

VOLUME NO. 37

OPINION NO. 173

CONTRACTS - County: Power to obtain hospital services for indigent aged; COUNTIES - Lease of hospital facilities and contracts for services for indigent aged; HOSPITALS - County lease and contract for rooms and services for indigent aged; LEASES - County: Power to lease hospital rooms for indigent aged; REVISED CODES OF MONTANA, 1947 - Sections 16-1007, 16-1032, 16-1037, 16-1038.

HELD: A county which has leased hospital facilities may lease rooms in that hospital from the lessee and contract for services with the lessee to provide room and care for the indigent aged who cannot be accommodated in the county nursing home.

5 December 1978

Conrad B. Fredricks, Esq.
Sweet Grass County Attorney
Sweet Grass County Courthouse
Big Timber, Montana 59011

Dear Mr. Fredricks:

You have requested my opinion on the following question:

May a county which has leased hospital facilities pursuant to section 16-1032, R.C.M. 1947, lease rooms in that hospital from the lessee and contract for services with the lessee in order to provide room and care for the indigent aged who cannot be accommodated in the county nursing home?

According to your letter, Sweet Grass County has constructed and leased a hospital in compliance with sections 16-1008A and 16-1032 of the Revised Codes of Montana 1947. Furthermore, the county has built and is operating a nursing home for the aged pursuant to sections 16-1037 and 16-1038, R.C.M. 1947. The nursing home, however, cannot accommodate all the indigent aged seeking admission, while the hospital facilities are not being used to capacity. The question has therefore arisen as to whether the county may now lease space in the hospital and contract for services from the lessee to provide for the indigent aged who are at present on a waiting list for the nursing home.

Section 16-1007, R.C.M. 1947, gives the board of county commissioners the power to lease or otherwise obtain property which is "necessary for the use of the county." Section 16-1037, R.C.M. 1947, further empowers the county not only to construct and equip a boarding house or nursing home, but also to maintain and operate those facilities. From a reading of these statutes, it is clear that the county may lease the space and provide or contract for the services necessary to the operation of a nursing home.

Section 16-1038, R.C.M. 1947, requires that a county nursing home "provide care, nursing care, maintenance, board and room for the indigent aged." The manifest intent of this statute is that the county, if possible, should furnish care for the elderly who are financially unable to care for themselves. In order to effectuate this purpose and perform the functions enumerated in section 16-1038, a county may use its explicit powers to lease property and operate a nursing home to obtain from a hospital necessary rooms and services for those indigent aged who cannot be accommodated in the county nursing home.

THEREFORE, IT IS MY OPINION:

A county which has leased hospital facilities may lease rooms in that hospital from the lessee and contract for services with the lessee to provide room and care for the indigent aged who cannot be accommodated in the county nursing home.

Very truly yours,

MIKE GREELY
Attorney General