Opinion No. 129.

Indians, Ward—Ward Indians—Relief, General—General Relief—Poor Fund.

Held: Ward Indians who qualify under the Public Welfare Act are entitled to general relief grants from county poor funds. Grants of general relief to ward Indians are payable from county poor funds and such grants are not reimbursable to the county from state funds.

February 25, 1946.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

Your letter of February 8th has been received in which you request an opinion as to whether a ward Indian is entitled to general relief payable from the county poor fund.

Subdivision (h) of Section VII, part 1, of Chapter 82, Laws of 1937, provides:

"Act as the agent of the federal government in public welfare matters

of mutual concern in conformity with this act and the federal social security act, and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department. If grants from the federal government are contingent upon state funds for the provisions to assistance to Indians, all Indians qualified for assistance hereunder to which the federal government contributes, and who are enrolled on an Indian reservation in the State of Montana, or who are of Indian blood and have resided in the State of Montana for five years during the nine years immediately preceding application and have resided within the State of Montana continuously for one year immediately preceding application or have not received their patent in fee to any tribal allotment shall be allowed assistance hereunder in the county in which he resides, but for assistance paid to him the state fund shall not be reimbursed by the county."

This statute was construed by our Supreme Court as above quoted in the case of State ex rel. Williams v. Kamp, 106 Mont. 444, 78 Pac. (2d) 585, decided April 7, 1938. The court there held that although a ward Indian was entitled to general relief, the payments thereof were payable only from state funds and that the county was not required to reimburse the state fund for such expenditures. The legislature in 1939 amended the above quoted statute. By this amendment, Chapter 129, Section III, Laws of 1939, the first sentence of the subsection was left intact and in lieu of the remaining portion the following was enacted:

"The counties shall not be required to reimburse the state department any portion of old-age assistance, aid to needy dependent children or aid to needy blind paid to ward Indians. A ward Indian is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use, or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the federal social security act is amended to define a 'ward Indian', such definition shall supersede the foregoing definition."

It will be observed that in the old act which was construed by the Supreme Court for assistance paid to him (ward Indian) the state fund shall not be reimbursed by the county.

The new act provides that counties shall not be required to reimburse the State Department any portion of (1) old age assistance, (2) aid to dependent children, and (3) aid to needy blind, paid to ward Indians. The old act used the word "assistance" and specified no particular form of assistance.

In Chapter 82, Laws of 1937, the various types of assistance are classified as (1) general relief (part II); (2) old age assistance (part III); (3) aid to needy dependent children (part IV); (4) aid to needy blind (part V).

Four categories of assistance are specified in the original public welfare act. The section under consideration as indicated in 1937 referred to assistance. The Supreme Court in the case above cited held that the use of the word "assistance" there referred to all forms of assistance, including general relief.

By the amendment of 1939 the act referred only to the last three forms of assistance, as enumerated above, declaring that the state department was not to be reimbursed for those forms of assistance. The act is silent as to assistance in the form of general relief. It is noteworthy that this amendment was so written after the decision of the Supreme Court in the case of State ex rel Williams v. Kamp, supra.

Section 5 of Article X of the State Constitution provides:

"The several counties of the state shall provide as may be prescribed by law for those inhabitants, who, by reason of age, infirmity or misfortune, may have claims upon the sympathy and aids of society."

This section places the primary duty of taking care of the infirm and unfortunate upon the counties, but the state may assist the counties in performing this obligation. (State ex rel Wilson v. Weir, 106 Mont. 526, 79 Pac. (2d) 305; State ex rel Normile v. Cooney, 100 Mont. 391, 47 Pac. (2d) 637; Mills v. State Board of Equalization, 97 Mont. 13, 33 Pac. (2d) 933.)

Under the act of 1937 the state assumed the duty of expending its funds in payment of the obligation to afford ward Indians general relief. After the

amendment of 1939 there was no longer any assumption of this obligation on the part of the state and accordingly the state is no longer obligated by law to discharge the obligation of affording ward Indians general relief.

The primary obligation of caring for ward Indians is placed upon the Bureau of Indian Affairs (29 USCA 13) under the supervision of the Secretary of Interior, but these federal agencies can only expend such money for this purpose as Congress may from time to time appropriate.

As was observed by our Supreme Court in the case of State ex rel Williams v. Kamp, supra:

> "It was natural to suppose that the federal government would provide for these ward Indians, if any, in need of relief."

These Indians are citizens of the United States (State ex rel Williams v. Kamp, supra) and if they are inhabitants of a county of Montana and the federal government has failed to take care of its wards, then it becomes the duty of the county to relieve them in their distress, unless the state by subsequent legislation undertakes that obligation. This is a matter entirely in the province of the legislature, and my answer to your question is therefore in the affirmative.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General