

**Opinion No. 157.****Public Welfare—Dependent Children.**

HELD: 1. A child who possesses the qualifications provided by Part IV, Chapter 82, Laws, 1937, is entitled to aid even though the father has an income.

2. Assistance under Chapter 82, is based on need.

September 16, 1937.

Mr. W. R. Flachsenhar  
County Attorney  
Terry, Montana

Dear Mr. Flachsenhar:

We beg to acknowledge your request for opinion on the following state of facts:

The father of dependent children is working on Resettlement, drawing a monthly salary of \$48.40; there are six children in the family under the age of 16 years; the mother is suffering from pulmonary tuberculosis and is unable to care for the children, being confined in a local hospital awaiting transfer to the Tuberculosis Sanatorium at Galen, and consequently is absent from home.

You ask if, under these circumstances, the children are entitled to aid under the provisions of Chapter 82, Laws 1937.

Section 1 (a) of Part IV, Chapter 82, Laws of 1937, defines the term "dependent child" as follows:

"The term 'dependent child' means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandmother, grandfather, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home."

Under the facts given, it would appear that these children come within the definition to the extent that they are "deprived of parental \* \* \* care by reason of the \* \* \* continued absence from home \* \* \* of a parent" (the mother); and are "living with \* \* \* the father, \* \* \* in a place of residence, maintained by him as his home."

Therefore, assuming the eligibility requirements under Section III are met, the only question to be determined is as to whether such children are en-

titled to receive aid while the father is working and has an income.

There is no provision of Chapter 82 which prohibits the granting of aid to dependent children, or the granting of assistance under any part of the Act, solely because the applicant has an income. The basis of all assistance is need. The whole idea of the public assistance program is to supplement the income of the individual with public funds to the extent that such individual may be maintained in decency and health.

Section VI of Part IV, provides that:

"The amount of assistance which shall be granted for any dependent child shall be determined by the county board with due regard to the resources and necessary expenditures of the family and the conditions existing in each case and in accordance with the rules and regulations made by the state department, and shall be sufficient, when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health."

It is therefore my opinion that aid may be granted to a dependent child as such term is defined in the Act, and who meets the eligibility requirements, even though such child may have income either from a parent or other source, providing such income is insufficient to maintain such child in decency and health.

It might be appropriate to state in connection with the subject case that it is our opinion that the intent of the provisions of Part IV is, that a child or children deprived of the maternal care be provided with a substitute therefor; i. e., a woman's care, and that any grant made should be sufficient, when added to the income of the father, to permit employment of a woman in the home to substitute the care of the absent mother. The state through its legislative branch has on many occasions expressed its purpose, insofar as possible through legislation, to maintain the family status and protect the children from the results of broken family relations. We think the legislature was mindful of this fact when they enacted Part IV of Chapter 82.