

September 24, 1937.

Mr. I. M. Brandjord  
 Administrator, State Department  
 of Public Welfare  
 Helena, Montana

Dear Mr. Brandjord:

You have advised me of the request of Reverend T. S. Stockdal, President of the Montana Home for the Aged at Billings, Montana, for information as to whether this home may take care of recipients of old age assistance. This brings up several questions which have arisen throughout the state and requires an interpretation of the provisions of Chapter 82, Laws, 1937, as well as of other statutes dealing with the powers and duties of the Department of Public Welfare, and of the county commissioners with relation to care of the aged and infirm.

The questions specifically raised may be summed up as follows:

(1) Can the State or County Department of Public Welfare contract with the Montana Home for the Aged, or other similar institution, for the care of old age recipients?

(2) Can county commissioners contract with such home for care of such recipients and pay therefor a sum in addition to the grant?

(3) If a recipient leaves the county of his legal residence and goes to such home for care, is the county of his legal residence relieved of liability for his assistance grant after six months, and would the county wherein such home is located be liable for assistance to such recipient after six months residence therein?

(4) In case of the death of a recipient while living in said home, what county would be liable for burial expenses of such recipient?

(5) Can the county of legal residence of such recipient contract with such home for the burial of such recipient?

In solving these questions, it is necessary to take into consideration the provisions of the Federal Social Security Act, and the rules, regulations and interpretations thereunder, as well as all statutory and constitutional provisions of our state.

**Opinion No. 165.**

**Public Welfare—County Commissioners—Old Age Assistance—Public Institution—Change of Residence—Liability of Counties.**

HELD: 1. State or County Departments of Public Welfare may not contract with private institution for care of old age assistance recipients and pay the grant directly to such institution, but recipient may use his grant for such purpose.

2. County Commissioners may legally pay from poor fund directly to recipient a sum in addition to assistance grant to permit him, if he so desires to live in a private home or institution.

3. County Commissioners may legally contract for burial of recipients of old age assistance.

4. A recipient of old age assistance may voluntarily live in a private home or institution outside county of his legal residence within the state, without changing his legal residence, and county of legal residence is not thereby relieved of liability for payment of assistance grant or burial expenses.

The Montana Constitution provides in Article X, Section 5, as follows:

"The several counties of the state shall provide as may be prescribed by law for those inhabitants who, by reason of age, infirmity, or misfortune, may have claims upon the sympathy and aid of society."

Under this mandatory provision of our constitution, the legislature has from time to time prescribed by law for the care of the poor, aged, infirm and sick. The latest enactment of our legislature being Chapter 82, Laws of 1937, commonly known as the Public Welfare Act.

Part III of Chapter 82, deals with the aged, and its provisions, as are all the provisions of the chapter, must be in conformity with the provisions of the Federal Act.

Under the provisions of Section II of Part III, an applicant for old age assistance is not eligible while "an inmate of any public institution." Therefore, in determining whether one may receive old age assistance while residing in the Montana Home for the Aged, or similar institution, we must determine the meaning of the words, "public institution," as used in the Act.

The generally accepted definition of the words, as used in a legal sense, and as they appear in statutes, is as follows:

"Any organized activity created or established by law or public authority."

32 Corpus Juris, 943;

State v. Clausen, 148 Pac. 28, 85 Wash. 260.

From my inspection of the charter of incorporation of the Montana Home for the Aged, it appears that this organization was created under the provisions of Chapter 42, Revised Codes Montana, 1935, and is a church institution, hence does not come within the definition above quoted. It is a private institution as distinguished from a public institution as used in the statute.

In ruling on a similar question under the provisions of the Massachusetts Welfare Act, the Attorney General of that state held recently that, "a tax exempt charitable home is not such a home or institution as would come

within the meaning of an old age assistance law denying aid to inmates of home or institution 'supported in whole or in part by public funds'."

In enacting paragraph (e) of Section II, Part III, of Chapter 82, the legislature unquestionably had in mind a public institution, such as a poor farm, or other similar institution, supported in whole or in part by taxation. It is therefore my opinion that the term "public institution," as used in Chapter 82, refers to an institution which is supported in whole or in part by taxation.

It is specifically provided by Chapter 82 that all grants must be paid directly to the recipient, and the Federal Act prohibits the use of such funds to pay for, (a) supplies, material or services furnished the individual, (b) medical or surgical treatment, (c) funeral or burial expenses, (d) institutional or other care for the applicant. This is in accordance with the interpretation of the Federal Social Security Act, by Frank Bane, Executive Director of the Board, in letter dated July 2, 1937. However, these prohibitions, according to said letter, do not restrict the use of such funds by the individual, and he may use such money as he sees fit, so long, of course, as he does not dissipate or squander it. Hence, an old age recipient, insofar as the Federal Social Security Act is concerned, may use his grant to pay for his care in a private institution.

Therefore, it is my opinion that the State Department or County Department may not contract with the Montana Home for the Aged, or with any private institution or home for the care of old age recipients and make payment of the grant directly to such home or institution, where Federal funds are involved, but such recipients may use their grants to pay for care in such place.

Chapter 82 is a special act, designed for the purpose of permitting the State and Counties to participate with the Federal Government in the care of the aged, sick and infirm, and all who have claims upon the sympathy and aid of society. It does not repeal former legislation on this subject, not in conflict with its provisions, nor does it take away all powers heretofore vested in counties with respect to their duties in caring for such citizens. The provisions of this Act only circumscribe

the powers of the counties insofar as the funds contributed by the Federal Government are concerned. As to the use of county funds exclusively in the care of these citizens, the general statutes are still in force and effect.

As to the authority of county commissioners with relation to the care of the poor, sick and infirm, our Supreme Court has said in the case of *Jones vs. Cooney, et al.*, 81 Montana, at page 341:

"When the character of the legislation enacted by territory and state with relation to the care of the poor is considered and analyzed as a whole, one is led inevitably to the conclusion that it has been and is the policy of the law-making body to repose in the county commissioners a wide discretion in the care of the indigent poor, sick and infirm of their respective counties."

And in the same case, in holding that the county commissioners may maintain the poor, sick and infirm outside the poor farm, the court said:

"Another element, but not a legal one, now enters upon our consideration; it is worthy of mention at least, even if it rests upon human frailty alone. In the minds of some, it is erroneously assumed that being committed to the poor-farm carries with it some stigma of disgrace; and many indigent persons prefer to retain what they term their self respect and independence by remaining in their own homes, however inadequate these homes may be to their comfort."

The cited case further holds that the county commissioners may contract for the burial of the poor. Under the Federal Act, no part of federal funds may be used for burial expenses, and Section VII of Part III, provides:

"Upon the death of a person who has been receiving old age assistance, funeral expenses shall be paid by the board of county commissioners from the county poor fund, if the estate of the deceased is insufficient to pay the same. Grants from the old age assistance account are not allowable for funeral expenses."

It is therefore my opinion that the county commissioners may pay to such persons an amount in addition to the assistance grant to permit them, if

they so desire, to live in a private institution, and may also contract for the burial of such recipients who die without sufficient funds to pay therefor.

Section XII of Part III, provides:

**"Change of Residence of Persons Receiving Old Age Assistance.** A recipient who moves to another county in this state shall continue to receive assistance, with the approval of the state department, and the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of six months, after which time the county to which he has moved shall be charged therefor; the county from which he has moved shall transfer the records of the case of such recipient to the county department of the county to which he has moved on notification so to do by the state department."

It will be noted that the section is entitled, "Change of Residence of Person Receiving Old Age Assistance." It would appear, therefore, that the statute contemplates a change of legal residence from one county to another. Therefore, one who retains his legal residence in a county, but for reasons of convenience and comfort, goes to the Montana Home for the Aged, or any other private institution outside his county, within the state, does not necessarily thereby change his legal residence so that the county wherein such institution is located assumes liability for the grant after a period of six months. It is, therefore, my opinion that an old age recipient may go to such institution for the purpose of receiving more agreeable and comfortable living accommodations, and still retain his legal residence in his original county, and hence the county of his legal residence would not be relieved of liability for payment of the grant, or for burial expenses of such recipient.

Summing up, therefore, it is my opinion,

1. The State Department or the County Department of Public Welfare may not contract with a private home or institution for the care of recipients of old age assistance grants, and make payments of such grants directly to such home or institution; but the re-

recipient himself may use such grants for the purpose.

2. County Commissioners may legally pay from the poor fund an amount to such recipient, in addition to the assistance grant, to permit such recipient, if he so desires, to live in such home; and may also legally contract for the burial of such recipient.

3. A recipient of old age assistance may voluntarily live in a private institution outside the county of his legal residence, within the state, without changing his legal residence, and the county of his legal residence is not thereby under such circumstances relieved of liability for payment of the assistance grant or burial expenses.