

**OPINION
67-177**

April 14, 1967 (OPINION)

Mr. Fabian E. Noack

State's Attorney

Foster County

RE: Public Welfare - State Hospital - Liability of County for Costs

This is in reply to your letter of April 3, 1967, relative to the responsibility of Foster County for certain patients at the State Hospital. You state the following facts and questions:

Frequently, patients are committed to the State Hospital at Jamestown through the Foster County Mental Health Board. Some of the patients so committed are residents of Foster County whereas other patients may be transients or temporarily residing in Foster County. Further, some cases are taken direct to the State Hospital where they are committed by the Stutsman County Mental Health Board.

Section 25-09-01 N.D.C.C. provides that all expenses at the State Hospital shall be paid from the State Treasurer. Section 50-02-04 N.D.C.C. provides for the determination of residents as far as welfare cases are concerned. Section 50-24.1-03 is a new section of the Code adopted in 1965 which has caused the problems in Foster County.

Foster County has several welfare patients at the State Hospital and who are unquestionably residents of Foster County. The question basically has arisen concerning a patient committed from Foster County in 1922 and another patient committed in 1930, both through the Foster County Mental Health Board. The patients admitted in 1922 and 1930 are not residents of Foster County and, in fact, lived in Foster County a few days prior to commitment.

At this point the State of North Dakota has billed Foster County for 15 percent of the state's share as provided under section 50-24.1-03 for all patients who were admitted from Foster County. We, of course, can avoid this problem in the future by having the Sheriff return the patient to his home or transferring him out of the county. We have never used this policy since it is very cruel and I do not feel that we would be carrying out our duties as county officials in the proper manner. Therefore, my questions are as follows:

1. Is Foster County liable to the State of North Dakota for the cost of care of patients at the State Hospital who are legal residents of Foster County under section 50-24.1-03?
2. Is Foster County liable to the State of North Dakota for patients at the State Hospital admitted from Foster County

but not residents of Foster County under Section 50-24.1-03?"

Chapter 50-24.1 was enacted by the Special Session of the 1965 Legislative Assembly. Section 50-24.1-02 of the North Dakota Century Code, as amended, provides:

ELIGIBILITY. Medical assistance may be paid for any person who:

1. Is eligible for or is receiving public assistance under chapter 50-09 or chapter 50-24, or
2. Except for length of residence, responsibility of relatives, or a requirement that such assistance be a lien on real property, would be eligible therefor under subsection 1 above, or
3. Has income or resources insufficient to meet the cost of necessary medical care and services, and is eligible under rules and regulations established by the public welfare board."

Section 50-24.1-03 of the North Dakota Century Code, as amended, provides:

COUNTY SHARE OF MEDICAL ASSISTANCE. Each county in this state shall reimburse the state department for amounts expended for medical assistance in such county in excess of the amount provided by the federal government, in the amount of fifteen percent."

Chapter 50-24 of the North Dakota Century Code, as amended, governs aid to the aged, blind or disabled. Section 50-24-03(6) provides:

Assistance shall be granted under this chapter to any person who shall meet the following requirements:

* * *

6. Is not an inmate of, nor being maintained by any municipal, state or national institution at the time of receiving assistance; provided, however, that the state department shall have authority to make payments as provided in this chapter to residents of such public institutions as are approved by the state department.

* * *"

Under this provision a person would be eligible for medical assistance under chapter 50-24.1 if he were eligible for assistance under chapter 50-24. Although the persons in question are in a public institution it would appear that subsection 6 of section 50-24-03 would authorize the Public Welfare Board to make such payments. We would also note that residence is not a requirement for medical aid under chapter 50-24.1.

With respect to the counties, however, we do not believe that section 50-24.1-03 requires the counties to pay the prescribed percentage if the persons are legal residents of some other county in the state for welfare purposes. If, however, the persons have no other residence in the state for welfare purposes, we believe the county from which they were committed would be responsible for the percentage of payments required by section 50-24-03. This has been the interpretation given to this matter by the Welfare Department. It is this department which has the duty of administering this act and, by the rules of statutory construction, such interpretation is to be given considerable weight in construing the applicable statutory provisions referred to herein.

We would further note that House Bill 810 introduced into the 1967 Legislature would have made the counties responsible only for those persons who were residents of the county. The bill would further have provided that the state, upon request from any county, should pay the county's share of assistance under chapter 50-24.1 for any individual who was otherwise eligible for medical assistance, but who had not resided within the state for one year, or if he had resided within the state for more than one year had not gained residence in any county. The bill would also have provided that if any person had resided within the state for more than one year, his residence in any county for purposes of chapter 50-24.1 would be determined in the manner prescribed in chapter 50-02 of the North Dakota Century Code. This bill was defeated in the Legislature thus indicating an intent on the part of the Legislature that legal residence in the county for welfare purposes was not required in order for a county to be liable for its share of the costs under chapter 50-24.1.

In direct answer to your questions:

1. It is our opinion that Foster County is liable to the State of North Dakota for medical assistance for patients at the State Hospital who are legal residents of Foster County under section 50-24.1-03.

2. It is our opinion that Foster County is liable to the State of North Dakota for patients at the State Hospital admitted from Foster County but not residents of Foster County only if such patients do not have legal residence for welfare purposes in some other county in the State. If the patients are committed from Foster County but have a legal residence for welfare purposes in some other county in the State, that county would be responsible for the costs under section 50-24.1-03.

HELGI JOHANNESON

Attorney General