

Opinion No. 80

**General Relief—Indians—Ward Indians
—Relief to—County Commissioners
—Counties**

Held: The primary duty of caring for the poor and unfortunate rests in the county.

Indian wards residing within the boundaries of the county either on or off the reservation are inhabitants of the county and it is within the power of the county commissioners to extend general relief to ward Indians when it is determined that they are in need of such assistance.

April 26, 1952.

Mr. Lloyd A. Murrills
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Murrills:

You have requested my opinion as to whether the County Commissioners may extend general relief aid to ward Indians from the County poor fund. The question submitted involves an interpretation of Section 71-211, Revised Codes of Montana, 1947. This statute was first enacted as Subd. (h), Section 7, Part 1, Chapter 82, Laws of 1937, and read as follows:

"The state department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act. The state department shall:

* * *

(h) 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 to 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 has 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."

In the year 1938 and under the above cited statute there arose the case of *State ex rel. Williams v. Kamp*, 106 Mont. 444, 78 Pac. (2d) 585, which held that the county was not required to reimburse the state fund for general relief furnished ward Indians, that the state and not the county must provide such relief without contribution from the county.

In the year 1939 the legislature amended the above quoted statute changing the language following the first sentence to read:

"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."

In the year 1946 the Attorney General issued an opinion interpreting this statute in its amended form and in answer to the precise question concerned in this instance. It was the holding in the opinion that:

"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." (Vol. 21, Opinions of Attorney General, p. 175).

In the Attorney General's Opinion Section 5 of Article X of the Montana Constitution was cited and interpreted as placing the primary duty of taking care of the infirm and unfortunate upon the counties. It was reasoned that whereas the Act of 1937 (*supra*) assumed the duty of expending state funds for the general relief of ward Indians, the 1939 amendment was interpreted as removing this assumption as to such expenditures for general relief from the state.

It is noteworthy and significant that following the Attorney General's Opinion of 1946 the legislative assembly of 1947 amended Section 71-211, Revised Codes of Montana, 1947 (Sec. 1, Ch. 219, Laws of 1947) to read as follows:

"Board to Act as Agency of Federal Government—Assistance to Ward Indians. 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.

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, further provided that counties shall not be required to pay general relief 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."

The section was once again amended in 1951 by inserting the words "or aid to the permanently and totally disabled" to the first sentence of the second paragraph above.

It will be noted that the 1947 amendment added the words, "further provided that counties shall not be required to pay general relief to ward Indians" and it is upon the interpretation to be given these words that the

answer to the question submitted depends.

Section 5 of Article X of the 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 aid of society."

The words "as may be prescribed by law" have been interpreted to mean as may be prescribed by the legislative assembly. (State ex rel. Wilson v. Weir, 106 Mont. 526, 79 Pac. (2d) 305).

In the Weir case (*supra*) the court said:

"While the duty to care for the poor is primarily an obligation of the counties, the state is free to offer co-operation and assistance (citing cases). The legislature has the right to make provisions binding upon the counties, as to how they shall care for their poor, even though this involves the right to dictate to the counties concerning expenditures of their own funds.

The court then cited with approval from 15 C.J. 581 as follows:

"The revenues of a county are not the property of the county in the sense in which the revenue of a private person or corporation is regarded. A county being a public corporation existing only for public purposes connected with the administration of a state government, its revenue is subject to the control of the legislature, when the legislature directs the application of a revenue to a particular purpose, or its payment to any party, a duty is imposed and an obligation created on the county." (Emphasis added)

Prior to the 1947 amendment to Section 71-211, (*supra*) the Public Welfare Act made no distinctions or exceptions as to its applicability to ward Indians. Moreover, the provisions of Chapter 82, throughout adequately and clearly provided for all inhabitants, regardless of race, color, religious or political affiliation. All through the act, when reference was made to eligibles, the language used was, "any person", "any person or family", "any individual",

"any applicant". By the legislative amendment of 1947 (*supra*) counties are not required to pay general relief to ward Indians. The legislature did not forbid the counties to pay general relief to ward Indians but merely stated in clear and express language that ". . . counties shall not be required to pay general relief to ward Indians . . ."

It is my opinion that the primary duty of caring for the poor and unfortunate rests in the county, that Indian wards residing within the boundaries of the county whether on or off an Indian reservation are inhabitants of the county, and that it is within the power of the county commissioners to extend general relief aid to ward Indians when it is determined they are in need of such assistance.

Very truly yours,
ARNOLD H. OLSEN
Attorney General