Opinion No. 141.

Public Welfare—Old Age Assistance. Liability of Counties on Removal of Recipient.

HELD: 1. Where recipient removes from county of residence prior to March 4, 1937, county from which removed is chargeable with assistance for six months after March 4, 1937, and the county to which removed thereafter.

2. Where removal occurred after March 4, 1937, county from which removed is chargeable for six months after date of removal, and thereafter county to which removed is chargeable.

August 16, 1937.

Mr. Fred Veeder
State Director of Public Welfare
Helena, Montana

My Dear Mr. Veeder:

You have called to my attention the difficulties arising in several counties of the state on the interpretation of the provisions of Section II and Section XII of Part III of Chapter 82, Laws of 1937. The difficulty seems to be as to what county is responsible for the payment of the Old Age Pension, where a recipient has removed from one county to another. It appears that the difference of opinion seems to arise on the question of whether or not six months period mentioned in Section XII is to be computed from the effective date of Chapter 82 or from the actual date of removal where such removal was made prior to March 4, 1937.

It is very evident that in order to establish uniform administration of the Act, this question must be determined from a legal standpoint in order that the State Department may promulgate a rule to be followed throughout the several counties. In doing this it is necessary to consider the provisions of the old law which was known as Chapter 170, Laws of 1935, and later carried into the codes of 1935 as Sections 335.18 to and including 335.45, in conjunction with the provisions of Part III of Chapter 82.

To begin with, Chapter 82 by its provisions specifically repealed the sections above mentioned. There being no saving clause in the repeal, all parts of these sections became invalid on March 4, 1937, when Chapter 82 became effective. However, in interpreting the statutes it is the general rule that if any of the provisions are ambiguous or are in conflict with the intentions of the Legislature if possible must be determined. To determine such intention it is necessary, especially in this instance, to consider the provisions of Chapter 170 together with the related provisions of Chapter 82.

It will be noted that Section III, paragraphs 4 and 5 of Chapter 170 were adopted in Chapter 82 as Section 2 (c) and (d) with no material change in wording. On the other hand, it will be noted that Section 18 of Chapter 170 was materially changed in Chapter 82 (Section XII). It is interesting also to note with reference to this particular section that the provisions of Section XII of Chapter 82 are much more definite and specific than were the provisions under Section 18. Section 18 provided that a person qualified to receive assistance in any county of the state who moved to another county was entitled to receive assistance after one year residence in the county to which he removed **provided** that an agreement in writing was entered into by the two counties approving such transfer or removal and thereafter the county of first residence continued to pay the assistance for one year and until the residence was established in the second county. There is no provision in Section 18 governing the liability of a county for a recipient who removed in case there was no agreement between the two counties. However, in going back to paragraph 5 of Section 2 of Chapter 170 we find the provision that every person residing in any county in the state for one year acquired a legal residence, which he retained until he acquired a legal residence elsewhere or until he had been absent voluntarily and continuously for one year therefrom. Therefore, in determining under Chapter 170 which county would be liable for assistance for one removed where no agreement was entered into by the two counties, it would obviously appear that the county of the first residence would be liable until the recipient had established a year's residence in another county or until he had been absent voluntarily

and continuously from that county for a period of one year. While under Section XII of Chapter 82 it is definitely stated that a recipient who removes to another county shall continue to receive assistance, with the approval of the state department, and the county from which he moved is chargeable by the state department for the county's share of the assistance for a period of six months, after which time the county to which he removed shall be chargeable therefor.

It is very evident that the intention of the Legislature in enacting Section XII, and making the provisions thereof specific and clear as to liability of the several counties, was to clear up the ambiguity which existed under Chapter 170, and to divide the responsibility between the counties.

It we had to determine only the liability of a county in these removal cases where the removal occurred subsequent to March 4, 1937, it would be a very easy matter. The provisions of Section XII being specific and clear, there would be no doubt about it. The county from which the person removed is chargeable for a period of six months from the date of removal and after that time the county to which recipient moved would be liable. But the difficulty arises in those cases where removal was made prior to the effective date of Chapter 82.

The question has been raised as to whether or not the provisions of Chapter 82 are retroactive. It seems, therefore, that this question should be disposed of at the outset. The Constitution of the State of Montana in Article XV, Section 13, provides as follows:

> "The Legislative Assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retroactive in its operation, or shall impose on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed."

Section 3, Revised Codes of Montana, 1935, provides as follows:

> "No law contained in any of the Codes or other statutes of Montana is retoractive unless specifically so declared."

Our Supreme Court has interpreted these provisions in the Educational Bonds case, reported in 68 Mont. 526, in the following language:

> "There is always a presumption that statutes are intended to operate prospectively only, and words ought not to have a retroactive operation unless they are so clear, strong and imperative, that no other meaning can be annexed to them, or unless the intention of the Legislature can be otherwise satisfied. Every reasonable doubt is resolved against a retroactive operation of a statute." (See also the last of State ex rel The City of Billings v. Austin, 91 M. 76.)

Therefore, inasmuch as Chapter 82 does not in any of its provisions specifically declare them to be retroactive and as it cannot be said that the words used are so "clear, strong and imperative, that no other meaning can be annexed to them," it is my opinion that the provisions of Chapter 82 are not retroactive.

It would appear from a reading of Section 2 (d) and Section 12 (d) there is a conflict. Section 2 (d) provides in part that "For the purpose of this Act every person who has resided one year or more in any county in this state shall thereby acquire a legal residence in such county which he shall retain until he has acquired a legal residence elsewhere or until he has been absent voluntarily continuously one year therefrom; and said section also provides as eligibility requirement for assistance that the applicant has resided and been an inhabitant of the state and county for one year; whereas in Section 12 it provides where one removes from one county to another the county to which he removes becomes liable for his assistance after a residence of only six months. It, therefore, becomes necessary to reconcile these two provisions. It is a well established rule of interpretation that where statutes appear to be in conflict in interpreting them, courts must give a liberal interpretation with the view to harmonizing and making the provisions effective rather than invalid. Our codes specifically provide in Section 4, Revised Codes of Montana 1935, as follows:

> "The rule of the common law that statutes in derogation thereof are to

be strictly construed has no application to the codes or other statutes of the State of Montana. The codes establish the laws of this state respecting the subject to which they relate and their provisions and all proceedings under them are to be liberally construed with a view to effect their object and to promote justice."

Hence, bearing in mind the evident intention of the Legislature to clarify this particular provision and to divide the responsibility in these cases, in interpreting the provisions, it becomes necessary to give them a liberal construction with the view to effect their object and to promote justice. When we do this, we must necessarily come to the conclusion that in determining the period of six months under the provisions of Section 12 of Chapter 82, the effective date of said chapter, to-wit, March 4, 1937, must be the guide post.

It is, therefore, my opinion that a county is chargeable for Old Age Assistance to all recipients who have removed from such county prior to March 4, 1937, for a period of six months after March 4, 1937, and for all those removing after March 4, 1937, for a period of six months after the date of removal and, conversely the county to which the recipient removed is chargeable after the expiration of the six months period in each case.

Trusting that this opinion is sufficiently clear in that the State Department may promulgate a rule on this question to be uniform throughout the state and complied with by the several counties, I am