

**OPINION
61-228**

November 16, 1961 (OPINION)

STATE INSTITUTIONS

RE: Claim of State and County Against Patient's Estate - Disposition
of Funds

Re: County's Share of Expense in Care of Patients at the State Hospi

This is to acknowledge receipt of your letter dated November 9, 1961, concerning the above-captioned matter.

The facts in this matter appear to be as follows:

The County Auditor of Grand Forks County has filed a claim against the estate of a deceased individual who was formerly institutionalized at the State Hospital. The claim has been approved by both the administrator of the estate and the court. The question remaining is this: After the County Auditor has collected from the estate of a former patient, what amount should be retained by the county and what amount should go to the state?

Section 25-08-27 of the North Dakota Century Code provides:

COUNTY AUDITOR TO FILE CLAIM. When the estate of a deceased person who has been a patient at the state hospital, state school, or the state sanatorium is entered in probate in the county court, and the expense incurred by the county or state, including the amount advanced by the state from the institutional support funds for his treatment and maintenance at such institution, or any part thereof, remains unpaid, the county auditor shall file a claim against the estate for the full amount due to the county and the state for such expense." (Emphasis supplied).

Section 25-08-29 of the North Dakota Century Code provides:

DISPOSITION OF FUNDS COLLECTED. The amount collected from such persons or their estates by the county auditor shall be applied first in payment of the sum due to the county auditor and the balance, if any, shall be paid to the state treasurer who shall credit the same to the charitable institutions revolving fund."

As you will note both above-mentioned sections refer to the sum due to the county. The basic question therefore is, what is this sum?

For the purposes of example, suppose that X was a patient at the State Hospital from January 1, 1960, to June 30, 1961. The following would be a breakdown of his maintenance costs.

Statutory	Percent	Amount
-----------	---------	--------

	Responsibility of County per Quarter	Paid by Liquor Tax	Percent Paid by County	Actually Expended by County
1960				
First Quarter	\$135.00	90%	10%	\$13.50
Second Quarter ...	135.00	60%	40%	54.00
Third Quarter	135.00	100%	0%	0.00
Fourth Quarter ...	135.00	100%	0%	0.00
1961				
First Quarter	135.00	100%	0%	0.00
Second Quarter ...	135.00	100%	0%	0.00
TOTAL	\$810.00			\$67.50

In this hypothetical case posed above, the counties' statutory obligation for patients at the State Hospital is \$45.00 per month or \$135.00 per quarter. The total obligation of the county for the six quarters is \$810.00, but as you can see from the figures the county has been required to expend only \$67.50 and the liquor tax has taken care of the balance.

It is our opinion that the sum due to the county is \$67.50 or the amount actually expended by the county rather than the statutory cost of \$135.00 per quarter.

Both the excise tax on liquor sold at retail and the tax on sales of liquors from wholesaler to retailer are state taxes. Any funds derived from these taxes is state money. The moneys derived from these taxes were never intended to be a gift to the counties.

This tax money was merely allocated by means of a credit to the counties to assist them in caring for their indigent patients. Furthermore, it would appear that the county would be unjustly enriching itself if it were allowed to retain money which it had not actually expended and which did not rightfully belong to the county. We do not believe that it can be fairly said that since the credit belonged to Grand Forks County at the time of the billing that the credit should still be a benefit to Grand Forks County when a lump sum is collected from an estate.

LESLIE R. BURGUM

Attorney General