

**Opinion No. 11****Payment of Fees and Expense in Sanity Hearings—Cost of Maintenance of Tuberculosis Patient—Maintenance of Patient at Montana Training School For Feeble Minded—Cost of Maintenance of Patient in the Insane Asylum.**

- Held:** (1) Cost of examination, committal, and taking an indigent insane person to the Insane Asylum is an expense of the County, to be paid out of the County general fund.
- (2) Maintenance of an indigent person in the Tuberculosis Sanitarium is an expense of the County, to be paid from the County poor fund.
- (3) Hearing, transportation, clothing and necessary personal expense of an indigent person at the Montana Training School for feeble minded is a County expense, payable out of the County poor fund.
- (4) Maintenance of an indigent person at the State Insane Asylum is a State expense.

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April 1, 1949.

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You have submitted the following questions for my opinion:

- (1) Out of what County funds should the costs, including doctor's fees, other witness fees, Sheriff's fees and Justice of the Peace fees be paid, in a hearing to determine whether one should or should not be sent to the Insane Asylum?

(2) From what County fund should the expense of maintenance of a patient sent to the State Tuberculosis Sanitarium be paid?

(3) From what County fund should the maintenance of one in the Montana Training School for feeble minded be paid?

(4) Who pays the expense for the maintenance of a patient in the Insane Asylum?

In answer to your first question, it is necessary to consider the statutes which govern the hearing of insanity cases.

Section 1441 of the Revised Codes of Montana, 1935, as amended by Chapter 117, Session Laws of 1939, specifically allows physician fees in insanity hearings and provides that:

" . . . the Clerk of the District Court or the Chairman of the Board of County Commissioners, if the hearings be had before him, must give to such physician a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated **from the County Treasurer.**" (emphasis supplied)

Furthermore, two doctors must be subpoenaed for an insanity hearing under 1433 of the Revised Codes of Montana, 1935, as amended by Chapter 117, Session Laws of 1939.

Under Section 1432 of the Revised Codes of Montana, 1935, as amended by Chapter 117, Session Laws of 1939, and Chapter 183, Session Laws of 1943, the Judge or Chairman of the County Commissioners must subpoena at least **two witnesses** to appear and testify at such insanity examinations.

Section 4885 of the Revised Codes of Montana, 1935, as amended by Section 3, Chap. 121, Session Laws of 1941, relates to the payment of Sheriff's fees and provides that:

"Sheriffs delivering prisoners at the State Prison or at the State Reform School, or **insane persons** at the State Insane Asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the State Board of Examiners or by the Board of County Commissioners, as the case may be, **and paid out of the same money and in the same manner as are other expense claims against the State or Counties**, and no other or further compensation shall be received by sheriffs for such expense." (emphasis supplied)

All other expenses relating to the hearing and commitment in insanity cases are provided for in Section 1442 of the Revised Codes of Montana, 1935, which provides as follows:

"The cost of the **examination**, committal and taking an insane person to the asylum must be paid by the county in which he resides at the time he is adjudged insane." (Emphasis supplied).

The above quoted sections are the only sections pertaining to the expense of examination, committal and taking an insane person to the Insane Asylum. Obviously, they fail to set out the precise fund from which the County is to pay such expense. Therefore, it is my opinion, that, inasmuch as the statutes fail to designate the fund that is to bear the expense of the examination, committal and transporting insane persons of the Insane Asylum is payable out of the County general fund in the same manner as other general claims against the County.

Former Attorney General Opinions are in accord. See 19 Attorney General Opinion No. 225, p. 354, and 19 Attorney General Opinion No. 442, pp. 748.

In answer to question No. (2), your attention is directed to Section 1522 of the Revised Codes of Montana, 1935. These statutes in effect provide:

(1) Every person desiring free treatment in said sanitarium (State Tuberculosis Sanitarium) shall apply to the local authorities of his or her town, city or county **having charge of the relief of the poor**, who shall request the president of the sanitarium for treatment of such person.

(2) Every person who is unable to pay for his care and treatment shall be transported to and from the sanitarium **at the expense of the local authorities**, and cared for, treated and maintained therein at the expense of the County or municipality **which would otherwise be chargeable with the support of such poor and indigent person**.

(3) Every month the president of the sanitarium shall furnish local authorities for each county, city or town, as the case may be, **having charge of the relief of the poor**, a list of persons who are unable to pay for their care, treatment and maintenance and shall accompany each list with a bill of charges for care, treatment and maintenance, etc. The treasurer of the sanitarium shall thereupon collect from the local authorities of the county, city or town such sum as may be due therefrom and pay the same over to the State Treasurer. (Emphasis supplied).

In the light of the above statutes, it is my opinion that the expense of maintenance of a patient sent to the State Tuberculosis Sanitarium should be paid from the County poor fund.

In answer to question No. (3), I direct your attention to Chapter 183, Sec. 15, Session Laws of 1943. Chapter 183, Session Laws of 1943, expressly repeals Sec. 1474 to 1483, inclusive, of the Revised Codes of Montana, 1935, and Sec. 15 of this chapter provides:

"The cost of hearing and transportation of persons admitted to the school (Montana Training School) **shall be paid by the County**

**from which admitted out of its poor fund. . . .** If any such order shall be made to the effect that any such person has no property or estate out of which payment can be made, and has no parents, guardian or relatives financially able to pay any part of such cost of care, maintenance, clothing and other necessary needs, the county from which he was admitted **shall be liable for such clothing and other necessary personal expenses**, and the superintendent of the school shall quarter-annually, at the end of each quarter, prepare and transmit to the Board of County Commissioners of such County an itemized statement showing the amount to be paid therefor for such quarter, and said Board of County Commissioners **shall allow and pay it by warrant drawn against its poor fund payable to such training school.**" (Emphasis supplied)

In my opinion, the expense of hearing, transportation, necessary clothing and other personal expense of an inmate at the Montana Training School is a County expense payable out of the County poor fund.

The fourth and final interrogative presented by you raises the question as to who is to pay for the maintenance of a patient in the Insane Asylum.

Sec. 1, Art. X of the Constitution of Montana is as follows:

"Educational, reformatory and penal institutions and those for the benefit of the blind, insane, deaf and mute, soldiers home and such other institutions as the public may require, shall be established and supported by the State in such a manner as may be provided by law".

Under Sec. 1414 of the R.C.M., 1935, the powers and duties of the Board of Commissioners for the insane are enumerated and it is expressly made their duty, "to provide for the care, custody **maintenance and treatment. . . .**"

Sec. 1418 R.C.M. 1935, provides that the board has power to send an insane person to friends outside the State, **at the expense of the State**, and under Sec. 1419 of the R.C.M., 1935, the Board may send an insane person to some other institution, outside the State, and the expense of sending and supporting him at such institution **must be paid by the State**, providing such person is indigent.

Under the above provisions of the Constitution of the State of Montana, and the statutes hereinabove mentioned, it is my opinion that the care and maintenance of an inmate at the State Insane Asylum is a State expense.

I also refer you to Attorney General Opinions, Volume 9, p. 226, and Vol. 19, Opinion No. 442, p. 748, wherein it is stated that the maintenance of insane persons at the State Insane Asylum is at the expense of the State of Montana.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.