

### Mothers' Pensions—Widows—Pensions—Attachment.

Money paid to a mother for the support of her children under the mothers' pension act is not attachable in an action against the mother for obligations incurred by her.

June 18, 1928.

Norman R. Barncord, Esq.,  
County Attorney,  
Harlowton, Montana.

My dear Mr. Barncord:

You have requested my opinion whether moneys due under the mothers' pension act can be attached.

In my opinion, the following considerations are decisive of the question:

1. Only property of the defendant can be attached. (Sections 9256-9261 R. C. M. 1921).

2. The mothers' pension act (sections 10480-10487 R. C. M. 1921) authorizes an allowance to be made out of the public moneys of the county to certain enumerated classes of "children." Section 10481 reads as follows: "Such money to be paid to the mother of said child or children."

Although the money is paid to the mother it does not, in my opinion, belong to her in her individual right but she is in fact a trustee of the money and is charged with the duty of spending it for the support of the children for whose benefit the allowance is made.

It is therefore my opinion that such money is not attachable in an action against the mother for obligations incurred by her; even though incurred by her for the benefit of the minor children it is still an obligation of the mother and the creditor must look to the party with whom he has contracted for the payment of the debt.

While some injustice may result to creditors by reason of the above peculiar status of the mothers' pension act I can see no sufficient reason for reaching a different conclusion on the question presented.

Very truly yours,

L. A. FOOT,  
Attorney General.