

No. 295

SILICOSIS—PAYMENTS, to whom made—GUARDIAN

- Held:
1. The word "children" as used in sub-section (c) of Section 3, Chapter 5; Laws of 1941, means dependent children regardless of age.
 2. Payment should be made to wife, rather than to children.
 3. Payment should be made to person having custody and control of children, where wife is deceased.
 4. Where wife is deceased, legal guardian should be appointed only in those cases where the county or state department is satisfied. Such appointment is necessary to insure use of money for benefit of children.

November 15, 1941.

Mr. J. B. Convery
Administrator
State Department of Public Welfare
Helena, Montana
Dear Mr. Convery:

You have requested my opinion on the interpretation of sub-section (c) of Section 3, Chapter 5, Laws of 1941, in respect to the following questions:

1. Must the children be both under legal age and dependent to be eligible for the payment?
2. Should the payment be made to the wife, if there be both wife and children?

3. Should the payment be made to the person having care of the children if the wife is not living, and must that person be the legal guardian of the children?

The section you refer to reads as follows:

"(c) . . . If the person to whom payment has been ordered to be paid is an inmate of the Montana state tuberculosis sanitarium then and in that case the payment herein provided shall be made to his wife and children, if any."

In construing statutes, our Supreme Court has laid down some well defined rules:

A Court, in construing a statute, must ascertain the legislative intention from a consideration of the act as a whole, and not from the wording of any particular section. (State v. Board of Com'rs. of Cascade County, 296 Pac. 1, 89 Mont. 37; Angell v. Lewistown State Bank, 232 Pac. 90, 72 Mont. 345; State v. Callow, 254 Pac. 187, 78 Mont. 308.)

Every word, phrase, and provision of an act must be considered in determining the legislative intent (Stadler v. City of Helena, 127 Pac. 454, 46 Mont. 128).

The particular meaning to be given a word in any given instance must be determined from the context and general purpose of the provision in which it is found (Ex parte Lockhart, 232 Pac. 183, 72 Mont. 136.)

In determining the legislature's intention from a statute, the Supreme Court must look to the whole context of the statute (Short v. Karnop, 275 Pac. 278, 84 Mont. 276.)

It is quite apparent—from a reading of Chapter 5 as a whole—the legislature intended, in providing a payment of thirty dollars per month to a person having silicosis which resulted in total disability to do manual labor, that such payment was for the purpose of assisting him to maintain himself and those dependent on him for support. In providing that, in the event the recipient was an inmate of the tuberculosis sanitarium, the payment should be made to his wife and children, the legislature must have had the thought in mind that an inmate with a wife and other dependents would not himself require the payment for his support, and therefore it should be paid to the wife and other dependents for their support. This being obvious from the language of the whole act, it is not reasonable to suppose any but dependents should receive the payment. It is therefore my opinion that, by the use of the word "children," the legislature meant dependent children, regardless of age.

Inasmuch as, in the absence of the father from the home or his inability to support the children, this duty of support devolves upon the wife and mother (Section 4522 of the Revised Codes of Montana, 1935), it is only fair to assume payment should be made to the wife rather than the children or dependents.

In the event the wife is not living, payment should be made to the person having the custody and care of the children or dependents. In order to insure the proper use of the money, such person should be the legal guardian. However, in view of the expense necessitated by the legal proceedings in appointment of a guardian, it is my opinion only in such cases where the State or County Department is satisfied payment to such person not the guardian would not insure its use for the benefit of the children, should it be required a guardian be appointed.

Sincerely yours,

JOHN W. BONNER
Attorney General