

Opinion No. 405**Mothers Pensions—Amount of Pension,
Property or Income Taken
Into Account**

HELD: Where a mother and her children are wholly dependent upon the labor of the mother for care and support, the children are entitled to the allowances fixed by section 10481.

The Board of County Commissioners have authority to reduce the allowance named in Section 10481, to what they think is actually necessary when a mother or her children have property or income which may be used for the care and support of the children.

December 6, 1933

You have requested my opinion on the questions (1) to what extent the commissioners are bound by the allowances fixed by Section 10481, R. C. M. 1921, (Mother's Pension Act, Sections 10480-10487, as amended by Chapter 133, Laws of 1933) which provides for \$20.00 per month if there is one child and if there is more than one child, \$15.00 per month for the first child, \$10.00 per month for the second child and \$5.00 per month for each additional child, the total not to exceed \$50.00 per month; and (2) whether the board of county commissioners must allow to mothers with children dependent upon them for care and support the full amounts provided in the said Section 10481.

It will be observed in reading the Act that the Legislature has provided (Section 10489) that the "child shall be entitled to such assistance which will help make it possible for such child to be cared for in his own home without being sent to some public institution, said financial aid to be given to the mother of said child or children as in this section provided." In Section 10482 it is stated that the allowance must be made when in the absence of such allowance the mother is unable to properly provide for and care for said child or children without being required to work regularly away from her own home and children.

The purpose of the Legislature was further expressed in the title to the original Act, being Chapter 86, Laws

of 1915, "An Act to Provide for Financial Aid in the Care of Dependent Children in their own homes under the direct Control of the Mothers of such Children, whose Fathers are dead * * * and * * * whose Mothers are wholly dependent upon their labor for support."

Section 10482 as amended in 1933 requires (3) that the allowance shall be made upon the condition that the mother be physically, mentally and morally fit for the bringing up of her children, and (4) when in the judgment of the board of county commissioners such allowance shall be actually necessary for the support and maintenance of the child or children in the home.

It is evident from the foregoing that it was the intention of the legislature to provide suitable homes and support therein for children whose fathers are dead, or for the other reasons mentioned in Section 10480, are unable to support them, and whose mothers are wholly dependent upon their labor for support; and that to accomplish this purpose the Legislature found that the amounts mentioned in Section 10481 were necessary. In other words, the allowances named constitute both the minimum and the maximum where the mother as well as the children are wholly dependent upon the labor of the mother for their support. In such circumstances the board of county commissioners would have no right to disregard the plain intention, purpose and will of the Legislature.

It does not follow, however, that in all instances and regardless of the financial condition of the mother or the children, that the board of county commissioners must allow the full amounts named in Section 10481. Assume that a mother with seven children receives a monthly endowment of \$40.00 from life insurance left by a deceased husband. If the board of county commissioners made the full allowance by statute she would receive \$50.00 from the county, thus making a total income of \$90.00 per month. It is the legal as well as the moral duty of the mother to support and care for her children to the extent of her financial ability and to that extent the county should be relieved. Otherwise, on account of lack of poor funds, some chil-

dren might not be able to receive anything while the children of the mother with partial financial ability in some instances would receive nearly twice the amount of the maximum allowed by law. It is my opinion that it was the intention of the Legislature that the financial ability of the mother, as well as the children, in the event they have property or independent income, should be taken into consideration and that the board of county commissioners has authority to reduce the allowance accordingly.

As we have pointed out, Section 10482 provides as a condition to the allowance that "such allowance shall in the judgment of the board of county commissioners be actually necessary for the support and maintenance of the child or children in the home." If the mother has some income which she is by law required to contribute, or if one or more of the children have income or property which under our statutes may be used for his or their support, then the board of county commissioners may find as a fact that the full allowance is not actually necessary, and if they so find, they have no legal authority to use public funds to the extent of the full allowance for pension purposes. This intention of the Legislature is further supported by the language of the section, which provides that the application of the mother must set forth the "financial conditions of such mother and child or children," that the commissioners shall "make a thorough investigation of all the facts of the case," and that the mother after allowance of her application must each month file a "report * * * showing a detailed statement of all income of the family from whatever source for the preceding month."

Unless the board of county commissioners has the authority to cut the pension down to what they think is "actually necessary" when, added to the other income of the family, they would be obliged to refuse any allowance at all if they did not believe the full amount "actually necessary." This would lead to absurd and unjust situations and I believe, would be a frustration of the legislative intention and will. On the other hand, the conclusion I have reached is in my opinion within the spirit as well as the letter of the law.