

VOLUME NO. 34

Opinion No. 50

**COUNTIES - Budgets, public welfare, ward Indians; COUNTIES - Public welfare, ward Indians, budgets; INDIANS - Indigent, public welfare, county duty to budget for, aid to dependent children whose father is unemployed; PUBLIC WELFARE - Aid to dependent children whose father is unemployed, ward Indians, county budgets; PUBLIC WELFARE - Ward Indians, county budgets, aid to dependent children whose father is unemployed; WARD INDIANS - Counties, public welfare, budgets. Article X, section 5, Constitution of Montana; sections 71-211 and 71-508, R.C.M. 1947.**

**HELD:** The state, rather than counties, has the duty under section 75-508, R.C.M. 1947, to budget for indigent ward Indians who are eligible for "aid to Dependent Children Whose Father is Unemployed."

August 11, 1972

Mr. Douglas Y. Freeman  
Big Horn County Attorney  
Hardin, Montana 59034

Dear Mr. Freeman:

You have requested my opinion on the meaning and application of section 71-508, Revised Codes of Montana, 1947, as it pertains to the counties' duty to budget for ward Indians who are eligible for "Aid to Dependent Children Whose Father is Unemployed but Seeking Employment".

Section 5 of Article X of the Montana Constitution provides:

"The several counties of the state shall provide as may be prescribed by law for those inhabitants, who, by reason of age, infirmity or misfortune, may have claims upon the sympathy and aid of society."

Section 71-508, R.C.M. 1947, was amended by Chapter 373, Laws of 1971, to read:

*"Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved aid to dependent children grants exclusive of the federal share, provided, however, whenever the state appropriation to fund the state's share of the grants, to families with unemployed fathers who are honestly and responsibly seeking employment, is insufficient to fully fund the state's share of such grants and such funding, if any, has been depleted, then the county, if any, which would be responsible for extending aid to dependent children to such families, shall reimburse the state department in the full amount granted to such family, exclusive of the federal share and exclusive of any costs to the state for participation by any such family in any and all federal or state work incentive programs and retraining programs and exclusive of any costs to the state for any such payments made to persons for whom the state is responsible. The state department, on receiving any appropriation for funding the unemployed father families payments, shall allocate such funds for such programs so that it may be determined when, if at all, such funds as are appropriated for such program are depleted."*

Section 71-211, R.C.M. 1947, provides:

"The state department shall act as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the Federal Social Security Act,

and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department. The counties shall not be required to reimburse the state department for any portion of old-age assistance, medical assistance, aid to needy dependent children or aid to needy blind or aid to the totally disabled paid to ward Indians . . . A ward Indian is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use, or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes . . .”

In 1938, the Montana Supreme Court construed section 71-211, R.C.M. 1947, as originally enacted (subdivision (h), section 7, part 1, Chapter 82, Laws of 1937) and its relation with section 6, part 2, Chapter 82, Laws of 1937, (now codified in its amended form as section 71-308, R.C.M. 1947). Section 6, part 2, Chapter 82, Laws of 1937, read in part:

“Medical aid and services and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, payable from the county funds.”

The court held:

“This (sec. 6, pt. 2, ch. 82, L. 1937) is a general provision and makes the county liable for all such services to all persons. Subdivision (h) of section VII, Part I, (sec. 71-211) is a special provision dealing with Indians only, and, as we have interpreted it, when applied to ward Indians, it is controlling over other general provisions of the act, and therefore controls over section VI, Part II. In consequence, medical aid and services and hospitalization of ward Indians, not adequately provided for by the federal government, must be provided by the state without reimbursement by the county.” **State ex rel. Williams v. Kamp, et al.**, 106 Mont. 444, 451, 78 P.2d 585 (1938). (Bracketed words added)

After **Williams**, *supra*, section 71-211, R.C.M. 1947, was amended to specifically provide for state payment for certain **categorical assistance** (old age assistance, aid to needy dependent children or aid to needy blind) to ward Indians, by section 3, Chapter 129, Laws of 1939. In 1946, then Attorney General Bottomly issued an opinion holding that, in view of the 1939 amendment, counties were required to provide **general relief** to ward Indians without reimbursement from state funds. 21 **Opinions of the Attorney General**, no. 129. In that opinion Attorney General Bottomly noted that the legislature had replaced the general

reference to "assistance" with reference to specific forms of assistance designated as "old-age assistance, aid to needy dependent children or aid to needy blind". Bottomly then referred to Article X, section 5, Constitution of Montana, stating:

"This section places the primary duty of taking care of the infirm and unfortunate upon the counties, but the state may assist the counties in performing this obligation. (Citing authority.)

"Under the act of 1937 the state assumed the duty of expending its funds in payment of the obligation to afford ward Indians general relief. After the amendment of 1939 there was no longer any assumption of this obligation on the part of the state and accordingly the state is no longer obligated by law to discharge the obligation of affording ward Indians general relief."

The reasoning of Attorney General Bottomly is based on the fact that the legislature accepted three types of welfare obligations by statute and, had it meant to accept the fourth type of welfare obligation, it would have done so specifically. By not accepting the fourth type, the legislature acknowledged the constitutional primary obligation of the county for general relief assistance.

In 1947, the legislative assembly amended section 71-211, R.C.M. 1947 (section 1, Chapter 219, Laws of 1947), to include the payment for general relief to ward Indians by the state.

In 1952, 24 *Opinions of the Attorney General*, no. 80, stated that the counties may extend general relief to ward Indians, but cited *State ex rel. Wilson v. Weir*, 106 Mont. 526, 79 P.2d 305 (1938), for the proposition that the state can, under section 5 of Article X of the constitution, offer assistance and bind counties as to how they shall care for their poor.

Section 71-508, R.C.M. 1947, before the 1971 amendment, was a general statute similar in character to the statute interpreted by *State ex rel. Williams v. Kamp, et al.*, supra. Chapter 373, Laws of 1971, did not add a new category of coverage to the Montana welfare statutes, but rather, expanded coverage of the category, "aid to needy dependent children" to include those "Whose Father is Unemployed but Seeking Employment", Chapter 373, Laws of 1971. The amendment to section 71-508, supra, provides for a larger county share than the statutory one-third ( $\frac{1}{3}$ ) county reimbursement in the event the state's appropriation is insufficient. As section 71-508, supra, is a general statute and section 71-211, supra, is a special statute, the rule of statutory construction that the special controls over the general is here applicable. *State ex rel. Williams v. Kamp, et al.*, supra.

As to the time when section 71-508, supra, as amended, becomes operational, see 34 **Opinions of the Attorney General**, no. 48.

**THEREFORE, IT IS MY OPINION** that the provision of section 71-508, R.C.M. 1947, as it pertains to the counties' duty to budget for Aid to Dependent Children Whose Father is Unemployed but Seeking Employment does not require counties to budget for ward Indians.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General