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Opinion No. 17

**LOCAL BOARDS OF HEALTH - Home Nursing Services; BUDGETS - Nurse, Employment of; BUDGETS - Emergency Expenditures; BUDGETS - Home Nursing Services. Section 69-4512, 69-4508, and 16-1907, Revised Codes of Montana, 1947.**

- HELD:**
- 1. The local boards of health are empowered only to employ a nurse to provide nursing services to those persons qualified under section 69-4512, R.C.M. 1947, and, therefore, may not set up a separate budget item for home nursing services.**
  - 2. The power in the local boards of health to employ a nurse implies the power to pay the same for service rendered.**
  - 3. The salary of said nurse is properly an item to be included in the budget of the local board of health.**
  - 4. Section 16-1907, R.C.M. 1947, dealing with emergency expenditures, is the proper method of proceeding when funds are unavailable to pay the nurse for services rendered.**

March 16, 1970

Mr. V. G. Koch  
Richland County Attorney  
P. O. Box 831  
Sidney, Montana 59270

Dear Mr. Koch:

I am in receipt of your letter of January 9, 1970, in which you ask several questions concerning home nursing services. For the purpose of this opinion I have stated your questions as follows:

1. Can a separate budget be established for home nursing services?
2. May the local boards of health pay a nurse for home nursing services rendered?
3. May the nurse's salary be included in the local health board's budget?
4. If funds are unavailable to pay for such nursing services already rendered, how should the funds be made available?

1. Section 69-4512, R.C.M. 1947, states:

(1) "A local board may employ a qualified nurse for nursing services to persons under a physician's care who are confined to their homes. Before nursing services are provided, a physician must:

(a) determine that the person needs the services of a visiting nurse;

(b) direct the nurse to visit the person;

(c) specify the type and duration of services to be performed by the nurse.

(2) Person shall pay for the services at rates set by the local board. Local boards, on behalf of persons receiving services, may accept payment from persons or public agencies either directly from, or by contract with, the person or agency. All payments shall be deposited in a special county or city fund and used to defray expenses of providing the service."

The above section does not give the board the power to establish a home nursing service and thus there is no implied power to provide funds for the same. It is a well settled rule of law that administrative boards have only the authority which is expressly granted to them by the laws under which they are created. *State v. State Board of Equalization*, 319 P.2d 221, 133 Mont. 8 (1957).

2. This section gives the local boards of health only the power to hire or employ a qualified nurse for nursing services. The fact that a board is given the power to employ a nurse implies the power to pay the same nurse for her services.

3. Boards of health are financed in the manner provided under section 69-4508, R.C.M. 1947, which states in part:

(1) "Local boards are financed by general fund appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) Appropriations are made as follows:

(a) County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R.C.M. 1947."

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By reading section 69-4508, with 69-4512, R.C.M. 1947, it is readily apparent that nursing services were to be provided for out of two funds: 1) the general fund, and 2) the special fund which is established for receiving payments for the nursing services. It is assumed that salary of the nurse will be paid first out of the latter, until it is exhausted, and then out of the former, which is properly a budget item of the local health board.

4. If the budget of the county health board is insufficient to meet the salary payments of the nurse performing the home nursing services the proper method of supplementing the budget is by the use of the emergency expenditures as provided under section 16-1907, R.C.M. 1947. The terms of the aforementioned section are quite explicit as to the method of proceeding; therefore, it is unnecessary for me to reiterate the same.

THEREFORE, it is my opinion that:

1. The local boards of health are empowered only to employ a nurse to provide nursing services to those persons qualified under section 69-4512, R.C.M. 1947, and, therefore, may not set up a separate budget item for home nursing services.
2. The power in the local boards of health to employ a nurse implies the power to pay the same for service rendered.
3. The salary of said nurse is properly an item to be included in the budget of the local board of health.

4. Section 16-1907, R.C.M. 1947, dealing with emergency expenditures, is the proper method of proceeding when funds are unavailable to pay the nurse for services rendered.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General