

Opinion No. 32**County Welfare Department—County Employees—Section 11-1024,
Revised Codes of Montana, 1947—Group Health Insurance,
County Employees****Held: County welfare department employees are county employees
for the purpose of group health insurance authorized by Section
11-1024, RCM, 1947.**

November 13, 1957

Mr. R. E. Towle
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Towle:

You ask if county welfare department personnel are county employees for the purpose of the group health insurance plan authorized by Section 11-1024, RCM, 1947.

Your problem presents this question: Whose employee is a county welfare department worker?

Study of the pertinent laws show that an employment relationship exists with both the state and county.

The state welfare administrator supervises the appointment, dismissal and entire status of the public assistance staff attached to the county boards of public welfare in accordance with the merit system (Sec. 71-209 (a), RCM, 1947). Section 71-217 provides that these employees shall be paid from state public welfare funds, but that the county welfare board shall reimburse the state for one-half of the payments so made. Section 71-210 (f), RCM, 1947, provides that the state department shall:

"Prescribe and maintain minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment. Develop policies relating to

educational leave of employees of the department and prospective employees of the department; and develop policies relating to staff development needs of employees of the department . . ."

His relationship with the county is set out in Section 71-217, RCM, 1947, the first paragraph of which provides:

"Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause."

In general the employer-employee relationship is determined by the existence of certain elements, the power to hire, the payment of wages, the power of dismissal and the power to control the performance of the work. Of these elements the last is regarded as the essential element. (See 35 Am. Jur., Master v. Servant § 3) and particularly if it includes the power to discharge (See Denby v. Bartlett, 318 Ill., 616, 149 N. E. 419, 42 ALR 1406).

Applying these tests to the facts of this problem we find that the county does the hiring, that the county furnishes half the salary, that the personnel are directly responsible to the county in the performance of their duties, and that the county does the discharging.

These powers are augmented by two statutes that express further county authority over employees of the county welfare department. These provide as follows:

"71-216. Powers and duties of the county board. The county board of public welfare shall be responsible for establishing local policies and such rules and regulations as are necessary to govern the county department and local administration of public welfare activities except that all such policies and rules and regulations must be in conformity with general policies and rules and regulations established by the state board. The county board of public welfare shall review the determinations of eligibility and amount of payment to individuals made by the staff of the county department for conformity with the aforesaid rules and regulations.

Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by said board."

"71-221. Functions and activities of the county department. The county department of public welfare shall be charged with the local administration of all forms of public assistance and welfare operations in the county except that all such local administration must conform to federal and state law and the rules and regulations as established by the state department."

To carry out these responsibilities, powers and duties, the county board must necessarily control the personnel who will perform the details. And being subject to such control these personnel are thereby county employees.

The law requires that statutes shall be "liberally construed with a view to effect their objects and to promote justice." (Sec. 12-202, RCM, 1947.)

One object of Section 11-1024 certainly is to improve county employment for the benefit of the county. That object is furthered by finding that the category county employees as used in Sec. 11-1024, RCM, 1947, includes county welfare department employees. I therefore so find and hold.

Very truly yours,
FORREST H. ANDERSON
Attorney General