

available to reimburse counties in old age pension expenditures, notwithstanding that Federal funds have been withdrawn.

January 29, 1937.

Montana Relief Commission
Mr. Joseph E. Watson
Administrator
Helena, Montana

My dear Mr. Watson:

You have requested an opinion from this office as to whether or not the State Old Age Pension Commission can continue to reimburse County Old Age Pension Commissions, from funds in the Old Age Pension account, in the State Treasury, on a matching basis in the ratio of 75% to the county, as provided by Section 8, Chapter 170 of the 1924 Session laws.

It appears, from the facts that you have submitted, that the Federal Social Security Board has suspended the Montana plan; that at the present time the Montana Relief Commission has on hand, the sum of approximately \$150,000.00, which could be used at this time for Old Age Assistance Payments; that the Montana Old Age Pension Commission has at the present time in the state treasury to its credit, certain sums of money from the Federal Agency; and that the Federal Agency has withdrawn its authorization to expend such sums of money by reason of the Social Security Board suspending the Montana Plan.

The situation resolves itself into the question of whether or not your board is authorized to use the funds it now has available to reimburse the counties for disbursements within the ensuing immediate future, and until such time as new legislation can be enacted, notwithstanding that the authorization to use the federal funds has been withdrawn.

Section 4 of Chapter 129, Session Laws 24th Legislature provides:

"There is hereby created, and the State Treasurer is hereby directed to set up and establish a fund to be known as the "Relief Fund", to which shall be distributed such moneys as are provided therefor by the Legislative Assembly, and such funds as are made available to the State of Montana, or the Governor thereof,

Opinion No. 30.

Old Age Pensions. State Relief Commission.

HELD: The State Old Age Pension Commission may utilize funds

by the Federal Government, by or through the President of the United States, or by Act of Congress, or by or through any department or agency of the United States; or by gift or grant from private sources, or from any sources whatsoever, for any of the purposes set forth in this Act. The Montana Relief Commission shall have authority to allocate a portion of the relief fund for the purpose of matching any Federal funds which may become available for old age assistance or aid to dependent children, or other relief, welfare or social security purposes for which Federal funds are or may become available on a matching basis."

Section 17 of said act provides:

"This act being necessarily for the welfare of the state, shall be literally construed to effect the purposes thereof."

Section 1 of the Act provides:

"* * * The purpose of which shall be to provide means for the sustenance of life, shelter and the relief of distress among the people of the state whom economic conditions, industrial inactivity, old age, unemployment or other causes over which they have no control have deprived of support and to aid dependent children and for such other economic security functions as are or may be assumed by the state; * * * *".

The only restriction, of course, that could be had upon the funds belonging would be those restrictions, if any, imposed by state law; it being obvious that neither the federal agencies nor the federal statute would have any power to restrict the authority of the State to expend its own funds. These funds are to be used for the particular purpose of Old Age Assistance, and simply because the Federal agency suspends its operation does not mean that the authority of the State Commission to use these funds can be curtailed. The Act provides that the Relief Commission shall have authority to allocate a portion of the relief fund for the purpose of matching any Federal funds, which may become available, for Old Age Assistance. The use of that language, namely, "matching," as applied in this Act, does not necessarily mean equality, or dollar for

dollar, because the Act specifically declares that a liberal construction shall be given to the provision thereof in accordance with the purpose of the Act. And with the Act, itself, expressly defining the spirit in which it may be resolved, a common sense interpretation of the Act should be given, and not an interpretation that would make the Act so rigid that it could not apply to an emergency,—a liberal interpretation of the law will not resolve itself into a dilemma. The purpose of the Act is the relief of distress, Old Age Unemployment, etc., and certainly a temporary emergency exists, the permanent solution of which will require new legislation.

Furthermore, Section 4 of the Act uses the word "may," and not "must", which is not a word of mandate, in reference to the matching of the State or Federal funds.

It would be in violation of the express provision to liberally construe this Act, to hold that notwithstanding the State has the funds available to remedy, temporarily, and until such time as the legislature may act, and an emergency now prevailing, that this money could not be used.

It is to be observed from your letter that at the time the State funds were accumulated, there was, and is, an approximate equal sum from the Federal agencies, and to that extent the State funds are actually matched, and while the expenditure of the Federal funds has recently been suspended, it is also apparent that in the very near future, if suitable guarantees are given to the Federal agency, that these Federal funds may be used.

It is therefore my opinion, that, notwithstanding that the Social Security Board has suspended the Montana plan and no funds are now available from the Federal Agency, that the State is authorized to reimburse the counties from such funds as it now has available, and the mere fact that these funds are not equally matched by the Federal Agency, is immaterial.