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VOLUME NO. 45

OPINION NO. 23

COUNTIES - Responsibility of nonassumed counties to pay Department of Family Services administrative costs for protective services;
FAMILY SERVICES, DEPARTMENT OF - Responsibility of nonassumed counties to pay for department's administrative costs for protective services;
MONTANA CODE ANNOTATED - Sections 27-2-209(3), 41-3-1122, 52-1-110, 53-2-322, 53-2-801, 53-2-811;
MONTANA LAWS OF 1987 - Chapter 609, sections 14, 77.

- HELD: 1. Mont. Code Ann. § 53-2-322 requires nonassumed counties to pay for their proportionate share of administrative costs for protective services, including rent, adequate equipment and supplies.
2. The responsibility of nonassumed counties to pay for their proportionate share of the administrative costs associated with providing protective services in the county, other than the salaries, travel expenses, and indirect costs of employees, is not capped at the amount paid in fiscal year 1987.
3. If the Department of Family Services has presented claims to the nonassumed counties, any action to recover the disputed claims must be filed within six months of the denial of the Department's claim. Older claims are barred by the statute of limitations.

May 19, 1994

Mr. Hank Hudson
Director
Department of Family Services
P.O. Box 8005
Helena, MT 59604-8005

Dear Mr. Hudson:

You have requested my opinion on three questions I have phrased as follows:

1. Does Mont. Code Ann. § 53-2-322 require nonassumed counties to pay for administrative costs for protective services, including rent, adequate equipment and supplies, in addition to the salaries, travel expenses and indirect costs of protective services employees?
2. If so, is their responsibility capped at the amount paid in fiscal year 1987?
3. If nonassumed counties must pay for the administrative costs associated with providing protective services in the county, are nonassumed counties responsible to repay the Department of Family Services amounts already paid by the Department that were the financial obligation of the nonassumed counties?

At the option and with the express consent of an individual county, the Department of Family Services [DFS] may assume all responsibility for protective services for children in the county. Mont. Code Ann. §§ 53-2-801 and -811. Several Montana counties have not opted to transfer such responsibility to DFS, and remain "nonassumed" by the state. You have informed me that some of these nonassumed counties refuse to reimburse DFS for administrative costs of protective services, and your questions stem from a continuing controversy about whether or not they are obligated to do so.

This presents the second request from DFS for an opinion on these issues. An earlier request in 1991 was declined by Attorney General Racicot, due in large part to the conclusion that the statutes provided no clear answer to the questions and that a legislative solution should be sought. The statutes have not been amended since that time, and the controversy between DFS and the nonassumed counties continues to exist. What follows is my analysis of the construction of the involved statutes. It leaves unanswered a major point of contention between DFS and the nonassumed counties, but provides some guidance about the manner in which the answer to that question should be determined.

DFS and the counties apparently agree that two statutes enacted as part of the bill which created DFS govern the controversy. DFS was established in 1987 through the enactment of House Bill 325, a lengthy and complex rewriting of the statutes governing the administration of public assistance and child protective services in Montana. 1987 Mont. Laws, ch. 609. The bill addressed the allocation of costs for protective services in two sections. One

section of the bill amended Mont. Code Ann. § 53-2-322, an existing statute dealing with allocation and reimbursement for costs of public assistance. *Id.* at § 77. As amended in 1987, section 53-2-322 provides in pertinent part:

(1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters in the county. A county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. . . .

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as necessary to reimburse the department [of social and rehabilitation services] and the department of family services for the county's proportionate share of the administrative costs and of all public assistance and protective services and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements . . . to the department of family services must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each one of these public assistance and protective services activities, and proper accounts must be established for the funds for all the activities.

(Emphasis added.) Though inartfully worded, this statute in my opinion evidences a legislative intent to require counties to shoulder a "proportionate share" of the "administrative costs" incurred by DFS in providing protective services. The terms "proportionate share" and "administrative costs" are not defined in the statutes, and your letter and memorandum have provided no clear explanation of DFS's interpretation of the terms.

It appears to be common ground that the salaries, travel expenses, and "indirect costs" of DFS protective services employees are among the "administrative costs" for which DFS must be reimbursed. This is clear from the provisions of the second section of HB 325 addressing costs allocation, 1987 Mont. Laws, ch. 609, § 14, codified at Mont. Code Ann. § 52-1-110:

(1) Upon the transfer of certain functions of the county welfare department to the department of family services as provided in section 12, Chapter 609, Laws of 1987, the salaries and travel expenses . . . of protective services employees must be paid by the department of family services. The board of county commissioners shall reimburse the department of family services from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.

It must be presumed that if the legislature had intended that these personnel-related costs be the only costs for which the counties were required to reimburse DFS, it would have used the term "salaries, travel expenses, and indirect costs" in both Mont. Code Ann. § 52-1-110 and § 53-2-322. Since it did not, it is my opinion that the costs for which reimbursement is due under Mont. Code Ann. § 53-2-322 must be read to include more than the personnel costs referred to in Mont. Code Ann. § 52-1-110.

I further conclude that DFS's interpretation that a county's "proportionate share" of "administrative costs" for protective services includes costs for rent, utilities, adequate equipment and supplies is not unreasonable or inappropriate. The legislature did not limit the administrative costs to be reimbursed by nonassumed counties to the salaries, travel expenses, and indirect costs of employees. Mont. Code Ann. § 53-2-322(1) requires that a county levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the "administrative and operational costs" of the previous year. Mont. Code Ann. § 53-2-322(2) requires that the board budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as necessary to reimburse the Department of Social and Rehabilitation Services and DFS "for the county's proportionate share of the administrative costs and of all public assistance and protective services." Finally, Mont. Code Ann. § 53-2-322(3) requires the county to budget sufficient funds "to make all of these reimbursements in full." Use of such broad and unrestrictive language indicates a legislative intent to require reimbursement for all administrative costs, not just salaries, travel expenses and indirect costs of employees. It is not unreasonable for DFS to conclude that these "administrative" or "operational" costs should include matters such as rent, utilities, adequate equipment and supplies.

Your second question concerns the ceiling amount, if any, on the nonassumed counties' responsibility for payment to DFS for their

proportionate share of the administrative costs of child protective services. This question stems from controversy over whether the "proportionate share" of the administrative costs of child protective services to be paid by nonassumed counties is capped at the level paid in fiscal year 1987, adjusted for annual inflation.

A county's expenditure for salaries, travel expenses, and indirect costs for protective services employees is capped at 1987 amounts, adjusted for inflation. Mont. Code Ann. § 52-1-110. County reimbursements for foster care are also expressly limited to a level at or below the level of reimbursements paid in fiscal year 1987. Mont. Code Ann. § 41-3-1122(3), (4). However, nowhere in the statutes expressly limiting reimbursement to the level in fiscal year 1987, adjusted for inflation, is language concerning general administrative costs of protective services. The statute generally referring to administrative costs requires a county to levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. Mont. Code Ann. § 53-2-322(1). That section also requires that the board "budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as necessary to reimburse the department [of social and rehabilitation services] and the department of family services for the county's proportionate share of the administrative costs." Mont. Code Ann. § 53-2-322(2). My function in interpreting a statute is merely to ascertain and declare what in terms or substance is contained in a statute; it is not my function to insert what has been omitted. Mont. Code Ann. § 1-2-101. The statutes contain a cap only on the counties' responsibility to pay for salaries, travel expenses, and "indirect costs" for protective services employees, and on foster care. They contain no cap on the responsibility of the nonassumed counties for their proportionate share of other administrative costs of protective services.

The above discussion makes no attempt to define the full extent of the terms "administrative costs" and "indirect costs" in these statutes. DFS is the agency designated by law to apply and enforce the laws dealing with protective services. A court would be obligated to defer to the agency's interpretation of these statutory terms, giving appropriate weight to the agency's experience and expertise in the subject area. See, e.g., Norfolk Holdings v. Montana Dep't of Revenue, 249 Mont. 40, 44, 813 P.2d 460, 462 (1991). Your memorandum has not indicated the full extent of the agency's interpretation of these terms, and I decline to construe them in this opinion in advance of any interpretation and application of the terms by the agency.

Your final question concerns whether nonassumed counties are responsible to repay DFS amounts already paid by DFS that were the financial obligation of the nonassumed counties. Mont. Code Ann. § 27-2-209(3) provides the statute of limitations applicable to any action DFS might bring to recover sums claimed to be due from the counties. It states:

Actions for claims against a county which have been rejected by the county commissioners must be commenced within 6 months after the first rejection thereof by such board.

If DFS has presented claims to the nonassumed counties, any action to recover the disputed claims must be filed within six months of the denial of the department's claim. Accord Sisters of Charity of Providence of Montana v. Glacier County, 177 Mont. 259, 266, 581 P.2d 830, 834 (1978).

THEREFORE, IT IS MY OPINION:

1. Mont. Code Ann. § 53-2-322 requires nonassumed counties to pay for their proportionate share of administrative costs for protective services, including rent, adequate equipment and supplies.
2. The responsibility of nonassumed counties to pay for their proportionate share of the administrative costs associated with providing protective services in the county, other than the salaries, travel expenses, and indirect costs of employees, is not capped at the amount paid in fiscal year 1987.
3. If the Department of Family Services has presented claims to the nonassumed counties, any action to recover the disputed claims must be filed within six months of the denial of the Department's claim. Older claims are barred by the statute of limitations.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/kcs/brf