

OFFICIAL OPINION NO. 89-07, Poor Relief

March 29, 1989

Ms. Karen A. Johnson
Custer County State's Attorney
P.O. Box 749
Custer, South Dakota 57730

OFFICIAL OPINION NO. 89-07

Poor Relief

Dear Ms. Johnson:

You have requested an official opinion from this Office in regard to the following factual scenario:

FACTS:

Custer County has received an application for County Assistance from an individual who requested that the County pay the entire monthly mortgage payment on her mobile home. The current mortgage payment is \$237.60 per month. The individual has equity in the mobile home of approximately \$1,000.00. Custer County adopted Ordinance #7 establishing Poor Assistance Guidelines on November 25, 1986. The Ordinance provides that under "Housing Assistance";

"The maximum rental supplement, per household per month shall not be more than \$125 excluding utilities."

Based upon those facts, you have asked the following questions:

QUESTIONS:

1. Is Custer County required to pay mortgage payments for individuals under their "Housing Assistance" provision?
2. If Custer County is required to pay mortgage payments for an individual, is it required to pay more than \$125 a month?

IN RE QUESTION NO. 1:

The analysis of this question must begin with a review of the applicable statutory section. SDCL 28-13-16 charges the county commissioners with the oversight and care of poor persons. The statute provides:

The county commissioners in each county shall have the oversight and care of all poor persons in the county so long as those persons remain a county charge, and shall see that those 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 commissioners may adopt reasonable standards for the amount, scope and duration of emergency and nonemergency medical and remedial services. The commissioners may designate a county official to assist in the coordination of poor relief information with other counties.

The second sentence in the statute allows the county commissioners discretion when adopting reasonable standards regarding the amount to be provided an indigent individual for remedial services. The commissioners possess "broad discretion" in these matters. cf. *Bartron v. Codrington County*, 2 N.W.2d 337, 347 (S.D. 1942). By county ordinance, the amount, available for rent subsidy, has been set at one hundred and twenty-five dollars per month, (\$125).

Based on the facts in your question, the individual petitioning for poor assistance has taken the position that, since she has met the indigence requirements, she is entitled to have the county not only meet her shelter needs but purchase equity in an asset on her behalf. This Office has stated that the county commissioners may make capital improvements to an indigent person's home if, without the improvements, the home would be declared a public nuisance. (1967-68 AGR 27). The particular improvements that were in question involved the installation of sanitary facilities in indigents' homes. The opinion was based on the assumption that the county did not have a poor home.

The distinction between this earlier opinion and the question presented here is clear. In the prior case, there were no other shelter options for the indigents of that county except for the homes in which they lived. If those homes were declared to be public nuisances, then the residents would be forced to vacate. The final result would be homeless individuals. Shelter is as necessary for the support of the poor as is food. *Id.* See also, (1931-32 AGR 692). This should not be misconstrued to mean that a qualifying indigent has an innate

entitlement to housing at a level above and beyond that which meets the minimum standards of health and safety. In addition, it does not mean that an indigent can pick the home of their choice and require the county commissioners to purchase it in the name of the indigent, via mortgage payments. In the prior case, the county did not have any place to shelter the poor. To handle this problem and fulfill their statutory duty, the commissioners exercised the broad discretion they have and determined that it was most economical to install the sanitary facilities. In this situation, the indigent believes that the making of the trailer mortgage payments is required by SDCL 28-13-16.

In response to question one, it is my opinion that SDCL 28-13-16 provides the county commissioners with the discretion to adopt reasonable standards for the amount, scope and duration of the rent assistance. As long as the commissioners do not abuse their discretion, they may decide that the indigent in question is subject to the one-hundred and twenty-five dollar, (\$125), limit or that they will pay her mortgage payment. Regardless, she can not require the county commissioners to make her mortgage payment. Thus my answer to question number one is No.

IN RE QUESTION 2:

In light of the foregoing analysis, this question does not need to be addressed.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

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