

**Dependent Children, Who Are. Allowances to Deserted and  
Dependent Children, Who Entitled to. Children, Who Are  
Dependent.**

Chapter 86 of the Session Laws of the Fourteenth Legislative Assembly construed herein.

July 21, 1915.

Hon. M. F. Canning,  
County Attorney,  
Butte, Montana.

Dear Sir:

I am in receipt of your communication under date the 17th instant, asking for an interpretation of Chapter 86 of the Session Laws of the Fourteenth Legislative Assembly, which is an Act to provide for financial aid in the care of dependent children. Altogether six questions are involved in your inquiry:

1. Does the clause "and who has for a period of two years or more failed to provide for said child" modify all that has gone before it in the section, and apply to all three classes of children or only to the last one, i. e., children whose father "is physically or mentally unable to work?"
2. Or is it to be construed disjunctively, so as to allow it to be given in all cases where the father has failed to provide support for two years, regardless of any disability?

3. Can an allowance be made under the act to children deserted by the father for two years or more, his whereabouts being unknown?

4. Can such allowance be made if before the desertion the father was incapacitated?

5. Would the fact that the mother had previous to or during such desertion obtained a divorce from the deserting husband affect the right to an allowance?

6. Or would the fact that a divorce was obtained from a physically or mentally incapable husband by the mother of the child after two years of such incapacity, affect the right of an allowance?

While it is perhaps possible to constitute the clause "and who has for a period of two years failed to provide for such child," as modifying all that has gone before, it is not the most reasonable construction. In the first place all three classes of children intended to be covered by the Act, are nominated in the title as well as in the body of the Act in the disjunctive; secondly, the clause "which act of disability shall have occurred while a resident of the state," logically can refer only to the physical or mental disability, because it would be impossible for the second class of disability, namely, confinement in a charitable or penal institution of the State of Montana, to occur except to one actually within the State of Montana, and the use of the clause in such questions in reference to one of this class would be meaningless, or at least tautological if applied to him.

A comparison of the language of the title and that of the body of the Act is also instructive. In the title the word "and" is not used at the beginning of this clause, and the three disjunctive clauses nominating the three classes of children are quite clearly shown. The difference in the condition of the fathers as regards ability to work, also aids us in arriving at the intention of the legislature. In the nature of things, men confined in state institutions are unable from the beginning of such confinement to furnish support by the product of their labor. Neither is it possible for dead men to furnish support to their families. This sort of total disability does not apply to living men who are not so confined, for even men physically or mentally disabled may soon recover. The purpose of the legislature in putting in the clause requiring disability to continue two years seems plain, and a lapse of such period would pretty clearly establish physical or mental disability. I conclude, therefore, that the two year period mentioned applies only to those children whose fathers are "physically or mentally unable to work."

Under the construction above given, question 2, above stated, may be answered in the negative; likewise the third question must be answered in the negative.

Question 4 is answered in the affirmative, provided the disability occurred in Montana.

In reference to question 5, there seems to be nothing in the Act to prohibit the giving of aid to the children otherwise qualified, of divorced parents.

Question 6 is answered by the answer given to No. 5.

Yours very truly,

J. B. POINDEXTER,

Attorney General.