

Opinion No. 229.

**County Commissioners—Medical Aid
—Hospitalization—Old Age Assistance**

Held: Money expended for medical aid and hospitalization furnished to a person during his lifetime under the provisions of Sections 4525, 4526, or 4465.4, Revised Codes of Montana, 1935, or Chapter 82, Laws of

1937, or amendments thereto, if not given as a part of "Old Age Assistance," is not recoverable by the county from the estate of the recipient for such aid, and the claim of the county for reimbursement for the money expended is not a valid claim against the recipient's estate.

July 22, 1944.

Mr. Robert E. Purcell
County Attorney
Garfield County
Jordan, Montana

Dear Mr. Purcell:

You have requested an opinion of this office on the following:

Could the county commissioners recover on a claim against the estate of a deceased person for hospitalization and medicine furnished to such person during his lifetime, when the hospitalization and medicine was not furnished in connection with, or as a part of, "Old Age Assistance."

You state in your request for an opinion that the deceased person to whom the hospitalization and medicine was furnished received the same from May, 1936, to November, 1941.

In May, 1936, our laws pertaining to such matters consisted of Section 5, Article X of our State Constitution, which makes it mandatory for counties to assist those unable to care for themselves, and Sections 4525 and 4526, Revised Codes of Montana, 1935, which provide for the county letting contracts for hospitalization and medical care for the indigent poor and infirm, and Section 4465.4, Revised Codes of Montana, 1935, which provides that the county commissioners may erect hospitals to take care of the sick and infirm or may otherwise provide for the same.

In view of the holding of our Supreme Court in the case of *Jones v. Cooney et al.*, 81 Mont. 340, 263 Pac. 263, it seems that the commissioners have a great deal of leeway in dealing with such cases, and need not follow any particular statute unless the same is mandatory in its language. Thus, it seems that in the instant case, the commissioners probably proceeded under the provisions of Section 4465.4, Re-

vised Codes of Montana, 1935; and provided for the now deceased person of whom you speak, by paying monies from the poor fund for hospitalization and medical care for the said deceased as an individual case, and not as institutional care or by contract, as provided under Sections 4525 and 4526, Revised Codes of Montana, 1935.

In any event, under any of the above quoted sections of our codes, such hospitalization and medical care, so provided to be given, would be derived from the poor funds of the county and no provision is made for payment or repayment by the recipient. In other words, the monies so expended were in conformity with the mandate of the Constitution of our state, and as an obligation of the county to its poor and infirm, and such monies were not intended by the Constitution or our laws to be repaid or reimbursed from the estate of the recipient.

Section VI of Part II of Chapter 82, Laws of 1937, provided in part as follows:

"Medical aid and services and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, payable from the county poor fund . . ."

No provision is made in Chapter 82, Laws of 1937, for the repayment of funds given from the poor funds for hospitalization or medical aid, or for the county making claim against the estate of such person for reimbursement. The only provision for reimbursement is in connection with what is known as "Old Age Assistance," which is provided for in Part III of said Chapter 82. Section 5 of Chapter 117, Laws of 1941, which amends Section 6 of Part II of Chapter 82, provides that medical aid and hospitalization may be given in connection with, and as a part of "Old Age Assistance," in which case such aid might be reimbursable out of the deceased's estate. However, as you state, the deceased in the instant case received no "Old Age Assistance," and therefore, that question is not before me.

It is, therefore, my opinion that money expended for medical aid and hospitalization furnished to a person during his lifetime under the provi-

sions of Sections 4525 and 4526, or 4465.4, Revised Codes of Montana, 1935, or Chapter 82, Laws of 1937, or amendments thereto, if not given as a part of "Old Age Assistance," is not recoverable by the county from the estate of the recipient of such aid, and the claim of the county for reimbursement for the money expended is not a valid claim against recipient's estate.

Sincerely yours,
R. V. BOTTOMLY
Attorney General