

Opinion No. 312**Mothers' Pension—Children—Residence
—Hospitalization, Effect of.**

HELD: An applicant for Mothers' Pension is entitled to an allowance for a child who is confined in an Orthopedic Hospital in another county.

August 16, 1933.

You request the opinion of this office on the following matter:

"In an application for a Mother's Pension, now before the board, it is disclosed that one of the children for whom relief is sought is a patient at the St. Vincent's Orthopedic Hospital in Billings, Montana.

"According to the strict interpretation of number 1 of Chapter 133 of the 1933 Session Laws, the child must be living with the mother. On page 325 of volume 12 of the Attorney Generals Opinions, the Attorney General there said that where a child was living away from its mother in another state, that no pension should be allowed."

The parent has the right to determine the child's residence (Section 5850), and no doubt the mother would claim its legal residence was Cascade County. The residence of an infant is that of the parent. (29 Cyc. 1584.) Indigent persons may be removed to the county where they reside. (Section 4532) "Reside" as here used would no doubt be held to mean legal residence. If the mother is unable to maintain the child at Billings, the officials of Yellowstone County may have it returned to Cascade, where the mother would have the right to the statutory allowance.

Under such circumstances we cannot see what difference it would make to Cascade County one way or the other, that county being liable for its maintenance in either case. The allowance to the mother, under the circumstances given, we believe to be within the law.