

Opinion No. 13

COUNTIES; Poor Fund; Construction of new buildings; COUNTY COMMISSIONERS; Powers; Construction; Buildings for care of poor — COUNTY COMMISSIONERS; Powers; Poor; Construction of buildings for—Section 71-222, R.C.M., 1947.

HELD: A Board of County Commissioners may not expend monies from the County Poor Fund for the construction of new buildings for the care of the poor so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance for any other welfare activity that is carried on jointly between the State and the county.

August 6, 1963

Mr. Robert L. Woodahl
County Attorney
Teton County
Choteau, Montana

Dear Mr. Woodahl:

You have asked me if a Board of County Commissioners has the power to expend monies from the County Poor Fund for the construction of a new county building for the care of the poor. Sec-

tion 71-222, R.C.M., 1947, as amended by Chapter 239, Laws of 1963, provides in pertinent part:

“No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county’s proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; provided, however, that expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by the per capita tax or the six (6) mill levy provided for in paragraph one of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the state board of health, and, when such expenditure has been approved by the state public welfare department.”

“Improvements” are defined for taxation purposes by Section 84-101, R.C.M., 1947 as follows:

“The term ‘improvements’ includes all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land whether title has been acquired to said land or not.”

Section 12-215, R.C.M., 1947, provides:

“Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.”

The question, then, is whether the definition of improvements as provided by Section 84-101 is applicable to Section 71-222, or whether the Legislature intended, in that statute, to use the term in a more restricted sense. It is my opinion that the broad definition of Section 84-101 does not apply in construing Section 71-222. The latter section refers specifically to “improvement of any county

buildings”, and thus must assume the existence of a building capable of improvement. It clearly does not contemplate the construction of new buildings, which would be an improvement of the real estate upon which the new building was situated rather than the improvement of an existing building. See e.g. *Interstate Lumber Co. v. Rider*, 93 Mont. 489, 19 Pac. 2d 644 (1933). It is therefore my opinion that the Board of County Commissioners may not expend monies from the County Poor Fund for the construction of a new county building for the care of the poor so long as the fund is needed for general relief expenditures by the county or is needed for paying the county’s proportionate share of public assistance for any other welfare activity that is carried on jointly between state and the county. Such monies may, of course, be used to provide existing county buildings used for the care of the poor with necessary equipment required by the State Board of Health for the operation of such buildings.

Very truly yours,
FORREST H. ANDERSON
Attorney General