

hand amounted to \$1,127.02, with the revenue estimated to accrue from one-half the six mill levy, permitted as the maximum for the poor fund, and with the estimated revenue from the payment of delinquent taxes and the payment of the \$2.00 poll tax, that the full amount of revenue which would accrue to the Widow's Pension Fund would be \$68,140.00, and therefore, budgeted for payment of Mothers' Pension the sum of \$68,140.00 for the fiscal year, 1933-1934.

"At the commencement of the fiscal year there was the sum of \$11,080.00 in registered warrants against the Widows' Pension, and the sum of \$1,597.00 in interest on such warrants, making a total of \$12,677.00. These sums were paid which left a total of \$55,463.00 estimated revenue available for the purpose of paying the Mothers' Pension Claims for the fiscal year 1933-1934.

"The claims allowed and paid to date amount to the sum of \$51,470.00, leaving a balance in the fund of \$3,993.00.

"As the amount already paid out, including the balance on hand, amounts to the full amount estimated to accrue to the Mothers' Pension Fund or one-half the poor fund, it is our belief that under the law, it will be necessary for us to cease all payments to those entitled to draw a Mothers' Pension for the balance of the fiscal year. The amount remaining in the fund of \$3,993.00 is insufficient to pay in full all of the mothers lawfully on the Mother's Pension Roll and entitled to payments for the next month. It would require the sum of \$6,390.00 to pay those entitled to be paid in full.

"We would appreciate very much your opinion as to what disposition we should make of the amount of \$3,993.00 in the Mother's Pension Fund."

On the same state of facts the county attorney of Silver Bow County, Montana, wrote you to the following effect:

"Section 10,483, R. C. M. 1921, as amended by Section 2, of Chapter 133, Laws of the Twenty-third legislative Session of the State of Montana, provides where material to this point, as follows:

"All warrants shall be drawn upon the poor fund of the County

Opinion No. 486.

Mothers Pensions—Insufficient Funds —Pro Rata Payment.

HELD: Under Section 10483, R. C. M., 1921, as amended by Section 2, Chapter 133, Laws of 1933, 50% of the Poor Fund of the County is automatically set aside for payment of Mothers Pension Warrants.

All mothers on the Mothers Pension Roll or Fund of the county are on an equal footing.

Where the residue of the fund is not sufficient to pay even one month's pension for the remainder of the fiscal year, it should be pro rated among the mothers entitled thereto.

March 7, 1934.

Your request for advice is as follows:

"At the commencement of the fiscal year July 1st, 1933, the County Commissioners estimated that the cash on

providing that the aggregate amount of such warrants shall not exceed Fifty Percent (50%) of such fund.'

"That, of course, means that of all moneys credited to the poor fund from whatever sources, the mothers are entitled to 50% thereof; and as said by the Supreme Court of Montana in the case of Board of County Commissioners, v. District Court, 62 Montana, 275, that of all moneys credited to the poor fund, 50% thereof are automatically set aside by this statute for the payment of such Mothers' Pension Warrants.

"It appears from the data furnished us that after making the payment for February, 1934, there will not be sufficient moneys anticipated to come into the fund to make the payment in full for the month of March, 1934. The amount anticipated to come into the fund being sufficient to pay only .6248% of the full amount due.

"In view of the above statute and the construction placed thereon by the Supreme Court, the amount of \$3,993.00 anticipated is automatically set aside for the payment of the Mothers' Pension and should be expended for that purpose.

"After a mother has been lawfully placed upon the Mothers' Pension Fund or Roll of the County, she stands upon an equal footing with all those who were placed thereon prior to the time she was placed thereon, and with all placed thereon after she was placed thereon. In view of this, it would be a manifest injustice to expend the money by paying to some of the mothers the amount due each of them in full until the sums were exhausted, and thus leave others equally entitled thereto without any payment whatsoever from the fund, they all being equally entitled to the several amounts that have been ordered paid to them. They should all receive an equal proportionate or pro rata payment if the fund is not sufficient to pay each in full.

"It is, therefore, our opinion, that as the sum of \$3,993.00 is .6248% of the sum of \$6,390.00, the latter sum being the sum required to pay all in full, that each mother on the list should receive .6248% of the amount of the individual sum that would be due her for the month of March, 1934, if there

were sufficient moneys to pay in full."

We fully agree with the views thus expressed by the learned county attorney.

Under the Mothers' Pension Law, so-called, it is made the duty of the Board of County Commissioners to order the county clerk to issue warrants to all mothers on the pension roll until such time as their share of the poor fund is exhausted. Where, as here, the residue of the fund is not sufficient to pay even one month's pension for the remainder of the fiscal year, it should be prorated among the mothers entitled thereto. While we have been unable to find any case exactly in point, *State v. Davis*, 217 Pac. 905, and *Stuart v. Nance*, 63 Pac. 323, are, at least, persuasive. See, also, 59 C. J. 231.