

Opinion No. 244.

**Vocational Rehabilitation—Funds—
Benefits—Rehabilitation, Vocational.**

Held: Vocational rehabilitation board may allow payments for maintenance from state funds in any amount, not to exceed the statutory limitations; make payments for maintenance in amounts in excess of statutory maximums; but the amount of such payments, which is in excess of the maximum provided by statute must be paid from federal funds only; may not use federal funds in payments to dependents.

August 25, 1944.

Mr. Leif Fredericks, State Director
Bureau of Vocational Rehabilitation
Power Block
Helena, Montana

Dear Mr. Fredericks:

You have requested my opinion on the following questions:

"1. May your board legally approve monthly maintenance payments in the amount of \$60.00 from federal funds, in view of the state law which limits such payments to \$40.00?

"2. May your board use federal funds for payments to dependents?"

The Bureau of Vocational Rehabilitation is a state-federal sponsored agency. The Federal Act, 41 Stat. 735, was approved by Congress June 2, 1920. The Legislative Assembly of Montana in its first session following such approval, to-wit, 1921, accepted such Act of Congress and enacted

Chapter 149, Laws of 1921, in conformity with such federal act.

In order that the state might participate in the benefits of the federal act, certain promises or assurances were required of the state. Among those were, (1) to accept the provisions of the federal act, and (2) to empower and direct the state board created to cooperate in the provisions of the federal act.

Our legislature in accepting the federal act complied with these requirements, and in Section 1 of Chapter 149, *supra*, provided as follows:

"The state of Montana does hereby, through its legislative authority accept the provisions and benefits of the Act of Congress, entitled: 'An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment, approved June 2, 1920, and will observe and comply with all the requirements of such Act.'"
(Emphasis mine.)

The original federal act did not provide for payments of maintenance. To conform to such act therefore, the state specifically provided by Section 5 of Chapter 149, *supra*, that:

"No portion of any appropriations made for the purposes of this Act shall be used by any institution for handicapped persons except for the special training of such individuals entitled to the benefits of this Act as shall be determined by the State Board."

Federal funds are granted the state on a matching basis. In order that the state receive federal funds, it must comply with the federal act, rules and regulations. However, the federal government is not concerned with the use made of state funds.

In 1925, the Legislative Assembly, by Chapter 20, Laws of 1925, provided for payment of maintenance, but limited such payment to \$30.00 per month for single persons, and \$50.00 per month to married persons or single persons with one or more dependents. So that the state law would conform to the federal statute, the legislature in Chapter 20, provided that:

"No part of the funds appropriated to match the allowance received by

the state from the Federal Board of Vocational Education may be so used (for maintenance)."

Each succeeding legislature made a separate appropriation for payment of maintenance, and none of the state funds appropriated for expense of training or administration, which were matched by federal funds, were used for maintenance.

The 78th Congress, by Public Law 113, Chapter 190, 1st Session, approved July 6, 1943, amended the original act, and provided for use of federal funds for payment of maintenance to trainees, but did not limit the amount, nor provide for payment to dependents, as does the state act. Thus the two acts, state and federal, conflict in this respect.

As heretofore stated, the federal government is not concerned with what the state law may provide with reference to amount of payments or to whom—so long as federal funds are not used contrary to the express provisions of the federal act. Therefore, your board may legally permit payments from state funds for maintenance of trainees and their dependents in any sum within the maximum amount provided by statute. Your board may also, if in its sound discretion it deems an amount in excess of the maximum necessary in any specific case, allow such amount, but any excess over the maximum must be paid from federal funds. Likewise, any payment to dependents may be made only from state funds.

It is, therefore, my opinion that your board may:

1. Allow payments for maintenance from state funds in any amount, not to exceed the statutory limitations.
2. Make payments for maintenance in amounts in excess of statutory maximums, but the amount of such payments which is in excess of the maximum provided by statute, must be paid from federal funds only.
3. Not use federal funds in payments to dependents.

Sincerely yours,
R. V. BOTTOMLY
Attorney General