Opinion No. 97.

**General Relief — Emergencies — Poor Fund—State Board of Public Welfare—Grants in Aid—Federal Social Security Act — County Commissioners—County Budget Law.**

HELD: The State Board of Public Welfare may legally make a grant in aid to a county which has exhausted its Poor fund, as well as its emergency appropriation, even though said county did not levy the maximum mill levy as authorized by law.

October 7, 1954.

Mr. W. J. Fouse
State Administrator
Department of Public Welfare
Helena, Montana

Dear Mr. Fouse:

You have requested my opinion on the legal questions arising out of the following factual situation. You inform me that Deer Lodge County has had to expend a large sum of money for general relief out of its Poor fund, due to an emergency created by a labor dispute which has shut down the principal industry of the county. Deer Lodge County levied a six mill tax for its Poor fund, although it received a certificate of the State Board of Equalization authorizing a 7½ mill levy. A six mill levy has been sufficient in the past to enable Deer Lodge County to meet its various obligations payable from its Poor fund. It is now apparent that the amount of money to be raised by a 6 mill levy will not be adequate to enable Deer Lodge County to meet its obligations for this fiscal year, and the Board of County Commissioners is contempalting the declaration of an emergency to enable it to make additional expenditures out of its Poor fund to meet the emergency.

Your question is whether the State Board of Public Welfare may legally make a grant in aid to Deer Lodge County when the county Poor fund is exhausted following the obtaining of an emergency appropriation, all in view of the fact that the county did not levy the maximum 10 mill levy authorized by law. You further inquire as to the maximum levy Deer Lodge County can make for its emergency budget.

Section 71-311, Revised Codes of Montana, 1947, as amended by Chapter 199, Laws of 1951, provides in part as follows:

> "If the whole of a six (6) mill levy together with the whole of the per capita tax authorized by said Section 71-106, and the income to the county Poor fund from all other sources shall prove inadequate to pay for the general relief in the county actually necessary and to meet the county's proportionate share of public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; and if warrants upon the county Poor fund can no longer lawfully be issued to meet these charges; and if the board of county commissioners is unable to declare an emergency for the purpose of providing additional funds or to provide additional funds from any other source; and if the county has in all respects expended the county Poor fund only for lawful purposes; and if all of these conditions actually exist in any county of the state, then the State Department of Public Welfare shall, insofar as it has funds available, come to the assistance of such county, in the following manner; . . ."

The legislative history of this section begins with the enactment of the Public Welfare Act in Chapter 82,

Laws of 1937. The Public Welfare Act was passed by the Montana Legislature in order to qualify for Federal participation in the administration of a welfare program under the Federal Social Security Act, to be carried on jointly by the federal, state and county governments. As originally enacted, what is now Section 71-311, supra, then Section 9, Part II, Chapter 82, Laws of 1937, provided that the states could make grants from state funds to counties financially unable to meet their share of the cost of the public assistance program, and authorized the State Welfare Department to require as a condition to such grants that the counties make such tax levies as were needed in respect to their public assistance situation.

In 1939, after two years experience under the new Public Welfare Act, the legislature amended the statute in question by Section 14, Chapter 129, Laws of 1939. The first three paragraphs of the 1939 Act are substantially the same as Section 71-311, supra, as amended, is now. In the 1939 Act the legislature specifically required the counties to make a 6 mill levy (the maximum levy at that time) for Poor fund purposes, and exhaust all other sources of revenue in order to qualify for a state grant. The 1939 Act also provided for a state grant to counties unable to reimburse the state for the county's share in old age assistance, aid to needy dependent children and aid to the needy blind under certain circumstances.

However, in 1941, the legislature by Section 7, Chapter 117, Laws of 1941, repealed that portion of Section 14, Chapter 129, Laws of 1939, pertaining to state grants to counties unable to meet their share of old age assistance, aid to dependent children and aid to needy blind programs, and enacted a companion law, Chapter 112, Laws of 1941, providing for an alternate method for counties to finance their share of old age assistance, aid to dependent children and aid to needy blind programs if the regular six mill Poor fund levy was inadequate. Chapter 112, Laws of 1941, authorized the counties to levy an additional one mill for Poor fund purposes for a two year period only, and specifically provided that no state grant-in-aid could be made to any county not making the additional one mill levy. Chapter 92, Laws of 1943, reenacted Chapter 112, Laws of 1941, for an additional two year period.

In 1943 the legislature enacted Chapter 97, Laws of 1943, which was a new approach to state and county interfinancial relations with respect to public welfare expenditures. This 1943 Act authorized boards of county commissioners in certain counties to levy an additional 4 mills, or so much thereof as might be necessary, to provide revenue necessary to meet appropriations for expenditures out of the county Poor fund. The 1943 Act provided it should be in force for two years only, but each succeeding legislative assembly has reenacted the law for an additional two years (see Chapter 77, Laws of 1945; Chapter 70, Laws of 1947; Chapter 49, Laws of 1949; Chapter 8, Laws of 1951; Chapter 17, Laws of 1953).

This legislative history demonstrates the various methods that have been devised by the legislature to solve the intricate financial problems arising out of the joint administration of public welfare by the state and county government. The Federal government does not participate in the general relief program, and the primary responsibility for this type of assistance (which is a catch-all program to take care of all needy persons not qualifying for the other welfare programs now in operation and in which the Federal government participates) rests with the counties pursuant to the traditional policy established by Article X, Section 5 of the Montana Constitution. The underlying policy of state grants-in-aid to counties authorized by Section 71-311, supra, is to assist those counties which have a great demand on their Poor fund which they cannot meet even after exhausting their local sources of revenue.

The question then arises as to whether Section 71-311, supra, requiring a 6 mill levy as a condition precedent to a state grant-in-aid was amended by implication to require a 10 mill levy by the enactment of Chapter 17, Laws of 1953, and its forerunners previously mentioned. Amendments to statutes by implication are not favored

by the law. State ex rel. Malott v. Board of County Commissioners of Cascade County, 89 Mont. 37, 296 Pac. 1: That the legislature did not intend to impliedly amend Section 71-311, supra, is further supported by the fact that the various Acts authorizing the additional 4 mill levy for the Poor fund were all temporary legislation for a two year period, and thus it is unlikely that the legislature intended to amend Section 71-311 for a two year period only. Further, had the legislature intended that a county avail itself of the additional 4 mill levy authorized by Chapter 17, Laws of 1953, before being eligible for a state grant-in-aid, it could have said so in express terms as it did in Chapter 112, Laws of 1941. Therefore, it is my opinion that a county need not make a 10 mill levy in order to be eligible for a state grant-in-aid.

However, Section 71-311, supra, as amended, does require that the board of county commissioners declare an emergency for the purpose of providing additional funds for the Poor fund before being eligible for a state grant-in-aid. Thus, the Board of County Commissioners of Deer Lodge County should proceed to declare an emergency in the manner prescribed by Section 16-1907, R. C. M., 1947, as amended by Chapter 159, Laws of 1953. Clearly, the additional demand on its Poor fund as a result of the labor dispute could not have been foreseen at the time the budget was made.

The County Budget Law, Subdivision 4 of Section 16-1907, supra, restricts the amount of emergency appropriations in any one year to be paid from the Poor fund to 25% of the total amount which could be produced for such county Poor fund by a maximum levy, authorized by law to be made for such fund. It is my opinion that the maximum levy authorized by law is 10 mills, and therefore Deer Lodge County should raise an amount of money by an emergency appropriation equal to the amount that could be raised by a 2½ mill levy on the taxable value of the property in the county.

After Deer Lodge County has declared an emergency and issued emergency warrants drawn on its Poor fund, then Deer Lodge County will have done all it can legally do to finance its welfare obligations, and if it meets the other conditions set forth in Section 71-311, supra, then Deer Lodge County will be eligible for a state grant-in-aid.