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In The Supreme Court of the State of Utah

WEBER COUNTY,

Appellant,

vs.

DAVIS COUNTY,

Respondent.

Case No. [illegible]

RESPONDENT'S BRIEF

Appeal from the Judgment of the [illegible] District Court in and for Box Elder County, [illegible] VeNoy Christofferson, Judge.

BENNETT P. [illegible]

Davis County Att[illegible]

Attorney for Res[illegible]

Courthouse

Farmington, Utah [illegible]

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JUN 21 [illegible]

Clerk, Supreme Court, [illegible]

LORRAINE PRESS 1997 SOUTH MAIN STREET SALT LAKE CITY, UTAH [illegible]

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In The Supreme Court of the State of Utah

WEBER COUNTY,

Appellant,

vs.

DAVIS COUNTY,

Respondent.

Case No. 12861

RESPONDENT'S BRIEF

NATURE OF CASE

Weber County brought an action against Davis County for recovery of costs incurred by Weber County for medical care rendered to eleven indigent sick residents of Davis County.

DISPOSITION IN LOWER COURT

The Court below denied Weber County's claim and decided that there is no liability on the part of Davis County to reimburse Weber County for costs incurred in caring for indigent sick persons named in the pleadings.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the decision of the lower court.

STATEMENT OF FACTS

The claim asserted by Weber County in the case at bar is for medical care rendered to eleven Davis County residents at Weber County Memorial Hospital.

At least seven of these patients were admitted to Weber County Memorial Hospital from private hospitals in Weber County. One was admitted from a private hospital in Salt Lake County. Two were admitted from home. (Tr. 28, 32, 67, 75, 76, 77, 79, 84, 85). There is no evidence that any were admitted from the scene of an accident.

Four of the patients were intitially admitted to Weber County Memorial Hospital in 1966. Three were initially admitted in 1967. Two were admitted in 1968. Two were admitted in 1969 (Tr. 7, 10, 23, 32, 33, 34, 36, 37, 38).

Davis County was not notified prior to the admission of any of these patients. Notice to Davis County that any Davis County residents had been admitted to Weber Memorial Hospital was given only after the patients had already been admitted. (Tr. 49, 68, 70, 72, 74, 77, 78, 84, 126).

Davis County did not agree to pay Weber County anything. Nor did Davis County affirm, authorize or ratify any action taken by Weber County concerning any of these patients.

However, there is no evidence that Davis County has ever refused to comply with its statutory obligation to care for the indigent sick and dependent poor. In fact, Davis County has complied with *Utah Code Ann.*, § 17-5-55.5 (Supp. 1971), by depositing an appropriation with the State Treasurer, and with *Utah Code Ann.*, § 17-5-55(1953), by maintaining an indigent account.

Each of the patients named in the pleadings was a recipient of welfare. The claim Weber is asking is over and above the amount paid by welfare, social security, family and other sources. Weber is asking Davis to pay the balance.

ARGUMENT

POINT I

THE COURT BELOW RENDERED A MEMORANDUM DECISION AND PREPARED FINDINGS OF FACT WHICH RESPONDED TO AND COVERED ALL OF THE MATERIAL ISSUES RAISED BY THE PLEADINGS.

Appellant avers generally that the findings of fact are deficient in scope. *Appellant's Brief at 7.*

Respondent concedes as a matter of law that findings of fact must respond to and cover all of the material issues raised by the pleadings, *Simper v. Brown*, 74 U. 178, 278 P. 529 (1929), and failure to do so is reversible error, where the failure is prejudicial, *Gaddis Investment Co. v. Morrison*, 3 U. 2d 43, 278 P. 2d 284 (1954), but denies that the trial court committed such error in the case at bar.

The Utah Supreme Court has taken the position that it will not reverse a trial court on the facts of a law case unless there is error of law, and the burden is upon the appellant to convince the court that the trial court committed error. *Brigham v. Moon Lake Electric Association*, 24 U. 2d 292, 470 P. 2d 393 (1970).

Appellant has not shown a single instance where the trial court failed to respond to a material issue raised in the pleadings. All appellant has shown is that appellant disagrees with the court's findings.

The memorandum decision and the findings of fact, which may properly be considered together, *Sprague v. Boyles Bros. Drilling Co.*, 4 U 2d 344, 294 P. 2d 689 (1956), clearly respond to and cover all the material issues raised by the pleadings.

Whether the court's findings are supported by the evidence is the issue of the following point.

POINT II

THE FINDINGS OF FACT BELOW ARE SUPPORTED BY THE EVIDENCE AND

FAIRLY REFLECT THE WEIGHT OF THE EVIDENCE.

Appellant contends that the findings of fact below do not fairly reflect the weight of the evidence. *Appellant's Brief at* 7.

In order to prevail, appellant must not only show there is error, but that the error is substantial and prejudicial.

When a matter such as the case at bar is on appeal, "all presumptions favor the validity of the verdict and judgment; and they will not be overturned unless the attacker shows that there is error which is substantial and prejudicial in the sense there is reasonable liklihood that in its absence the result would have been different." *Simpson v. General Motors Corporation,* 24 U. 2d 301, 305, 470 P. 2d 399 (1970).

The Supreme Court is "obliged to assume that the trial court believed those aspects of the evidence, and drew such reasonable inferences as could fairly be drawn therefrom in the light favorable to the sustaining of his findings and judgment." *W. P. Harlin Const. Co. v. Continental Bank & Trust Co.,* 23 U. 2d 422, 424, 464 P. 2d 585 (1970).

Even where a case is tried to the court without a jury, the evidence must be viewed in the light most favorable to sustain the findings of the court and judgment based thereon. *Lake Creek Irrigation Company v. Clyde,* 22 U. 2d 222, 451 P. 2d 375 (1969).

In the case at bar appellant disagrees with findings No. 4, 6, 7, 8 and 9. *Appellant's Brief at* 12 & 13.

Mere disagreement is not grounds for reversal. The Utah Supreme Court does not substitute its judgment for that of the trial court even if it should disagree with the trial court's finding where there is competent evidence to support the finding. *Pitcher v. Lauritzen,* 18 U. 2d 368, 423 P.2d 491 (1967).

Each of the findings is supported by competent evidence.

Finding No. 4 provides, "There appears to have been no emergency in the admission of any of the patients." In challenging that finding, appellant contends that "[t]here is some evidence of emergency within the meaning of that term as applied in the *Cache Valley* case." *Appellant's Brief* at 12. (emphasis added). It is of interest to note that the definition given by the court in *Cache Valley,* is that "the necessity for attention must be most urgent." *Cache Valley General Hospital v. Cache County,* 92 U. 279, 288, 67 P.2d 639 (1937).

There is no evidence that any of the patients named in the pleadings came from the scene of an accident or any other location in such condition that the necessity for attention was most urgent.

Respondent concedes that the patients were in need of some kind of medical and nursing care, but denies that any emergency existed. Just because a patient

needs and in fact receives medical attention does not mean that an emergency exists. Age, infirmity, senility, and the other conditions of the patients in the case at bar do not constitute the kind of emergency described in the *Cache Valley* case.

The trial court did not err in finding that no emergency existed. But, even if the court did err in such finding Weber County still cannot prevail.

The general rule is that before a county becomes liable to third parties in any case for medical care of an indigent sick person, the county must be notified and give its authorization. *Cache Valley General Hospital v. Cache County,* supra. However, in a proper case, where there is an emergency, the county must respond even though there is no authorization, the proper case being one where the person cared for is one *for whom the county is ultimately liable.* Even in an emergency there is a tight limit: "[A]ny one who gives relief in an emergency because the matter is too imminent to permit of the obtaining of authorization must at the first opportunity get in contact with those who are liable and obtain authorization for further care. If that is not given, he can only recoup for such services and care as are necessary to administer so as to put the party in a condition where he may be safely removed." *Id* at 290.

In the case at bar there was no authorization from Davis County. Nor has there been enough evidence to show that any of the patients were in such a condition

that they could not have been removed prior to the time they were in fact terminated.

Thus the most that Weber County could recover under any theory is the recoupment for emergency treatment. Before it could recover from Davis County on that theory it would have to establish that Davis County is ultimately liable. The statute doesn't impose liability on the county of residence. As discussed in Point IV of this Brief, infra, the county where the indigent person is found is liable, regardless of the indigent's residency.

Since Davis County is not ultimately liable as a matter of law, Weber County cannot recover from Davis County even where there is an emergency.

The trial court found that four of the patients were admitted in 1966, three were admitted in 1967, two were admitted in 1968, and two were admitted in 1969. Appellant contests that finding. *Appellant's Brief* at 12. There is really no room for dispute. Appellant's own Brief supports the finding! Patients Goldsberry, Murphy, Robins, and Shiramizu were admitted in 1966. Patients Bodily, Bodily and Taylor were admitted in 1967. Patients Fitzpatrick and Willey were admitted in 1968. Patients Bishop and Seagrist were admitted in 1969. *Appellant's Brief* at 2. The record also supports the finding. (Tr. 7, 10, 23, 32, 33, 34, 36, 37, 38).

Appellant also contests finding No. 7, wherein the court found that Davis County was not contacted at the time of admission of any of these patients. Any notice Davis County received was in *all* instances *after* the admission had been accomplished. In fact, the first notice to Davis County was in February 1968 after over one-half of the patients named in the pleadings had already been admitted. Notice given after February 1968 was never prior to or at the admission of any patient, but always after the admission. (Tr. 49, 68, 70, 72, 74, 77, 78, 84, 110, 126.)

Finding No. 8, which Appellant contests, is also supported by the evidence. According to all the testimony at the trial, the first notice to Davis County was executed in February 1968, (Tr. 49, 74, 77, 124), and in 1970 a demand was made as a "prelude to suit required by statute." *Appellant's Brief* at 13; (Tr. 66).

The final finding which Appellant contests is No. 9 which provides "Davis County did not agree to pay Weber County anything, nor did Davis affirm, authorize or ratify any action taken by Weber County concerning any of these patients."

There is no evidence whatsoever that Davis County entered into any agreement to pay Weber. Furthermore, the record is void of any evidence that would show Davis County affirmed, authorized or ratified any action taken by Weber. In fact it is clear that Davis County did not intend to pay Weber County anything, and so informed Weber County. (Tr. 112, 113.)

Appellant contends that the court below failed "to reach the issue raised by plaintiff's demand and defendant's responsive demurrer to the Weber County proposal to turn out or discharge the Davis County indigent patients (T 64-65)". *Appellant's Brief* at 13. That is not really an issue. It was not raised in the pleadings. It is merely some testimony for the court to consider with all other testimony in making a decision. Furthermore, even if Commissioner Smoot said what he is alleged to have said, (Tr. 64-65), which he says he has no knowledge of, (Tr. 115), that does not detract from any of the court's findings.

Appellant has not shown any error whatsoever on the part of the trial court concerning the findings of fact. Rather, each finding is supported by the evidence and the findings fairly reflect the weight of the evidence.

POINT III

THE TRIAL COURT DID NOT ERR IN CONCLUDING AS A MATTER OF LAW THAT THE CARE RENDERED TO DAVIS COUNTY INDIGENTS BY WEBER COUNTY WAS VOLUNTARY.

By Appellant's own argument, all of the patients named in the pleadings were hospitalized on the order of a physician whose judgment was reviewed by a hospital board. *Appellant's Brief* at 12. The fair inference

to be made from that representation is that the admission of the patients was not necessarily based upon compelling and urgent circumstances, but upon administrative decision. Just as they were admitted by administrative decision, so were most of them likewise discharged. (Tr. 87). That is not inconsistent with the court's conclusion.

Furthermore, most of the patients came to Weber County Memorial Hospital from other hospitals. There is no evidence that Weber County had to receive them. The lower court based his conclusion upon the evidence before it. The evidence and reasonable inferences to be drawn from the evidence substantiate the conclusion on the grounds there was no contract to take these patients, there was no emergency associated with the admission, and as will be discussed in the next point of the Brief, there was no legal responsibility on the part of Davis County to pay Weber County anything.

Therefore, the care rendered by Weber County must necessarily, as a matter of law, have been given on a voluntary basis as far as Davis County is concerned.

POINT IV

DAVIS COUNTY HAS NO OBLIGATION TO WEBER COUNTY FOR THE CARE, MAINTENANCE OR RELIEF OF ANY INDIGENT SICK PERSON.

The only obligation any county has concerning care of the indigent sick is statutory. As a matter of historical fact there is ". . . no common law or constitutional duty to support [the] poor. (Citations omitted)." *Allen v. Graham,* 446 P.2d 240, 243 (Ariz. 1968). Aid to the indigent sick and dependent poor is solely a matter of statutory enactment. See 41 *Am. Jur.,* Poor and Poor Laws, § 38 (1942); 70 *C.J.S.,* Paupers, § 67 (1951).

Utah does have a statute in effect which requires each county to take some action in caring for the indigent sick and dependent poor. *Utah Code Ann.,* § 17-5-55 (1953). The obligation of a county under that statute to provide assistance for the medically indigent is satisfiled by depositing a designated appropriation with the State Treasurer. *Utah Code Ann.,* § 17-5-55.5 (Supp. 1971). That issue is discussed in the next point.

Weber County contends that since it treated indigent sick Davis County residents, it is entitled to recover from Davis County. There is no statute in Utah which imposes an obligation on any county to make payments to another county for care of any indigent sick person. The majority view is that liability for relief furnished by others is wholly a matter of statute. See 70 *C.J.S.,* Paupers, § 72 (1951).

Weber County relies on *Ogden City v. Weber County,* 26 U. 129, 72 P. 433 (1903), to support its contention that one county may look to another for recovery of expenses outlayed to aid medically indigent

non-residents. That case does not stand for that proposition. The issue in that case was "whether, under our laws, it is the duty of the county commissioners to provide and care for . . . *non-resident* poor . . ." *Id.* at 131. (emphasis added).

The court in that case discussed the issue whether a county within whose boundaries a pauper is found can refuse to give assistance merely because the pauper is a resident of another county. The Utah Supreme Court concluded that a county is obligated to provide care, maintenance and relief of non-residents as well as residents found within the county. The court explained however, that where "the applicant for aid is a non-resident, it is doubtless also the duty of [the board of commissioners] to remove him, as soon as practicable, to the *county or state* of his residence." *Id.* at 133 (emphasis added). There was no discussion whatever concerning recovery of costs incurred from the county of the pauper's residence. The court did explain very clearly that the county where the indigent sick person is found—be he resident or non-resident—has a statutory obligation to provide relief. Thus, where a non-resident indigent sick man was found in Weber County, it was the duty of Weber County to care for him. In that case Weber County refused; Ogden City then rendered assistance to the man. Ogden City was allowed to recover from Weber County.

Therefore, *Ogden City v. Weber County,* supra, holds that as between a city and a county, the county

has the statutory obligation to aid a non-resident indigent sick person. That case did not deal with the kind of request Weber County is making in the case at bar. The very most that case provides in the way of doctrine concerning inter-county obligation, is that where a county has a non-resident indigent sick person within its boundaries it must provide relief and then remove such person as soon as practicable to the county of his residence.

Davis County is not attempting to express any affirmative duty Weber County may have. Davis County is merely contending that the *Ogden City v. Weber County* case does not support Weber County in the case at bar.

It is of interest to note that even where a county is obligated to assist indigent poor persons, the obligation is not unlimited. Statutory limits may be imposed. In *Cache Valley General Hospital v. Cache County,* 92 U 279, 67 P. 2d 639 (1937), the Utah Supreme Court explained that the amount of money available to a county for the care, maintenance and relief of the indigent sick and dependent poor may be limited by statute. When that case was decided there was a statute in effect limiting the levy for the care of indigent to one mill. The court held that the county has a duty to provide such assistance "only up to the point where the county may reasonably do so within its funds raised for that purpose. And there must be some discretion in the county commissioners." *Id.* at 287. Therefore, just as an obli-

gation can be imposed by statute upon a county to care for the indigent, so too can that obligation be limited by statute.

Since the Utah Supreme Court decided the *Cache Valley General Hospital* case in 1937, a very sophisticated and elaborate program providing care for the needy has been developed. This program is commonly referred to as Public Welfare.

Federal statutes and funds are involved. 42 *U.S.C.A.* §§ 1301 to 1396. So too are state statutes and funds involved. *Utah Code Ann.*, § 55-15-1 to 55-15-39 (Supp. 1971). If the state complies with the federal statute, then it is eligible for federal funds. One requirement of the state in order to qualify for medical assistance funds is that the state establish a plan which "shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them." 42 *U.S.C.A.*, § 1396(a)(a)(1).

Utah has establshed a public welfare plan which is in effect in all counties. As indicated in the preceeding paragraph in order for Utah to qualify for federal assistance, the plan in Utah must be uniform throughout every county.

In 1967 the Utah Legislature enacted a statute which enabled each of the counties in the state to take full advantage of the medical assistance program set up under federal and state law. The act relates to the care of the medically indigent and provides that each county

pay a minimum sum into a central fund to be used to provide for hospital and medical care for the medically indigent of every county. *Utah Code Ann.* § 17-5-55.5 (Supp. 1971).

Therefore, since any obligation a county may have to assist the medically indigent may be limited by statute, and since Utah has a statute which limits a county's obligation, then by complying with that statute a county has no further obligation.

The only obligation Davis County has concerning medically indigent persons who are on welfare, is to the State of Utah. Davis County has no obligation whatsoever to any other county.

POINT V

THE ONLY FINANCIAL OBLIGATION DAVIS COUNTY HAS CONCERNING MEDICAL AND HOSPITAL CARE FOR ANY PERSONS DETERMINED TO BE MEDICALLY INDIGENT IS SATISFIED BY DEPOSITING AN APPROPRIATION WITH THE STATE TREASURER PURSUANT TO *UTAH CODE ANN.*, § 17-5-55.5 (Supp. 1971).

Utah Code Ann., § 17-5-55.5 (Supp. 1971), was enacted in 1967 to enable each and every county to take advantage of the federal and state medical assistance programs. The main thrust of this provision is to provide uniform care to all of the medically indigent per-

sons in the State of Utah, regardless of their place of residence. The State of Utah is completely responsible for administering the program involving medical assistance to the indigent sick and dependent poor persons. The counties are able to fulfill any obligation they have in this regard by paying a maximum one-half (½) mill levy to the State Treasurer. *Att'y Gen. Op.*, 68-052 (Utah 1968).

Of course, compliance with *Utah Code Ann.*, § 17-5-55.5 (Supp. 1971), does not relieve counties of the obligation to care for indigent sick persons who are not eligible to receive any assistance under the state program. Compliance does however, relieve counties "of the responsibility of caring for the indigent sick . . . in those instances where the indigent sick qualify for medical or hospital assistance under programs administered by [the Division of Family Services]." *Att'y Gen. Op.*, 68-058 (Utah 1968).

"Since Section 17-5-55.5 fixes the limits of the responsibility of a County for care of the medically indigent, it cannot pay public funds in excess of the payments called for by that section for aid to the medically indigent." *Att'y Gen. Op.*, 69-053 (Utah 1969).

The State has the sole discretion in determining who is medically indigent for purposes of *Utah Code Ann.*, § 17-5-55.5 (Supp. 1971). However, where the State has made the determination that any person is medically indigent, then *any obligation a county may have concerning medical and hospital care for such a*

person is satisfied by complying with Section 17-5-55.5. *Att'y Gen. Op.,* 69-080 (Utah 1969).

Davis County does not ignore its obligation under *Utah Code Ann.,* § 17-5-55 (1953), to "provide for the care, maintenance and relief of all indigent sick or otherwise dependent poor persons who have lawfully settled in any part of the county . . ." Davis County has established an "indigent" account which has been in effect several years and from which thousands of dollars are drawn annually to provide a variety of essential services for the needy. No elaboration of that will be made here for the simple reason it is not relevant to the issue in the case at bar.

The issue here has to do with the obligation of Davis County to provide care, maintenance and relief of indigent sick persons found in Weber County, who have been determined by the State to be medically indigent and have received medical assistance from the State.

The parties to the action in the case at bar stipulated that each of the patients named in the pleadings was medically indigent and qualified for public assistance. (Tr. 2).

Therefore, since all of the persons involved in Weber County's claim have been determined to be "medically indigent", and since Davis County has complied with *Utah Code Ann.,* § 17-5-55.5 (Supp. 1971),

then Davis County has no further financial obligation with respect to these medically indigent persons.

(For the sake of convenience, all of the Attorney General Opinions involved are attached to this Brief and designated as "Appendix").

CONCLUSION

Weber County has failed to state a claim upon which relief can be granted.

In the first instance Weber has not shown any error on the part of the court below.

Secondly, Weber has not shown that one county can recover from another county for aid rendered to the indigent sick in any circumstance. There is *no* statute which allows Weber County to look to Davis County, or which would require Davis County to pay anything to Weber County.

Thirly, the statutory scheme upon which our Family Assistance Program is based, absolutely precludes one county from looking to another for recovery.

If Weber County is allowed to prevail, then, in spite of the federal requirement that the plan be uniform in every county, one county could look to another to pay money over and beyond the limit established by statute. That could have several adverse consequences. It could render the counties ineligible altogether from participating in the State Welfare Program, as funded

by the federal government. It could put each County Commission in a position of having no discretion whatsoever when another county comes forward with demands to pay for medical care of indigent sick persons.

Furthermore, if Weber is allowed to prevail then it would require the court to create legislation. There is no statutory authority for Weber's claim. Nor is there any common law authority, which means in the absence of statute, Weber cannot prevail unless the court acts as a legislative body and creates appropriate legislation.

Davis County never authorized, affirmed or ratified any action Weber took. Weber has not come forward with any theory upon which the court could grant its claims in absence of authorization, affirmation, or ratification.

Even if Weber came forward with such a theory i.e., emergency, it still can't prevail because, (1) there is no statutory obligation by one county to another in a case like this, and (2) Davis has satisfied all of its affirmative statutory obligations, which as indicated by the Attorney General Opinions, prepared by two different Attorneys General, satisfies all financial obligations with respect to the medically indigent.

Therefore, Davis County respectfully submits that

Weber County's claim be denied, and that the judgment of the lower court be affirmed.

Respectfully submitted,

BENNETT P. PETERSON

Davis County Attorney

Attorney for Respondent

I hereby certify that I mailed two copies of Defendant's Brief in the above entitled matter to Robert C. Newey, 2471 Grant Avenue, Ogden, Utah, 84401, on this ..... day of June 1972.

.....

APPENDIX

OFFICE OF THE ATTORNEY GENERAL
STATE OF UTAH

OPINION OF LAW

No. 68-052

Requested by Mr. B. H. Harris, Cache County Attorney, 31 Federal Avenue, Logan, Utah.

Prepared by Attorney General Phil L. Hansen and staff.

QUESTIONS

1. Are county commissioners required to provide for the care and maintenance of the indigent sick and dependent poor not otherwise cared for which are found within their county?

2. Does the Utah Code Ann. (1967) set forth the manner in which county commissioners are to fulfill their duties to provide for the care and maintenance of the indigent sick and the dependent poor not otherwise cared for which are found within their county?

CONCLUSION

1. Yes.

2. Yes.

OPINION

1. The duties of counties with regard to the care and maintenance of indigent sick and dependent poor are not specifically enumerated in the statutes. The code does state:

> They may provide for the care, maintenance and relief of all indigent sick or otherwise dependent poor persons who have lawfully settled in any part of the county, including that territory or portion thereof lying within the limits of any incorporated city or town situated in the county; and it is hereby made the duty of each board of county commissioners to provide such care, maintenance and relief for the indigent sick and dependent poor, whether found within or without the corporate limits of incorporated cities or towns . . . .[1]

The question immediately that presents itself is whether the above provision is a mandatory direction by the Utah State Legislature or a permissive authorization. While the use of the word "may" sometimes entitles the reader to conclude the provision is merely permissive, it does not render the conclusion inescapable:

> The word 'may' in a statute will be construed to mean 'shall' whenever the rights of the pub-

[1] Repl. Vol. Utah Code Ann. § 17-5-55 (1962).

> lic or of third persons depend upon the exercise of the power of the performance of the duty to which it refers, and such is its meaning in all cases where the public interests and rights are concerned, or a public duty is imposed upon public officers, and the public or third persons have a claim *de jure* that the power shall be exercised.[2]

The statute itself is mandatory: ". . . it is hereby made the duty of each board of county commissioners to provide such care, maintenance and relief for the indigent sick and dependent poor. . . ." This language argues against a permissive construction. To view the provisions as mandatory would be consistent with the view that public duty requires an enlightened person to provide for those penurious individuals who are unable to care for themselves.

Justice Bartch, speaking, for the Utah State Supreme Court, said:

> The enactment was made in the interest of humanity and mercy, and must receive a liberal construction, so as to carry into effect the humane and benevolent policy adopted by the legislature.[3]

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[2] *Board of County Comm'rs v. State*, 369 P.2d 537, 542 (Wyo. 1962).

[3] *Ogden City v. Weber County*, 26 Utah 129, 72 Pac. 433, 434 (1903).

If, as the high tribunal held in the *Ogden City* case, it is the duty of the county to provide for care of the transient poor found within the county in a helpless condition, then would a resident of the county similarly situated be entitled to county assistance? An affirmative reply is fairly compelled because the statute under consideration in the *Ogden City* case was interpreted to mean "all" indigent sick within a county.

2. Does the Utah Code Ann. (1967) set forth the manner in which county commissioners are to fulfill their duties to provide for the care and maintenance of the indigent sick and the dependent poor not otherwise cared for which are found within their county?

In 1967, the Utah State Legislature enacted an addition to Repl. Vol. Utah Code Ann. § 17-5-55 (1962), which enumerates in detail the method by which the county commissions may fulfill their responsibilities to the medically indigent. The secton states:

> Each and every county commission shall appropriate from the general funds of the county an amount of money not to exceed the equivalent of a ½ mill levy which, in its judgment, based upon historical experience and projected need as determined in consultation with the state department of public welfare, shall be equal to one-third (1/3) of the anticipated annual costs of medical treatment and hospitalization for the medically indigent, but in no event shall such annual appropriation be

> less than one hundred dollars ($100). Moneys so appropriated shall be deposited with the state treasurer who shall credit the same to a hospital and medical care account.
>
> Eligibility requirements for hospital and medical care shall be determined by the state department of public welfare and shall be uniform for all counties. Payment for such care shall be made by the department or division of state government administering the Public Assistance Act of 1961 upon notification to the county in which the indigent resides for whom payment is being made and the county commissioners agree. Disbursement from the hospital and medical care account shall be made only for costs accrued in excess of care limits otherwise established for the care of such patients by the state department or division administering the Public Assistance Act of 1961.[4]

The above provision enables each of the counties in the State of Utah to take full advantage of Title 19 of Public Law 89-97 of the "Social Security Amendments of 1965," which is a medical assistance program financed in a large part by the federal government. It appears to provide a tremendous advantage occurring to each of the counties of the State of Utah under the new section, for:

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[4] Repl. Vol. Utah Code Ann. § 17-5-55.5 (Supp. 1967).

1. All of the medically indigent in the State of Utah will receive uniform care, regardless of their place of residence.

2. The county itself will not have to pay full costs since the federal government will underwrite the major portion of the program.

The effect of this new section will be the transfer of the administration of all hospitals and medical care for the medically indigent from the various counties to the health and welfare departments of this State and will enable the counties to fulfill their responsibilities for such care by paying a maximum one-half (½) mill levy. Whatever the actual levy is that the county finally decides on after its consultation with the state department of public welfare, the amount must be equal to one-third (1/3) of the anticipated annual costs of medical treatment and hospitalization for the medically indigent, but in no event shall such annual appropriation be less than One Hundred Dollars ($100).

Further effect of the new section is to make the department of welfare completely responsible for the administration of this program, including outpatient care, emergency care, and all other benefits carrying to the medically indigent under Title 19.

All money appropriated by the county shall be deposited with the State Treasurer who shall credit the same to the hospital and medical care account. Disbursements from the hospital and medical care account are

to be made only for costs accrued in excess of care limits otherwise established for the care of such patients by the state department or division administering the Public Assistance Act of 1961. Thus, it is possible to envision circumstances whereby the county funds would not be used for the treatment of the medically indigent, but, rather, only the funds of the state department of public welfare.

Further, Utah Code Ann. § 17-5-55.5 (Supp. 1967) provides that payments out of the hospital and medical care account shall be made by the department or the division of state government administering the Public Assistance Act of 1961 and upon notification to the county in which the indigent resides for whom payment is being made and the county commissioners agree. This provision was apparently inserted in order to allow the local county commissioners to maintain some control over their moneys they deposit in the hospital and medical care account with the State Treasurer. The implementation of this program was apparently to be accomplished by the county commissioners as of July 1, 1967, by depositing the moneys they appropriated for the medically indigent with the State Treasurer, who was to credit the same to the hospital and medical care account. This money would then be used by the department of welfare to pay the county fees for the

care of indigent people requiring medical aid and assistance.

Dated this 5th day of August, 1968.

Respectfully submitted,

/s/ Phil L. Hansen

Attorney General Phil L. Hansen

OFFICE OF THE ATTORNEY GENERAL

STATE OF UTAH

OPINION OF LAW

No. 68-058

Requested by Mr. B. H. Harris, Cache County Attorney, 31 Federal Avenue, Logan, Utah.

Prepared by Attorney General Phil L. Hansen and staff.

QUESTION

Does Utah Code Ann. § 17-5-55.5 (Supp. 1967) relieve counties of caring for the indigent sick who are not covered by medical programs administered by the Utah State Department of Health and Welfare?

CONCLUSION

No.

OPINION

On August 5, 1968, this office issued an opinion construing the statutes of the State of Utah governing the allocation of responsibility for the care of the State's indigent sick.[1] However, the discussion contained therein was not specifically addressed to the question now posed, and it was believed that a further clarification should be made to serve as a supplemental reference to that initial effort.

The primary and overriding concern behind the enactment of Utah Code Ann. § 17-5-55.5 (Supp. 1967) was to provide a statutory vehicle which would enable the counties to acquire available federal funds to help defray the costs of caring for their indigent sick. The statute has admirably served this purpose to the extent the respective counties have complied with its provisions and have sought to utilize the benefits resulting therefrom.

There, nevertheless, remain certain persons who are in fact indigent and in need of medical attention who fall outside of the purview of Utah Code Ann. § 17-5-55.5 (Supp. 1967), in that they do not qualify for hospital and medical care under eligibility requirements established by the Utah State Department of Health and Welfare. Such persons, by reason of Repl. Vol. Utah Code Ann. § 17-5-55, still remain the responsibility of the State's respective counties:

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[1] Utah Att'y Gen. Op. No. 68-052, August 5, 1968.

> . . . it is hereby made the duty of each board of county commissioners to provide such care, maintenance and relief for the indigent sick and dependent poor . . . .

In summary, this office is of the opinion that the counties of this state are relieved of the responsibility of caring for the indigent sick only in those instances where the indigent sick qualify for medical or hospital assistance under programs administered by the Department of Health and Welfare. This exception to the general premise of county responsibility presupposes county compliance with provisions governing the appropriation and remittance of funds required for these programs.

Dated this 27th day of August, 1968.

Respectfully submitted,

/s/ Phil L. Hansen

Attorney General Phil L. Hansen

OFFICE OF THE ATTORNEY GENERAL

STATE OF UTAH

OPINION NO. 69-053

April 17, 1969

REQUESTED BY:

M. Dayle Jeffs, Utah County Attorney

PREPARED BY:

Vernon B. Romney, Attorney General
Homer Holmgren, Assistant Attorney General

QUESTIONS:

1. If the county complies with the provisions and payments set forth in 17-5-55.5, U.C.A. 1953, as amended, will this satisfy all obligations of the county to medically indigent persons?

2. If individuals are receiving welfare payments under the Public Assistance Act of 1961, are they thereafter no longer considered as medically indigent under the statutes and does the county have any residual responsibility for medical care of persons receiving welfare payments either through the Public Assistance Act of 1961 or pursuant to 17-5-55.5?

3. Can a county pay public funds in excess of payments under 17-5-55.5 and the Public Assistance Act of 1961 for care and treatment of persons determined to be medically indigent?

4. Does 17-5-55 and 17-5-55.5, imposing duties upon counties to provide for relief for the indigent sick, include mental illness?

5. Does 17-5-55.5 make the State Department of Public Welfare the sole administrator of payments for all medical care for persons determined to be medically indigent in the State of Utah?

CONCLUSIONS:

1. Yes.
2. No.
3. No.
4. No.
5. No.

1. Section 17-5-55.5 imposes a mandatory requirement upon each County Commission to make a levy not to exceed the "equivalent of ½ mill levy, which in its judgment, based upon historical experience and projected need as determined in consultation with the State Department of Public Welfare, shall be equal to one-third (1/3) of the anticipated annual costs of medical treatment and hospitalization for the medically indigent, but in no event . . . less than $100.00. The money is to be deposited with the State Treasurer in a hospital and medical care account.

When this is done the County has no further financial obligation with respect to the medically indigent. This, of course, relates only to medical and hospital care for indigents and does not relieve the County of its obligation to care for indigents under Section 17-5-55, U.C.A. 1953. For fuller details on this question, see Attorney General Opinion No. 68-052, dated August 5, 1968.

2. The 1961 Public Assistance Act was amended in 1967 and again in 1969 by H.B. 347. We answer the

second question in the light of the latest amendment as it will be effective May 13, 1969.

Section 55-15-23(6), as so amended by H.B. 347, provides:

> "The division (division of welfare) is authorized to adopt policies providing medical assistance for and in behalf of money grant recipients and for low-income medically needy children and adults when income and resources are insufficient to pay the cost of necessary medical services . . . "It is declared to be the intent of the Legislature that the most adequate medical care and services possible shall be provided for those eligible; within the limitations of the appropriations made for the biennium for the purpose of this subsection, together with federal matching funds as may be available."
>
> "It is the further intent of the Legislature that the program of medical assistance shall conform to requirements of the Federal Social Security Act."

From the foregoing, it is clear that persons receiving welfare payments under the Public Assistance Act of 1961, as amended, are not to be considered, by reason of receiving such grants, as being ineligible to receive medical assistance from the Division of Welfare in conjunction with Federal participation under the

Social Security Act. There is no residual responsibility in the County for medical care for persons receiving welfare payments either through the Public Assistance Act of 1961, as amended, or pursuant to Section 17-5-55.5. Incidentally, the result would be the same under the 1967 amendment to the Public Assistance Act of 1961.

3. Since Section 17-5-55.5 fixes the limits of the responsibility of a County for care of the medically indigent, it can not pay public funds in excess of the payments called for by that section for aid to the medically indigent. Further, to do so would be contrary to the provision in that section that eligibility to receive medical and hospital care shall be determined by the State Department of Public Welfare and should be uniform in all Counties.

4. The obligation of the County to provide funds for the medically indigent is imposed by Section 17-5-55.5. Whether this would include so-called "mental illness' would depend upon what is meant by the term. We assume it is used in the sense of mental abnormality as distinguished from illness generally. In that sense, the Legislature has seen fit to draw a distinction between medical care services and mental health services. Separate appropriations are made for each. Mental health is covered by Chapter 17, Title 26, which sets up a Division of Mental Health under the Department of Health and Welfare. Section 26-17-5 provides for equitable distribution of funds appropriated or avail-

able for mental health programs. Cities and Counties are authorized to establish local health authorities and to provide mental health services. Fees may be charged, but services shall not be refused to any person unable to pay therefor.

The word "medical" relates to the science of medicine or to the practice or study of medicine. Since the Legislature treats mental health in a category different from that of those "medically" indigent, it appears that mental health is not to be considered as being included in Section 15-5-55.5, which deals with medically indigent.

It is Chapter 17, Title 26, that provides for the care of the mentally ill without reference to indigency. Local authorities and the State provide the funds to carry on the mental health program under the administration of the Board of Mental Health, a division of the Department of Health and Welfare.

5. Payments for the hospital and medical services provided for by Section 17-5-55.5 "shall be made by the department or division of state government administering the Public Assistance Act of 1961 upon notification to the County in which the indigent resides for whom payment is being made and the County Commissioners agree." This indicates that the State Department of Public Welfare does not have unfettered control over the funds deposited by the County from the levy made to raise said funds. The County Commissioners must first be notified and also agree to the pay-

ment. In addition, "disbursement from the hospital and medical account shall be made only for costs accrued in excess of care limits otherwise established for the care of such patients by the department administering the Public Assistance Act of 1961." This, conceivably, could result in a situation which the County funds would not be used as the funds of the State Department of Public Welfare might be sufficient to cover the costs involved.

Respectfully Submitted

/s/Vernon B. Romney

VERNON B. ROMNEY

Attorney General

OFFICE OF THE ATTORNEY GENERAL

STATE OF UTAH

OPINION NO. 69-080

August 5, 1969

REQUESTED BY:

Ward C. Holbrook, Executive Director
Department of Social Services

PREPARED BY:

Vernon B. Romney, Attorney General
Homer Holmgren, Assistant Attorney General

QUESTION:

Can the Department of Social Services determine and thus designate persons to be "medically indigent", as being limited to those persons who qualify under the Federal Act as being "categorically related", and thus leave to the counties the obligation to care for all other persons needing medical assistance, as provided in Sec. 17-5-55, U.C.A. 1953.

CONCLUSION:

Yes.

Under Section 17-5-55, U.C.A. 1953, the counties were required to provide medical care to the indigent. The 1967 Legislature added a new Section 17-5-55.5 which provided for the levy of a tax by counties to raise funds to be turned over to the State Treasurer to be used by the Department of Public Welfare to furnish medical assistance to those persons denominated as "medically indigent", and providing that the "eligibility requirements for hospital and medical care shall be determined by the State Department of Public Welfare and shall be uniform for all counties."

Obviously Section 17-5-55.5 was not intended to shift the entire burden imposed by Section 17-5-55 to provide medical assistance to indigent persons from the counties to the state, for it left to the Department of

Public Welfare the determination of the person to be considered as "medically indigent", and thus be eligible to receive the assistance contemplated by that section.

Further, Section 17-5-55.5 was enacted to take advantage of the federal grants available to states having a program to care for medically needy persons who fell within the provisions of the federal act under the term "categorically related".

It is our opinion that it is within the right and jurisdiction of the Department of Public Welfare to limit the persons who are eligible to receive the medical assistance available under Section 17-5-55.5 to those persons who come within the term "categorically related" under the federal act. Such limitation being in harmony with the federal act, and qualifying the state to receive federal financial assistance, cannot be classed as arbitrary capricious or unreasonable. As to all other indigent sick, the counties have the duty of providing medical assistance under Section 17-5-55.

Our conclusion herein is in harmony with Opinion No. 68-058, issued by the Attorney General August 27, 1968. Our opinion No. 69-053 is not in conflict with this opinion. The questions answered in that opinion were considered as being related only to Section 17-5-55.5. We did not in any wise attempt to designate what persons belong to the class denominated as "med-

ically indigent", a matter wholly within the determination of the Department of Public Welfare.

Respectfully submitted,

/s/Vernon B. Romney

VERNON B. ROMNEY

Attorney General

/s/ Homer Holmgren

HOMER HOLMGREN

Assistant Attorney General