

Opinion No. 297.**Public Welfare—Dependent Children—
Foster Homes—State Orphans' Home.
State and County Obligations.**

HELD: 1. Dependent orphan children in foster family homes, where public expense is required, if under the age of twelve years, must be provided for by the state.

2. Such children over the age of twelve years and under sixteen years, must be provided for by the county, with discretionary power in the state to supplement the county assistance.

3. Financial responsibility for and authority over the child is determined at time of commitment, continues thereafter in accordance with statutory provisions governing the same.

July 28, 1938.

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

Dear Mr. Brandjord:

You have submitted the following questions: "Does the State Department have lawful authority to use any of the funds appropriated for its activities to pay for care of dependent orphan children in foster homes?" In explanation of this question, you advise that there is now no more room in the State Orphans' Home to receive these children, and that the counties are now paying approximately \$10.00 a month for foster family care, and a few counties pay somewhat more.

Paragraph (a), Section 1, Part IV of Chapter 82 of Laws of 1937, provides:

"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 the home, or physical or mental incapacity of a parent and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home."

Paragraph (a), Section 2, Part VI of Chapter 82, Laws of 1937, provides:

"Services for Crippled Children means: To extend and improve services (especially in rural areas and in areas suffering from severe economic distress) for locating crippled children, and for providing medical, surgical, corrective and other services and care, and facilities for diagnosis, hospitalization and after care of children who are crippled and who are suffering from conditions which lead to crippling, and cooperation with medical, health and nursing agencies providing for vocational rehabilitation of physically handicapped children."

In accordance with the designation of relatives with whom a child may live in order to be classified as a dependent child, under Chapter 82, a dependent orphan child, living in a foster family home, is excluded from participating in that particular form of benefit; nor can said child participate in the particular form of benefit provided for crippled children, unless being crippled or physically handicapped.

Section 10,465 provides when a child is of that class as referred to by you, and Section 10,470 authorizes the court to commit such a child to the State Orphans' Home, or make other proper disposition of the child as shall be conducive to its welfare.

Laws relating to dependent orphan children, existing prior to the enactment of Chapter 82 have not been repealed, and said chapter is a continuance of those laws. (Section 5, 8774; State ex rel. LaPoint vs. District Court, 69 Mont. 29.) Although paragraph (b), Section 7, Part 1 of Chapter 82 expressly provides that the State Department of Public Welfare shall administer and supervise the care of dependent, neglected, and delinquent children in foster family homes, yet no provision is contained in said chapter fixing the financial obligation of either the state or county for such care. A solution of the question must be found in those laws in force prior to the enactment of our Public Welfare Act.

Section 1485, R. C. M. 1935, provides:

"Who entitled to admittance. Every orphan, foundling, or destitute child, under twelve years of age, of sound mind and body, shall be entitled to

be received into said home at the expense of the state. Children over twelve years of age, and children with slight physical defects may be admitted to the home, if deemed advisable by the board of trustees. The board of trustees shall have the power to return to any county and at the expense of that county, any child forwarded to the orphans' home, provided it is ascertained that such child is not a proper subject for said institution."

When such child is placed in the foster family home, said home acts in lieu of the State Institution. Every dependent child under the age of twelve, who does not and cannot come within the statutory classification of a dependent or crippled child, under Chapter 82, is entitled to be received and cared for in the Montana Orphans' Home at state expense. While the right of the child to be cared for in the State Institution has been substituted by placing it in a private home where it will receive at least equivalent care, yet the obligation of the state, and not the county, to pay for the care of such child continues.

If the dependent orphan child is over the age of twelve, but under the age of sixteen, the Board of Trustees of the State Orphans' Home has the discretion as to whether or not to admit it. If admittance is refused, then of course, the primary financial obligation to provide for the child rests with the county. (Article 10, Section 5, State Constitution,—Section 4521, R. C. M., 1935.) However, the county's obligation is not necessarily exclusive. The state is not prohibited from cooperating with the county if the conditions warrant, and if it desires to do so. (*Mills vs. The State Board of Equalization*, 97 Mont. 13.)

By parity of reasoning, it follows that inasmuch as the State Orphans' Home has discretion to admit a dependent orphan child, or foster child, over the age of twelve, but under the age of sixteen, at state expense, and the foster home being a substitute for the state home, the State Department of Public Welfare may likewise, in its discretion, assist the county in providing for such child in the foster home.

Paragraph (b), Section 2, Part VI, Chapter 82, provides:

"Child Welfare services mean: The establishing, extending and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent."

For the purposes of such service an appropriation of \$15,000 has been made by the Legislature (Paragraph (5), Section 4, Part VIII, Chapter 82.), and if such appropriation should prove inadequate recourse may be had to the appropriation for general relief and contingencies. (Paragraph 6, Section 4, Section 6, Part VIII, Chapter 82.)

The financial responsibility for the care, support and maintenance of and authority over the child, is determined and fixed at the time of commitment. Having once been fixed, it continues until such child has been dismissed from custody.

Therefore, it is my opinion that the expenses, to be incurred in caring for an orphan dependent child under the age of twelve in a foster family home where public aid is required, must be borne by the State, through its Department of Public Welfare, and not by the county, and in the case of an orphan dependent child over the age of twelve but under the age of sixteen, while living in a foster home where public aid is required, is a primary obligation of the county, subject to discretionary powers of the State Department of Public Welfare to assist the county in such amounts as it deems proper. Chapter 82, Laws 1937, having provided authority for adequate care of dependent and crippled children, ordinarily has no application to that class of minors herein referred to.

It follows, therefore, that the State Department of Public Welfare has the authority and should allocate funds from the sources herein indicated to be used for the purposes herein mentioned.