

Opinion No. 89.

**Mother's Pension—Divorce—
Desertion.**

HELD: 1. The Mother's Pension Act makes no provision for payment of the pension in cases where the child's parents have been divorced.

2. Where the husband has deserted his family and is unheard of for seven years, he is presumed to be dead and the wife is entitled to a mother's pension unless such presumption is overcome.

April 26, 1935.

Montana Relief Commission
Helena, Montana

We are in receipt of your letter of March 20, in which you request us to give you our opinion "as to whether or not under our present mothers' pension law children are eligible for aid whose fathers have deserted, or whose fathers are divorced and living apart from their mothers and who have no knowledge of their whereabouts."

We presume by this that you mean to ask where in the case a child's parents are divorced, whether or not the child is eligible to receive aid under the mothers' pension law, and also where the father has deserted his wife and his child, and they have no knowledge of the father's whereabouts, whether that child is eligible to receive aid under the mothers' pension law.

In answer to your question as to whether the child of divorced parents is eligible to receive this mothers' pension aid, we regret to inform you that the law makes no provision for such cases.

In answer to your second question, we cite you to Volume 13, Opinions of the Attorney General, page 12, where it is stated:

"Under Section 10480 R. C. M. 1921, one of the conditions precedent to the right to a mother's pension, is that the husband be dead. By Subdivision 26 of Section 10606 a person who has not been heard of for seven years is presumed to be dead. This presumption is rebuttable. * * *"

You state in your letter that "an opinion rendered by J. D. Poindexter, Attorney General, on May 5, 1916, (p 386, Vol. 6) says 'the law is intended for the benefit of the children and should receive a liberal interpretation.'" The opinion to which you refer was not considering children of divorced parents or children of a home which the father has deserted. It specifically refers to a widowed grandmother adopting her grandchildren and when the opinion speaks of giving the law a liberal interpretation, it is referring only to that question under consideration.