

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

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OFFICIAL OPINION NO. 67-68 pg. 27

**Poor Relief. Poor Relief may include costs of modernizing an indigent's home to escape being declared a public nuisance and the payment of periodic municipal sewer charges.**

You have requested my official opinion based upon the following factual situation:

"Municipality "X" in Sanborn County, was required by Court order to construct a municipal sewerage disposal system. At an election the electorate approved the construction of such sewage disposal system, and authorized the city to levy a quarterly sewer rent upon all of its citizens to defray the costs of such construction. At the same time outhouses and septic tanks for the disposal of human and other wastes were declared to be public nuisances."

Based upon this factual system you have asked the following question:

"1 May the County Commissioners in providing relief for the indigent poor, under SDC 50.0101, install indoor sanitary facilities in the homes of such indigent poor and pay the quarterly sewer rent to the municipality for such indigents?"

"2 May the County Commissioners install such sanitary facilities and pay the municipal sewer rent for those residents in Municipality "X" who are without funds to pay the cost of such installations or sewer rental but who are not qualified to receive state welfare relief?"

In South Dakota the legal duty to furnish support for and to relieve the poor is statutory. SDC 1960 Supp. 50.0101 provides that every county shall relieve and support all poor and indigent persons having a lawful poor relief settlement therein whenever they shall stand in need thereof. In *Sioux Falls Paint & Glass co. v. Knutson*, 66 SD 261, 281 NW 201, Judge Roberts stated as follows:

"The duty to relieve and support the poor is expressed in general terms, but the mode and nature of the relief extended is not left entirely to the judgment and discretion of the board of county commissioners. Poor persons may be committed to the county asylum as provided in Section 10057, Rev. Code 1919, and in counties where no asylums for the poor have been established boards of county commissioners are authorized under Section

10040, Rev. Code 1919, to contract for the maintenance of the poor. Provision is also made for temporary aid and medical services, and recognizing that complete dependency may be prevented, provision is made for the payment of allowances, as to which there are restrictions imposed S S 10041, 10047, 10052 and 10055, Rev. Code 1919. Concerning the nature of the relief permissible under these statutes, this court in the recent case of South Dakota Employers Protective Ass'n v. Poage, supra, in considering an application for mandamus to require a county auditor to countersign warrants for premiums on a workmen's compensation policy covering relief workers employed on a federal work relief Project, said: 'The support and relief contemplated by the Legislature, as evidenced by the statutes, is direct in character and is primarily for the benefit of those unfortunate persons having a lawful settlement in the county who, through incapacity or circumstances over which they have no control, have lost the ability to help themselves. It includes, among other things, maintenance or allowance for necessities, hospitalization, medical care and treatment, education, visitation and supervision. Much latitude is permitted, but the power is not unlimited. In ascribing intent to the Legislature, the fact that it placed limitations upon the power of the county to raise revenue cannot be overlooked. Nothing in the statute points to an intention that the county engage in activities directed to the promotion of other welfare programs, or that it solicit or bargain for outside assistance to the poor. Its power to spend is intimately related to its power to raise revenue'."

Question I raises the question as to the extent of such support for the county indigent and poor. As above stated our courts have held that such includes "maintenance or allowance for necessities." In the situation you have given, is the modernization of the homes of such indigents within the broad comprehension of maintenance or allowance for necessities? Does such extend to the payment of the requisite sewer rent for the use of the municipal sewage disposal facilities?

My predecessor in office has ruled that the support of the poor may include the payment of necessary house rent for such poor, for the reason that in a climate such as South Dakota enjoys, shelter is as necessary for the support of the poor as is food. (1931-32 AGR 692). My predecessor also ruled (1931-1932 AGR 588) that it would be proper for the County Commissioners to take conveyances of their homes from its indigent poor on the condition that they could reside in such homes and the county would provide them with support during the rest of their natural lives.

It is my opinion that subject to the limitations as mentioned by Judge Roberts in the Sioux Falls Paint & Glass Co. case, that the Commissioners have certain broad and honest discretion in furnishing such relief to the county poor. There is nothing I can find that prohibits them from allowing the poor to remain in their own homes, it being assumed that your county has no poor house nor has it entered into agreements and contracts for such facilities to be provided for the county poor. If one accepts, as it is my opinion he must, the fact that in South Dakota shelter is as essential to life as is sustenance, if the shelter provided for the county poor is declared to be a public nuisance so that the poor may be forced to leave such shelter, the conditions of the statute requiring the county to relieve and support its poor and indigent whenever they shall stand in need thereof are shown, and the County Commissioners may, subject of course to the budgetary limitations, under their

broad authority to furnish "maintenance or allowance for necessities" expend county money to install indoor sanitary facilities in the homes of such indigents and pay the municipal sewer tax for such homes.

My answer to question No. 1 is "YES". The County Commissioners may, in furnishing relief for the county poor and indigent, install the necessary sanitary facilities so that such homes of the poor will not be public nuisances, and pay municipal sewer charges.

Question No. 2 presents a little different situation and comprehends two different types of poor or indigent.

It is my opinion that the statutory duty placed on the county to relieve and furnish support for its poor and indigents is a separate and distinct duty from that placed upon the state by virtue of the statutes concerned with state welfare. Qualifying for state welfare is not a condition precedent to being classified as a poor person or indigent residing within a particular county any more than qualifying as a county indigent is a condition precedent to being placed upon the state welfare rolls. There is no question, of course, that many may qualify as indigents under both programs and receive assistance from one and supplementary aid from the other. However, it should be emphasized that the two programs are exclusive and are not dependent upon each other. A person may be determined to be a county indigent even though state relief has been denied to such person.

It is my opinion that the determination of who may be properly categorized as county poor or indigent is a question the county commissioners must answer. They may consider the denial of state public welfare in making such determination, but such is not the controlling criterion. If the Commissioners decide that a particular person or group of persons within the group described in Question 2 are in fact indigent and poor, the answer to Question 2, as to these people, is the same as the answer to Question 1—"YES" the county may as a part of furnishing relief to the county poor and indigent install the necessary sanitary facilities so that the homes of such indigents are not public nuisances, and in addition pay the municipal sewer charges from the funds budgeted for the county poor.

There still remains in group two those persons who have been denied state welfare assistance and who are considered by the Commissioners not to be indigent or poor. As to this group your attention is called to the provisions of SDC 50.0205 which authorizes the Board of County Commissioners in its discretion to allow and pay to poor persons who may become county charges and who are of mature years and sound mind and who from their general character will probably be benefited thereby, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode.

The exercise of this authority is discretionary. It is my opinion that if the County Commissioners should determine that the cost of installing indoor sanitary facilities would be such that it would result in a person going from a "non-indigent" status to a status of a county indigent, and if it determined that such person was of mature years and sound mind, and who from their general character will probably be benefited thereby, and there is a further finding that the cost will not exceed the ordinary charges for maintenance, then as

to these persons, the answer to Question 2 must be "YES" the Commissioners may furnish the costs of installing such facilities so that the home will not be considered a public nuisance, and in addition the Commissioners could furnish the necessary funds to pay for such sewer charges.