

Opinion No. 4

**INSANE PERSONS; Support, County liability; COUNTIES;
Claims against, patients in state hospital — STATE HOS-
PITAL; Patients; Cost of medical service not chargeable to
county—Section 38-108, Revised Codes of Montana, 1947.**

**HELD: A county is not liable for the cost of special medical care
given an indigent resident of that county while he is a
patient in the Montana State Hospital.**

April 19, 1963

Peter L. Rapkoch, Esq.
Fergus County Attorney
Lewistown, Montana

Dear Mr. Rapkoch:

You have advised me that a resident of Fergus County was committed to the Montana State Hospital in 1921 and has remained there as a patient since that time. I assume, for the purpose of this opinion, that this person was determined to be an indigent at the time of his commitment. It has now been determined that this person requires a special operation which can only be performed in a private hospital by a surgeon who is not an employee of the state.

You ask if Fergus County is liable for the cost of this surgery and care in a private hospital.

It is my opinion that Fergus County is not liable for the cost of special medical care given an indigent resident of that county while he is a patient in the Montana State Hospital. I reach this conclusion for the following reasons:

The statutes dealing with the Montana State Hospital (Title 38, Chapters 1 to 6, R.C.M., 1947) contain no express requirement

that counties pay the cost of maintaining their indigent residents who are patients in Montana State Hospital. The legislature has expressly required counties to pay the cost of maintaining indigent residents who are inmates of certain of our other state institutions, e.g., the State Hospital for Inebriates (Section 38-707, R.C.M., 1947); the State Training School (Section 38-815, R.C.M., 1947); the State Tuberculosis Sanitarium (Section 80-212, R.C.M., 1947); the Industrial School (Section 80-816, R.C.M., 1947); and the Vocational School for Girls (Section 80-920, R.C.M., 1947). The omission of a similar requirement for the cost of maintenance of patients in the State Hospital is fairly clear evidence of a legislative intent that the legislature did not intend to require counties to pay for the cost of maintaining indigent residents who are patients in the State Hospital.

Section 38-108, R.C.M., 1947 provides:

“The board may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent.”

Certainly, if the state must pay the expense of supporting an indigent insane person who is transferred to an institution outside of the state, it is equally a state obligation for the expenses of an indigent inmate of the State Hospital who is temporarily transferred to a private hospital within the state for necessary medical treatment. I so hold.

Very truly yours,
FORREST H. ANDERSON
Attorney General