

VOLUME NO. 40

OPINION NO. 29

COUNTIES - Eligibility for emergency grant-in-aid;
COUNTIES - Procedures for transferring monies into
depletion allowance reserve fund;
COUNTIES - Use of poor fund monies for county nursing
home;
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES -
Required to approve improvements of certain county
facilities;

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES -
Required to approve improvement of certain county
facilities;

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Scope
of inquiry into county finances for determining
emergency grant-in-aid eligibility;

MONTANA CODE ANNOTATE - Title 7, chapter 34, part 24;
Title 53, chapter 2, part 3; sections 1-2-101, 7-6-2326,
7-6-2512, 53-2-101(2), 53-2-801, 53-2-802, 53-2-811,
53-2-812.

- HELD: 1. Title 53, chapter 2, part 3, MCA, does not
authorize a county to set aside monies in the
poor fund to be unavailable for supporting
public assistance activities in the county.
2. Section 7-6-2326, MCA, permits transfer of a
poor fund cash balance to another fund at the
end of the fiscal year only when there is an
excess of the amount budgeted for the poor
fund for the next fiscal year.
3. Section 7-34-2402, MCA, permits poor fund
monies to fund a depletion allowance reserve
fund only to the extent that they represent
actual excess of expenses incurred from or for
indigent patients in the county facility.
4. Transfer of monies into a depletion allowance
reserve fund is not subject to the
requirements in section 7-6-2326, MCA.
5. Section 53-2-322(7), MCA, permits use of poor
fund monies to build a new nursing home, but
not to improve an existing one. The county is
subject to the requirements in this section
before expending poor fund monies to build or
improve county facilities.
6. Under section 53-2-323, MCA, the inquiry into
a county's fiscal activities by the Department
of Social and Rehabilitation Services is
limited to the fiscal year in which the county
applies for emergency grant-in-aid.

30 December 1983

John D. LaFaver, Director
Department of Social and
Rehabilitation Services
P.O. Box 4210
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Dear Mr. LaFaver:

You have requested my opinion regarding the following questions relating to use of poor fund monies and the creation of a depletion allowance reserve fund:

1. Does Title 53, chapter 2, part 3, allow a county to set aside certain monies in a separate account within the poor fund, which would be unavailable for supporting the activities of the welfare department in administering public assistance in the county?
2. Does section 7-6-2326, MCA, prohibit the transfer of a poor fund cash balance to another fund when the cash balance is less than the amount to be expended by the county welfare department for public assistance activities in the next year?
3. If a county nursing home is operated by the county welfare department and if the operating expenses incurred in the care of the indigent patients in the nursing home exceed the revenue earned for the care of those patients in any one year, can other poor fund monies be transferred to a depletion allowance reserve fund for that nursing home?
4. Is a county subject to the requirements of section 7-6-2326, MCA, when making a transfer from the county poor fund to the depletion allowance reserve fund?
5. Is the transfer of poor fund money to a fund established to build or improve a nursing home facility lawful under the terms of section 53-2-322, MCA, and is approval from SRS necessary?

6. If the sole reason that a county cannot meet its obligation to perform public assistance activities is an improper transfer of a poor fund cash balance in a prior year, is the Department of Social and Rehabilitation Services required to provide such county with an emergency grant-in-aid?

Your first question is whether a county has the authority under Title 53, chapter 2, part 3, MCA, to set aside certain portions of the poor fund in a separate account which would not be available for supporting public assistance activities in the county.

Section 53-2-322, MCA, provides in part:

The board shall budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. [Emphasis added.]

In construing Montana's welfare statutes I recognize that they are entitled to a liberal construction with a view toward accomplishing their highly beneficial objectives. State ex rel. Florence-Carlton School District v. Ravalli County, 180 Mont. 285, 590 P.2d 602, 605 (1978). In addition, the rules of statutory construction prohibit omission of matter in the statute, and insertion of matter omitted. § 1-2-101, MCA.

The language of section 53-2-322, MCA, authorizes the board of county commissioners to expend monies from the poor fund only for "public assistance purposes." Those public assistance purposes are: (1) to pay the general relief activities of the county, and (2) to reimburse SRS for public assistance activities carried on jointly by the State and county. Express mention of a certain power or authority implies the exclusion of nondescribed

powers. State ex rel. Jones v. Giles, 168 Mont. 130, 541 P.2d 355, 357 (1975). Therefore, all monies within the poor fund must be used for public assistance activities within the definition of that term in section 53-2-101(2), MCA.

Your second question is whether the transfer of a poor fund cash balance to another fund is prohibited by section 7-6-2326, MCA, when the cash balance of the poor fund is less than the amount to be expended by the county welfare department for public assistance activities in the next year.

Section 7-6-2326(1), MCA, provides:

Transfer of cash balance in fund at close of fiscal year. (1) After a public hearing, if the cash balance remaining at the end of a fiscal year in any of the several county funds except the school fund, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county. [Emphasis added.]

This section states that only "excess" may be transferred to other funds at the end of a fiscal year. County commissioners can transfer this excess only when the cash balance at the end of the fiscal year exceeds the amount to be budgeted to that fund in the next fiscal year. The statute must be construed by its plain language. State ex rel. Woodahl v. District Court of Second Judicial District In and For Silver Bow County, 162 Mont. 283, 511 P.2d 318, 323 (1973). Therefore, transfer of a poor fund cash balance to another fund is allowed only when there is an excess of the amount budgeted for the poor fund for the next fiscal year.

Your third question relates to the sources of money for a depletion allowance reserve fund. Title 7, chapter 34, part 24, MCA, establishes the authority of the board of county commissioners to create such a fund and its appropriate sources of money.

Section 7-34-2402, MCA, provides:

Sources of money for depletion allowance reserve fund. Money for the depletion allowance reserve fund may be derived from:

(1) public and private grants;

(2) money collected by the hospital or nursing home for which the fund is created, from or for indigent patients, that are in excess of the expenses incurred for the care of such patients. [Emphasis added.]

This statute clearly limits the sources of revenue for a depletion allowance fund. Subsection (2) explicitly states that money collected by a nursing home from or for indigent patients must be in excess of the expenses incurred for their care in order to be allocated to a depletion allowance reserve fund. On this basis counties operating hospitals or nursing homes must use accounting methods which clearly demonstrate the sources of those revenues and that the revenues are in excess of the expenses incurred from or for indigent patients before they may be allocated to a depletion allowance reserve fund for the hospital or nursing home. The county does not have authority to place any poor fund monies into the depletion allowance reserve fund if those monies do not represent cash balance excesses retained by the nursing homes as described in subsection (2).

Your fourth question is whether the county is subject to the requirements in section 7-6-2326, MCA, when transferring monies from the poor fund into a depletion allowance reserve fund. That section pertains to transfers of remaining cash balance from one fund to another. The question is whether a depletion allowance reserve fund is a "fund" within the meaning of the statute. The term "fund" is not expressly defined in the county finance statutes. Generally, a "fund" is "an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and/or other resources together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations." Lynn and Freeman, Fund Accounting Theory and Practice, 30-31 (1974).

Section 7-6-2326, MCA, is part of the county budget law statutes, Tit. 7, ch. 6, pt. 23. These statutes provide for the budgeting procedure for counties and the method of determining tax levies based on the budget for the coming fiscal year. The monies in the funds contemplated in section 7-6-2326, MCA, come from this budgeting and tax levy process. The county budget laws attempt to restrict the use of these monies to the purposes for which they were budgeted and the taxes levied. For example, section 7-6-2325, MCA, limits transfer of monies among the various expenditure classes; and section 7-6-2326, MCA, limits transfer of the monies among funds so that they can be transferred only at the end of the year, after a hearing, and only an amount exceeding the next year's budget for that fund.

Sections 7-34-2401 to 2404, MCA, authorize establishment of depletion allowance reserve funds. These funds are strictly limited as to their sources of monies and their uses. A depletion allowance reserve fund exists solely for replacement and acquisition of a county hospital or nursing home and its property and equipment. Its funding is not budgeted, nor is it derived from tax revenues. This fund's monies are solely contingent upon grants, and excess cash balance retained by the county facility. Thus, the purposes for which section 7-6-2326, MCA, exists do not pertain to a depletion allowance reserve fund. It is my opinion that depletion allowance reserve funds established under section 7-34-2401, MCA, are not subject to the requirements in section 7-6-2326, MCA.

Your fifth question is whether poor fund money may be transferred to a fund established to acquire a new nursing home facility, and if approval from the Department of Social and Rehabilitation Services is necessary.

Section 53-2-322(7), MCA, provides:

No part of the county poor fund, irrespective of the source of any part thereof, may 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 public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) 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 department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services. [Emphasis added.]

This subsection clearly prohibits the use of poor fund monies to improve county nursing homes. This subsection was amended in 1983 to exclude improvements of county nursing homes and hospitals from county poor fund expenditures. At the same time the Legislature has enacted section 7-6-2512, MCA, which permits the county to levy up to ten mills for erection, maintenance, and operation of county-owned or county-operated hospitals and nursing homes. Although this tax levy can be used for the "erection" of nursing homes, section 53-2-322, MCA, as amended, does not expressly prohibit use of poor fund monies for "erection" of the nursing homes. The first part of subsection (7) permits use of county poor fund monies for the erection of any county building, so long as the fund is not needed for general relief expenditures or for the county's share of public assistance. This subsection distinguishes between use of poor fund monies for "erection" which denotes the construction of new facilities, and for "improvement" which denotes the enhancement of existing facilities. A county is subject to specific requirements before it can expend poor fund monies for improving county facilities used for the poor (except county hospitals and county nursing homes): (1) it must get some kind of certification from the Department of Health and Environmental Sciences that such improvements are needed to bring the institution up to that Department's legal

standards, and (2) it must get a determination from the Department of Social and Rehabilitation Services that the poor fund monies are not owed to the State for the county's proportionate share of any public assistance activities that may be carried on jointly by the State and the county. These two requirements do not, however, exist for erection of county buildings. In the event the county wishes to build a new facility, it may use poor fund monies so long as the county determines that the monies are not needed for general relief expenditures or its proportionate share of public assistance activities, including those shared with the State.

It is therefore evident that poor fund monies can lawfully be used for erection of a county nursing home but not improvement of one. At this point I must add that prior to the 1983 amendment to section 53-2-322, MCA, counties were not prohibited from using poor fund monies to improve county nursing homes and county hospitals. The counties were, however, subject to the requirements in that section, before they could use poor fund monies for such improvements. I also observe that section 53-2-322, MCA, does not prescribe the method by which poor fund monies are to be expended for building a nursing home. The county is thus able to expend the monies by placing them in a separate account for the specific purpose of building the facility.

Your last question is whether the Department of Social and Rehabilitation Services can deny emergency grant-in-aid to a county that made an improper transfer of monies out of the poor fund in a prior fiscal year.

Section 53-2-323, MCA, provides for emergency grants-in-aid from the Department of Social and Rehabilitation Services to counties for public assistance. Such grants-in-aid are available only to counties that have not transferred their public assistance and protective services responsibilities to the Department of Social and Rehabilitation Services under sections 53-2-801, 53-2-802, 53-2-811, and 53-2-812, MCA. Section 53-2-323, MCA, contains criteria for counties to qualify for emergency grants-in-aid, including requirements "(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;" and "(c) that all expenditures from the county poor fund have been lawfully made."

It is my opinion that this section limits the inquiry of the Department of Social and Rehabilitation Services into a county's fiscal activities to the fiscal year in which the county applies for the emergency grant-in-aid. Section 53-2-323(2), MCA, requires the county to transfer all money credited during the current fiscal year to the depletion allowance reserve fund to be transferred to the poor fund to be used up before the grant-in-aid money can be received. Subsection (7) requires the county to return all unspent money in the poor fund and the emergency fund account (the grant-in-aid money) at the close of the fiscal year. The language throughout the statute focuses on the current fiscal year only. Furthermore, there is no direction in the statute as to how many past years the Department of Social and Rehabilitation Services may consider. I construe the language in this section as disclosing a legislative intent that the Department of Social and Rehabilitation Services inquire into the county's fiscal activities during the current fiscal year only. The inquiry is to make certain that expenditures from the poor fund within that year are lawful and to assure that any grant-in-aid money requested by the county is needed because of a genuine emergency. It is not to explore the possibility of unlawful expenditures or improper management of the poor fund by the county in prior years.

THEREFORE, IT IS MY OPINION:

1. Title 53, chapter 2, part 3, MCA, does not authorize a county to set aside monies in the poor fund to be unavailable for supporting public assistance activities in the county.
2. Section 7-6-2326, MCA, permits transfer of a poor fund cash balance to another fund at the end of the fiscal year only when there is an excess of the amount budgeted for the poor fund for the next fiscal year.
3. Section 7-34-2402, MCA, permits poor fund monies to fund a depletion allowance reserve fund only to the extent that they represent actual excess of expenses incurred from or for indigent patients in the county facility.

4. Transfer of monies into a depletion allowance reserve fund is not subject to the requirements in section 7-6-2326, MCA.
5. Section 53-2-322(7), MCA, permits use of poor fund monies to build a new nursing home, but not to improve an existing one. The county is subject to the requirements in this section before expending poor fund monies to build or improve county facilities.
6. Under section 53-2-323, MCA, the inquiry into a county's fiscal activities by the Department of Social and Rehabilitation Services is limited to the fiscal year in which the county applies for emergency grant-in-aid.

Very truly yours,

MIKE GREELY
Attorney General