

No. 464

**PUBLIC WELFARE—RELIEF—INDIANS— WARD  
INDIANS—COUNTIES**

**Held: Counties prohibited by law from making any payments for general relief to ward Indians.**

August 15, 1942.

Mr. Erick Moum  
County Attorney  
Roosevelt County  
Wolf Point, Montana

Dear Mr. Moum:

I have your recent request for an opinion regarding the payment of general relief to ward Indians residing on the Fort Peck Indian reservation.

In your letter you state it is contended these ward Indians are entitled to general relief to be paid by the Public Welfare Board of Roosevelt County from funds distributed to the county out of the \$250,000 appropriation appearing in sub-section (e) in sections 2 and 4 of House Bill No. 366 of the 27th Legislative Assembly, page 391, Laws of 1941.

In the case of *State ex rel. Williams vs. Kamp*, 106 Mont. 444, 78 Pac. (2nd) 585, the Supreme Court held that, under the Public Welfare Act, ward Indians were not entitled to general relief to be paid from the county Poor Fund and the county officials were prohibited from making any such payment. However, the court held these Indians were entitled to general relief to be paid from the general appropriation contained in Part VIII, section IV, subdivision (6) of the Public Welfare Act, adopted in 1937, and the County Welfare Board should take the applications of the Indians, pass upon the same and report to the State Public Welfare Department.

As a result of this decision, it is clear general relief payments cannot be made to ward Indians from the Poor Fund of the county. The question then arises whether the monies distributed to Roosevelt County under the appropriation contained in House Bill No. 366, mentioned above, became a part of the county Poor Fund or have the characteristic of state funds rather than county funds.

In *State ex rel. Lewis and Clark County vs. State Board of Public Welfare*, 112 Mont. 380, 117 Pac. (2nd) 259, the Supreme Court construed the appropriation in question. In holding the State Department of Public

Welfare could not transfer any of the funds appropriated under sub-section (e) of sections 2 and 4 of that act to any other purpose, the court said, at page 385 of the Montana Report:

“The grants made under paragraph (e), after they have been made as therein provided, cease to be under the further authority of the state department, and hence are not subject to transfer.”

From this language it is apparent the funds in question are not state funds—nor are they subject to administration or expenditure by the State Department. This is further borne out by the fact that sub-section (e) contains the language: “For grants to counties to supplement county Poor Funds, . . .” Thus, the legislature expressed its intention any money distributed to a particular county under that appropriation would immediately become a part of the Poor Fund of that county and thereafter under the decision in the case of *State ex rel. Williams vs. Kamp*, supra, the officials of your county are prohibited by law from making any payment for general relief to ward Indians.

Sincerely yours,

R. V. BOTTOMLY  
Attorney General