the provisions of the subsection following. Subsection (e) provides:

“An applicant must not be in need of continued care in a public institution because of physical or mental condition.”

We think it clear these provisions of the Welfare Act were intended to care for non-residents who might become stranded while passing through the state, and have no reference to non-residents who become insane while within the state.

It is therefore my opinion the expense of transporting non-resident insane persons, confined in the state hospital, to their place of origin outside the state cannot be paid from either county funds or State Welfare Funds.

Very truly yours,

HOWARD M. GULLICKSON  
Attorney General