

OFFICIAL OPINION NO. 77-50, Providing medical care for poor relief recipients at county hospital

June 14, 1977

Mr. Douglas J. Luebke  
Douglas County State's Attorney  
Armour, South Dakota 57313

Official Opinion No. 77-50

**Providing medical care for poor relief recipients at county hospital**

Dear Mr. Luebke:

You have requested an opinion based on the following factual situation:

FACTS:

Mrs. X is an indigent person, a resident of Douglas County. Mrs. X needs to be periodically hospitalized. During such hospitalization she received certain medical treatment which needs to be supervised by a physician, but not a specialist. Douglas County has a county hospital. Adequate care is available to Mrs. X in the county hospital. Mrs. X has been hospitalized out of the county since she prefers a physician who because of distance and travel time cannot attend to her in the county hospital.

Based on the above factual situation you have asked the following question:

QUESTION:

If Mrs. X is a resident of Douglas County and Douglas County has a county hospital, can the board of county commissioners require that she be hospitalized in the county hospital even if it is impossible for the physician of her choice to attend her, but a qualified physician is available?

SDCL 28-13-16 provides:

The county commissioners in each county shall have the oversight and care of all poor

persons in such county so long as such persons remain a county charge, and shall see that such persons are properly relieved and taken care of in the manner provided by law, and shall perform all the duties with reference to such poor persons that may be prescribed by law.

The South Dakota Supreme Court in *Jerauld County v. St. Paul Mercury Indemnity Company*, 71 N.W.2d 571 (1955), interpreted the role of the county as follows:

SDC Supp. 50.0101 (SDCL 28-13-1) makes it the duty of the county to relieve and support all poor and indigent persons having a lawful poor relief settlement therein. In this general duty is included, among other things, the specific duty to provide hospitalization, medical care and treatment. *South Dakota Employers Protective Association v. Poage*, 65 S.D. 198, 272 N.W. 806. In the acceptance of this duty the county has no choice. It does however have a choice as to the means by which the hospitalization, medical care and treatment are to be provided. SDC 50.0201 ([SDCL 28-13-16](#)); SDC Supp. 50.0204. *Bartron v. Codrington County*, 68 S.D. 309, 2 N.W.2d 337, 140 A.L.R. 550. If the electors of the county petition and vote to establish a county hospital as authorized by SDC Supp. 27.19 (SDCL 34-8- 1), the county may utilize such facility in providing the enumerated services.

The *Bartron* case above cited stated that the statutes obligating the county to care for the poor and indigent also vested the commissioners with broad discretion in determining how the care is to be provided.

Therefore, assuming the board has made a determination that the care available from the county hospital is adequate for the medical needs of Mrs. X, it is my opinion that the board may require her utilization of these facilities.

It is also my opinion that the board should state their position in the minutes of an official board meeting.

The answer to your question is yes.

Respectfully submitted,

William J. Janklow  
Attorney General

WJJ:LLV:jo