

Held: Where State Department of Public Welfare advanced funds for county's proportionate share of old age assistance and aid to dependent children under Section XI (b) Part I, Chapter 82, Laws of 1937, the county being unable to pay such share at the time, the county was thereafter obliged to repay the amounts advanced. Under 1937 Public Welfare Act, state department was authorized to require county to assume obligation of repayment before advancing funds for county's share of old age assistance and aid to dependent children. Execution by county officials of requisition for funds containing promise to make prompt reimbursement indicated recognition of county's obligation to repay. Advancements by state department for county's share of old age assistance and aid to dependent children, where county was financially unable to bear such share, under Section XI (b) Part I of 1937 Act, were loans rather than gifts or grants, as distinguished from grants-in-aid by state department for general relief purposes under Section IX and XIII of Part II of said Act.

December 12, 1942.

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

Dear Mr. Convery:

You have asked for my opinion regarding the obligation of Carter County to make reimbursement to the State Department of Public Welfare for funds advanced by your department to said county for recipients of old age assistance and aid to dependent children therein during the months of January, 1938, through March, 1939, inclusive. The total amount involved is \$8,401.69. In your request you state the following facts:

During the period involved Carter County did not have sufficient funds to meet the county's proportionate shares of the necessary payments for old age assistance and aid to depend-

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ent children. As a consequence, the state department advanced funds in each month to make up the deficiency which would not be supplied by county funds, under provisions of Section XI (b) of Part I of the Public Welfare Act, being Chapter 82 of the Laws of the Twenty-Fifth Legislative Assembly, 1937.

You inform me that in each month a voucher or requisition entitled "Certificate of Aid to Needy Dependent Children" was executed by the chairman and secretary of the county welfare board with the county seal affixed, in which, among other things, there was stated the amount required and the following language, "We further certify that the said county of Carter will promptly reimburse the State Department of Public Welfare to the extent of thirty-three and one-third per cent (33⅓%) of the said total sum of \$..... as provided by law." In each certificate the sum in dollars represented the total amount paid out by the state department for that month.

Similar certificates containing identical language, except that the percentage of reimbursement was 16⅔%, were executed by the same county officials with respect to money paid out by the state for old age assistance.

Section XI (b) of Part I of the Act requires the county commissioners to levy the regular six mills required for poor fund purposes and then continues:

"If the six mill levy shall prove inadequate to meet the county's proportionate share of public assistance under any part of this act and if the county board of commissioners is unable to declare an emergency for the purpose of providing additional funds, and if an audit by the state examiner's office proves this condition to be true and the county board has expended its poor fund only for the purposes levied, then such proportion of its public assistance as the county is unable to meet shall be paid from the state public welfare fund."

The question depends upon the interpretation of language just quoted, for it is clear that the legislature did not state in positive language whether the money advanced by the state department should be considered as an outright grant or as a loan which should

be repaid. However, reference to other portions of the Public Welfare Act and to subsequent treatment of this matter by the legislature, I believe makes clear the meaning of the above section as intended by the legislature.

Section VIII of Part I of the Act provides that the state department shall have the authority to:

"(a) Require as a condition for receiving grants-in-aid that the county shall bear the proportion of the total of local public assistance as is fixed by law relating to such assistance."

This would indicate that, although the state department would be required to come to the aid of a county in financial distress as provided in Section XI (b), before disbursing any money for the aid of the county the state department might require the county to obligate itself to make reimbursements for its proportionate share of old age assistance and aid to dependent children. It is apparent that the state department did this in obtaining the execution by the county officials of the certificates to which we have referred above and in which the county directly assumed the obligation to make percentage reimbursements.

The above interpretation is substantiated by the fact that Section V of Part III of the Act required each county department to reimburse the state department for its percentage of approved old age assistance grants to persons in the county each month, such reimbursements to be credited to the old age assistance account of the state department, and a similar provision with reference to aid to dependent children is contained in Section IV of Part IV of the Act.

Section XIX (b) of Part I of the Act provides that on or before the 20th of each month the state department shall present a claim for reimbursement to each county department for its proportionate share of public assistance during the previous month and that the county department must make reimbursement within twenty days thereafter.

Nowhere in any of the three sections last referred to is any exception made with regard to funds advanced by the state department under Section XI (b) in cases where a county was not currently able to bear its share of expenses,

and from this it must follow that the legislature did not intend to exempt the counties from these reimbursements under any circumstances, even though it might not at the time be able to pay the money back within twenty days.

Under Part II of the Act a different situation is presented, for there it is apparent that in cases of general relief the state department was required to make outright grants of funds for general relief purposes in the various counties, with no requirement of reimbursement by the county to the state. (See Sections IX and XIII.)

In 1939, by Section 8 of Chapter 129 of the Laws of the Twenty-sixth Legislative Assembly, Section XI (b) of Part I of the 1937 Act was so amended as to delete the provision for payment from state funds for the proportionate share of old age assistance and aid to dependent children which could not be borne by the county, and by Section 14 of Chapter 129 of the same Session, Section IX of Part II of the 1937 Act was amended so as to provide not only for grants-in-aid for general relief purposes, but also monthly grants for old age assistance, aid to dependent children and aid to needy blind where the county was unable to bear its proportionate cost of those forms of relief.

The 1941 legislature, by Chapter 112 of the Laws of the Twenty-seventh Legislative Assembly, recognized the fact that some counties in the state were in arrears for reimbursement to the state department for relief assistance previously advanced by the state and, to remedy that situation, made provision for an additional one mill levy to create a fund to discharge such floating indebtedness to be known as the "poor fund debt reduction fund."

Taking all of the above legislative provisions together, it becomes obvious that our legislature intended that for the period of January, 1938 to March, 1939, each county should reimburse the state department for its proportionate share of old age assistance and aid to dependent children, whereas no such reimbursement was required in cases of general relief. It was recognized that some counties might not have current funds to meet these requirements for reimbursement, and, in such cases, the state department was to advance the money. (Section XI (b) Part I, 1937). Although grants-in-aid by the

state for general relief need not be repaid, under the 1937 Act the state department was expressly given the power to require repayment for funds advanced for old age recipients and dependent children under Section XI (b) Part I and this requirement was, in fact, imposed by the state department in making advances to Carter County. Subsequent legislative action likewise indicates that during the period 1937 to 1939 advances made by the state to counties for other than general relief purposes were considered in a different light and were to be repaid at some future time.

Finally, we have the express acknowledgment of the duty to repay by the execution of the certificates referred to by the officers of Carter County during the period in question.

It is therefore my opinion that Carter County is obligated to repay the state department of public welfare the total sum of \$8,401.69, being its aggregate proportion of funds advanced by the state department for old age assistance and aid to dependent children during 1938 and the first three months of 1939.

Sincerely yours,  
R. V. BOTTMLEY  
Attorney General