

## Opinion No. 51.

**Counties—Hospitals, authority of board of county commissioners—Buildings—County Commissioners.**

**Held:** The board of county commissioners has power and authority to purchase or erect a building or buildings for use of the county in providing hospitalization for the indigent sick and infirm poor of the county, and may operate the same itself, or lease such building or buildings to an individual for such purpose. Such building or buildings, either purchased or erected, may not be used to provide hospitalization to the public generally.

July 6th, 1945.

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

Dear Mr. Kronmiller:

You have submitted for my opinion the following question:

May Big Horn County purchase a building and alter the same by making the building suitable for hospital purposes, or in event that it becomes necessary to construct a new building, may the county construct a hospital building and in either event, after the same is equipped by the county and put in condition to be used for hospital purposes, may it then lease the property for operation by a qualified hospital superintendent or person who will operate the hospital and pay rental for the use of the hospital and its equipment?

In determining the authority of county commissioners, it must be borne in mind that such board has only such powers as are expressly conferred upon it or necessarily implied from those expressed. (Section 4441, Revised Codes of Montana, 1935; *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60.) And where there is a reasonable doubt as to existence of particular power, such power must be denied.

Section 4465.4, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1941, provides in part as follows:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

"To provide for the care and maintenance of the indigent sick, or otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same . . ."

Under the provisions of Section 4465.8, Revised Codes of Montana, 1935, the board is given power "to cause to be erected and furnished a courthouse, jail, hospital, and such other public buildings as may be necessary." Under the provisions of Section 4465.7, Revised Codes of Montana, 1935, the board has power to purchase any real or personal property necessary for the use of the county.

It is, therefore, clear that the board may purchase or erect a building and equip the same for hospital purposes if such building is necessary. However, it is, likewise, clear that the board may purchase or erect such a building only if the same is necessary for hospital purposes. It would seem to follow therefore that if the board purchase or erect a building for a county hospital, it must be used for such purpose.

The question would then arise under your inquiry whether the board, having purchased or erected a building for use as a county hospital, could thereafter lease the same to a private person for hospital purposes. An answer to this question requires the consideration of several statutes pertaining to the power and duty of the board toward the indigent sick and infirm of the county.

Section VI of Part II, Chapter 82, Laws of 1937, the Public Welfare Act, makes it the legal and financial duty of the board to provide medical aid, services and hospitalization for persons unable to provide such necessities for themselves. To carry out this obligation, the board may operate and maintain a poor farm and provide hospitalization and medical services in connection therewith; they may operate and maintain a hospital separate from the poor farm; they may also contract for such services with some hospital or physicians. If the board adopts the contract method, the statute provides the procedure.

Sections 4525, 4526 and 4527, Revised Codes of Montana, 1935, as amended

by Chapter 131, Laws of 1943, provide for the letting of contracts for the care, support and maintenance of the poor and for the care, support, maintenance, hospitalization and nursing of the indigent sick and infirm. Such contracts may include both or may be made separately. The contracts, however, may run for only one year.

Section 4465.29, Revised Codes of Montana, 1935, gives the board jurisdiction and power "to lease and demise county buildings, equipment, furniture and fixtures, for hospital purposes," and provides that before entering into such a lease, the board must advertise the fact in a newspaper for five weeks and that no such lease may be made for longer than five years.

It is clear, therefore, from these statutes that the board has authority to erect a building, equip and maintain the same for the purpose of providing medical care and hospitalization for the indigent sick and infirm poor of the county, the same to be operated by the board. Having such a building equipped as a hospital, the board, not desiring to operate the same itself, could lease such building to a private person to operate. However, such operation and use, whether by a private person or by the board, may only be for the benefit of the indigent sick and infirm of the county. I find no statute which either directly or impliedly gives the board authority to erect a building for hospitalization of those persons not coming within the class of indigent sick and infirm, nor to lease a county building to a private individual to use for hospitalization of such persons. The board may purchase or erect only such buildings as are necessary for county purposes.

It is, therefore, my opinion that the board of county commissioners has power and authority to purchase or erect a building or buildings for use of the county in providing hospitalization for the indigent sick and infirm poor of the county, and may operate the same itself, or lease such building or buildings to an individual for such purpose. Such building or buildings, either purchased or erected, may not be used to provide hospitalization to the public generally.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General