

Opinion No. 67

**Department of Public Welfare—
Dependent and Neglected Child
—Fine—County Treasurer—
Trustee.**

Held: 1. Members of the state and county public welfare departments may, when the public interests would be benefited rather than damaged thereby, be compelled to testify as to matters within such representatives' knowledge, and give any information in such court proceeding.

2. The court has authority to appoint a trustee, but the trustee must be willing to accept the trust, and if the county treasurer is unwilling to accept the trust he cannot be compelled to accept the fine and administer the trust.

September 26, 1947

Mr. Nat A. Allen
County Attorney
Golden Valley County
Ryegate, Montana

Dear Mr. Allen:

I have your request for an opinion on two questions which may be stated as follows:

1. Can a member or representative of either the county or state departments of public welfare in a proceeding in court brought against a parent of a child for failure to support his or her child, brought under the provisions of subsection 1 of Section 11017, Revised Codes of Montana, 1935, be compelled to testify as to whether assistance has been given to such child or children of such parent as a dependent and neglected child, and if such assistance has been given, the amount and over what period?

2. Can the Court in such a proceeding, where a fine has been imposed on conviction of such parent, direct the county treasurer to accept the fine and disburse the same to the mother of the child in monthly installments until the amount of the fine has been completely disbursed?

The first question submitted involves the construction of numerous statutes. Section 455, Revised Codes of Montana, 1935, as amended by Chapter 112 of the Laws of 1945, provides, in part:

"The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person."

Section 10542, Revised Codes of Montana, 1935, provides:

"Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute."

Subsection (c) of Section III of Part I of Chapter 82 of the Session Laws of 1937, as amended by Section 1 of Chapter 129 of the 1939 Session Laws, as further amended by Chapter 117 of the Laws of 1941 provides:

"The use or disclosure of information concerning applicants or recipients of old age assistance, of aid to the blind or of aid to dependent children for purposes not directly connected with the administration of these forms of assistance, shall be unlawful, and shall constitute a

misdemeanor. The state department of public welfare shall adopt all rules and regulations necessary to give effect to this provision."

The first two sections from which quotation is made above have the effect of making all records in public offices in the state of Montana open to the public.

The last quotation operates to remove from the category of public records all information in the hands of either the state or county departments concerning applicants or recipients of old age assistance, of aid to the blind, or of aid to dependent children, and only permits the giving of such information for purposes connected directly with the administration of these forms of assistance.

The last quoted section is silent on the question as to whether this information may be given in court in an appropriate proceeding.

However, a part of the rules of the State Department of Public Welfare, Bulletin 89, provides:

"Approved in public welfare administration sanctions the releases of information to another agency from whom the applicant or recipient has requested certain services, and whose objective is the protection or advancement of the welfare of the applicant, such disclosure can be made on the theory that the request constitutes an actual or implied consent on the part of the applicant or recipient to the release of relevant information to such agency and a recognition that the release is for the applicant's benefit." (Emphasis supplied).

Jones on Evidence, Fourth Edition, Vol. 3, page 1390, paragraph 762, states, in part:

"Moreover, the general rule must, in certain circumstances, yield to the requirements of the administration of justice; the privilege may not be invoked in respect of evidence which is essential to the proper disposition of a case."

The matter of who may be witnesses is regulated by other statutes.

Section 10536, Revised Codes of Montana, 1935, provides:

"There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases: . . .

"5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure."

Public officers may not be examined as to communications made to them in official confidence when the public interests would suffer by the disclosure. Here, in the proceeding or proceedings under discussion, the interests of the public would not suffer, but would be benefited, in that if a parent has wilfully refused to support his or her child and has thereby forced this burden upon the respective welfare departments then the public interests would be benefited rather than damaged by his testimony.

Accordingly, it is my opinion that members of these welfare departments, their representatives and workers, may, in the type of proceeding described in the above stated question, be compelled to testify as to matters within such representatives' knowledge, and give any information in such court proceeding.

As to your second question—Section 11017, Revised Codes of Montana, 1935, provides, in part:

"Every person who:

"1. Having any child under the age of sixteen years, dependent upon him or her for care, education or support, wilfully omits without lawful excuse, to furnish necessary food, clothing, shelter or medical attention for his or her child or children, or ward or wards; or . . . shall be guilty of a misdemeanor."

Section 11018, Revised Codes of Montana, 1935, provides, in part:

"In any case enumerated in the previous section, the court may render one of the following orders:

"1. Should a fine be imposed, it may be directed by the court to be

paid in whole or in part to the wife, or to the guardian or custodian of the child or children, or to an individual appointed by the court as trustee."

By the following provisions, upon conviction, the court may impose a fine and direct it be paid to an individual appointed by the court as trustee.

The above quoted portion of Section 11018 does not enumerate the county treasurer as the person who shall be appointed as trustee. The duties of the county treasurer are enumerated in Section 3750 of our code, which reads:

"The county treasurer must:

"1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law."

The county treasurer, under this statute, is only required to receive moneys which are directed by law to be paid to him. The law does not provide that the fine in question be paid to the county treasurer and hence it is not one of his duties as required by law to accept the fine.

The proper procedure would be for the court to make an order appointing a trustee who is willing to administer the trust. No one can be compelled to accept a trust unless so directed by law, and the county treasurer is not so directed by any statutes either general or special.

It is, therefore, my opinion the court has authority to appoint a trustee, but the trustee must be willing to accept the trust, and since the county treasurer is unwilling to accept the trust he cannot be compelled to accept the fine and administer the trust.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General