

Official Opinion No. 82-17, The County's Duty to pay the Hospital Bill of a Preterm Child

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Ms. Joan P. Baker
Hand County State's Attorney
111 North Broadway
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Official Opinion No. 82-17

The County's Duty to pay the Hospital Bill of a Preterm Child

Dear Ms. Baker:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

A premature baby was admitted to the neonatal intensive care unit of a hospital where it remained for 137 days. Because the parents were indigent, the child was eligible for Medicaid. However, medicaid benefits were exhausted after 60 days. The mother wanted to release her rights to the child to the Department of Social Services. However, the Department of Social Services deliberately delayed taking legal custody of the child until the child was ready for release from the hospital. The hospital then billed the mother's county of residence for the hospital bill.

Based upon the above facts you have asked the following question:

QUESTION:

Must the county pay the balance of the child's hospital bill, even though the Department of Social Services deliberately delayed taking legal custody of the child?

The duty of the county must first be explored. SDCL 28-13-1 placed a statutory obligation upon the county. The statute provides:

28-13-1. Every county shall relieve and support all poor and indigent persons who have established residency therein, as that term is defined in §§ 28-13-2 to 28-13-16.2, inclusive, and who have made application to the county, whenever they shall stand in need. Each board of county commissioners may raise money by taxation for the support and employment of the poor.

The duty to provide support to all indigent and poor persons having a lawful residence in the county includes the specific duty to provide hospitalization, medical care and treatment. South Dakota Employers Protective Association v. Poage, 65 S.D. 198, 272 N.W.2d 571 (1955). The county has no choice in the acceptance of this duty. Jerauld County v. St. Paul Mercury Indemnity Company, 76 S.D. 1, 71 N.W.2d 571 (1955). A lack of funds is not sufficient reason for a county to refuse to pay for the care of the poor. 1955-56 A.G.R. 408. The county's power to spend is related to its power to raise revenue. South Dakota Employers Protective Association v. Poage, supra.

The responsibilities of the Department of Social Services must also be examined. Although no statute requires that agency to support children, it does provide for the children in its care. Unlike the counties, the agency has no powers of taxation, but rather is limited to the budget which the Legislature appropriated for it. The agency must rely upon state dollars for those indigent children in its care who are not eligible for Medicaid. Also, state statutes place limitations upon the agency's ability to spend funds. SDCL 4-8-3 provides that no agency may incur any expense in excess of its appropriation. Any officer who violates this provision is subject to a class two misdemeanor.

The Legislature placed the duty of providing care for the poor and the ability to raise funds for that purpose upon the county rather than upon the state agency. Therefore, the county has the obligation to pay for the child's hospital bill. The county's duty to support the poor is not vitiated because the agency delayed in taking legal custody of the child.

Therefore, the answer to your question is YES.

Respectfully submitted,

Mark V. Meierhenry
Attorney General