

Opinion No. 30**County Commissioners—Powers of County Commissioners—Medical
Aid and Hospitalization—Osteopathic Services—
Chiropractic Services.**

Held: 1. The Board of County Commissioners may properly allow the claims of an osteopathic and chiropractor for a set sum per month for services rendered to indigent residents of the County, regardless of the number of patients treated. The Board has discretion to select an appropriate mode of procedure when a power is conferred by statute and no set procedure is defined.

July 6th, 1949.

Mr. George J. Allen
County Attorney
Livingston, Montana

Dear Mr. Allen:

You have requested my opinion as to the legality of the action of the Board of County Commissioners of Park County in paying a chiropractor and an osteopath a set sum per month for chiropractic and osteopathic services rendered to the indigent residents of the county, such payments being made irregardless of the number of patients treated.

The factual situation in your County is set forth in the December 1st, 1948 report of the State Examiner and since it is pertinent to your question I shall herein quote such report which is as follows:

"Attention is called also to a certain Board of Health expenditure. At present there is employed a County Health Officer at a salary of \$150.00 per month, a County Physician at \$270.00 per month, and two osteopaths, each of whom are paid \$60.00 per month. The Health Officer has filed reports of his inspections of restaurants, meat-markets, clubs ,etc., and there is evidence of services performed by the County Physician, but there are no reports or other evidence indicating that any services have been performed by the two osteopaths. There may be some question as to the number of professionals which may be employed by the County in connection with its Board of Health, and it is suggested that the matter be referred by the Commissioners to the County Attorney for his opinion."

In your opinion to the County Commissioners you held that the County Health Officer and the County Physician could properly be paid a set sum each month and need not submit an itemized account; but that an osteopath or a chiropractor could not properly be paid a fixed amount each month, regardless of the number of patients treated, but rather must submit an itemized account of the number of patients treated and could not be paid more than the total of such itemized transactions.

Section 4605, Revised Codes of Montana, 1935, is as follows:

"No account must be allowed by the Board unless the same is made out in separate items, the nature of each item stated, and is verified by affidavit showing that the account is just and wholly unpaid; and if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Each claim against the County must be presented within a year after the last item accrued."

I agree with the conclusion that the terms of the above quoted statute do not affect the monthly claims of the County Health Officer or the County Physician since both these officers are entitled to a salary as set forth in the statutes. Section 2473, Revised Codes of Montana, 1935, provides for the payment of a fixed salary to the County Health Officer. Section 4527, Revised Codes of Montana, 1935, as amended by Section 3 of Chapter 131, Montana Session Laws of 1943, provides for the payment of a fixed salary to the County Physician. It is not open to question that when an official is entitled to a salary as set forth by statute he need not present an itemized claim as required by Section 4605, *supra*.

I am, however, unable to agree with the conclusion that Section 4605, *supra*, prevents the Board of County Commissioners from allowing the claim of an osteopath or chiropractor for services to the County poor unless such claim be itemized and the nature of each item stated.

The statutory provision for medical aid and hospitalization for indigent persons is contained in Section VI Part II, Chapter 82, Montana

Session Laws of 1937, as amended by Section 15, Chapter 129, Montana Session Laws of 1939, as amended by Section 5, Chapter 117, Montana Session Laws of 1941, as amended by Chapter 155, Montana Session Laws of 1947. The law as set forth in Chapter 155, Montana Session Laws of 1947 is 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. It shall be the duty of the Board of County Commissioners to make provisions for competent and skilled medical or surgical services as approved by the State Board of Health or the State Medical Association, or in the case of osteopathic practitioners by the State Osteopathic Association or Chiropractors by the State Chiropractic Association, or optometrical services as approved by the Montana Optometric Association, and dental services as approved by the Dental Association. 'Medical' or 'medicine' as used in this act refers to the healing art as practiced by licensed practitioners."

By virtue of the above quoted section, the Board of County Commissioners is directed to provide for the services of an osteopath and a chiropractor. May not the Board use its discretion in the manner of providing such services and, if reasonable, contract with an osteopath and a chiropractor for such services, or agree to pay a monthly salary for such services? The question of the powers of Boards of County Commissioners has been passed upon many times by the Montana Supreme Court. In the case of *Arnold et al. v. Custer County et al.*, 83 Mont. 130, 269 Pac. 396, the Court said:

"When the statutes require an act to be done by a County official or County officials and do not provide a method of doing it, any reasonable and suitable means may be adopted."

And in *State v. Gallatin County* _____ Mont. _____, 184 Pac. (2d) 998, the Court said:

"Whenever a power is conferred upon the Board of County Commissioners, but the mode in which the authority is to be exercised is not indicated, the Board in its discretion may select any appropriate mode or course of procedure. *Franzke v. Fergus County*, 76 Mont. 150, 157, 245 P. 962; *State v. Board of Commissioners*, 106 Mont. 251, 76 P. 2nd 648."

Since the Board of County Commissioners has the discretion to select an appropriate procedure for providing medical aid and service, it follows that the Board may contract with a chiropractor and an osteopath for their services and may pay a set salary for such services. It is not the province of this office to tell the County Commissioners how to exercise their discretion. In the exercise of such discretion they are responsible only to the electorate and not to any public official.

It is my opinion that the Board of County Commissioners of Park County may properly allow the reasonable claims of an osteopath and a chiropractor for a set sum per month for services rendered to indigent residents of the County, regardless of the number of patients treated, and that the prohibition of Section 4605, supra, against paying an account unless such account is itemized and the nature of the items stated, does not apply in this instance if the commissioners see fit to pay a monthly fixed, reasonable stipend.

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