

Opinion No. 132**State Board of Examiners—State Department of Public Welfare—
Old Age Assistance—Emergencies, What
Constitute—Legislature.**

Held: When unforeseen and unanticipated emergencies consisting of increases in the number of recipients receiving Old Age Assistance benefits and in the cost of living arise, the State Board of Examiners may, in the exercise of its discretion, authorize the State Department of Public Welfare to expend an amount in excess of the sum appropriated by the Legislature, in order to insure that the recipients of Old Age Assistance will be maintained in a standard of living compatible with decency and health.

November 13th, 1950.

Mr. N. C. Briggs, Administrator
State Department of Public Welfare
Helena, Montana

Dear Mr. Briggs:

You have requested my opinion upon the following question:

"When the Legislature appropriates money for public assistance payments on the basis of an expectation of X number of recipients to receive an average of Y amount, may the department make payments to a number of recipients in excess of X number in amounts in excess of Y amount?"

Your question arises from the following set of facts and circumstances. The State Department of Public Welfare is charged with the administration and supervision of the granting of Old Age Assistance benefits to needy persons over the age of sixty-five who meet certain residence and other requirements. Sections 71-401 through 71-413, Revised Codes of Montana, 1947. The program of assistance is partici-

pated in financially by the State, the Federal Government, and the various counties of the State of Montana.

The portion of the assistance benefits which is contributed by the State Department of Public Welfare is supplied by funds which are appropriated for such purpose by the Montana Legislative Assembly. For the fiscal year 1950-1951 the Thirty-First Legislative Assembly appropriated the sum of two million three hundred seventy-six thousand eight hundred dollars (\$2,376,800.00) to be used for Old Age Assistance payments. House Bill 448, Laws of 1949. This figure was substantially what the State Department of Public Welfare had asked for, its appropriation request was for the sum of two million three hundred seventy-nine thousand two hundred dollars (\$2,379,200.00).

The request of the Department was based upon an estimated eleven thousand four hundred (11,400) recipients of Old Age Assistance at an average monthly grant of fifty-two dollars and fifty cents (\$52.50) for each recipient.

At the present time there are approximately eleven thousand nine hundred (11,900) persons receiving Old Age Assistance from the State of Montana, an increase of five hundred (500) over the number of recipients considered when the Department requested funds from the Legislature. In addition to such factor the present state of World affairs has brought about a sharp increase in the cost of living since March of 1949 when House Bill 448 was approved. Due to such increase in the cost of living the average payment of fifty-two dollars and fifty cents (\$52.50) per recipient is no longer sufficient to provide a recipient with a reasonable subsistence compatible with decency and health as is required by Section 71-403, Revised Codes of Montana, 1947.

Your question then is whether the Department may make Old Age Assistance payments in excess of the funds appropriated for that purpose when there is an unexpected increase in the number of recipients and the cost of maintaining such persons in a position compatible with decency and health.

Section 79-902, Revised Codes of Montana, 1947, provides as follows:

"If it shall at any time appear to the State Board of Examiners that due to an unanticipated increase in the number of inmates or patients of any penal, custodial or charitable institution, in the case of such institutions, or that due to any unforeseen and unanticipated emergency in the case of such institution or that due to any unforeseen and unanticipated emergency in the case of any other State institution, educational institution, department, board, commission or bureau, the amount appropriated for the maintenance and operation of any State institution, educational institution, department, board, commission or

bureau, with all other income of the institution, if any, will be insufficient for such purposes during the year for which the appropriation was made, on written application to such State Board of Examiners, setting forth in detail the reasons therefore, said Board of Examiners, by an order made and entered at length, with such application, in its minutes, may authorize an expenditure to be made during such year for such purposes in such an amount in excess of such income for said year as said Board of Examiners may deem necessary and required, and the board, managerial staff or other authority in charge of any State institution, educational institution, department, board, commission or bureau, may expend such amount, and no more, for such purposes during such year; provided that any increase in expenditure so authorized for any penal, custodial or charitable institution due to increase in number of inmates or patients, shall not exceed the cost per inmate day as set forth in the last preceding Legislative budget for each such institution. Said State Board of Examiners shall report to the next Legislative Assembly the amount expended or indebtedness or liability incurred under such authority granted by it and request that a deficiency appropriation bill be passed to take care of and pay the same."

The above quoted Section was considered in the case of *State ex rel. Dean v. Brandjord*, 108 Mont. 447, 92 Pac. (2d) 273, wherein the relatrix asked for a writ of mandamus to compel the Administrator of the State Department of Public Welfare to pay the full amount of monthly Old Age Assistance originally granted to the relatrix, but reduced by the order of the State Board of Public Welfare when it was found that the amount of money appropriated by the Legislature was insufficient. The court, in a divided opinion, held that the provision of Section 79-912, *supra*, that where it appears that the appropriation made for the maintenance of a state department or board will be insufficient for such purpose because of an "unforeseen and unanticipated emergency", the State Board of Examiners may authorize expenditures in excess of such appropriations, does not apply where the alleged emergency was not only not unforeseen and unanticipated but was called to the attention of the Legislature as likely to arise when the State Department submitted its budget and therein stated its reasons for asking for a much larger appropriation, which must have been considered but was not acted upon in making the smaller appropriation.

In the *Brandjord* case the State Department recognized the need for and requested three hundred thirty-eight thousand dollars (\$338,000.00) for the period between March 10th and June 30th, 1939. The Legislature only appropriated the sum of two hundred eighteen thousand dollars (\$218,000.00) for that period. Therefore, the court drew the conclusion that the emergency which had arisen was not unforeseen and unanticipated but rather had been considered and the

Legislature was aware of such condition when it refused to appropriate the additional funds.

In the present situation the facts with regard to the amounts requested and granted are entirely dissimilar from those of the Brandjord case. Here the State Department asked for and received substantially the amount it deemed necessary to supply some eleven thousand four hundred (11,400) recipients with the assistance to provide them with a decent standard of living. The conditions which have arisen were in fact "unforeseen and unanticipated" and therefore the present situation is taken out of the rule of the Brandjord case.

It would seem that there are two emergencies which have arisen and are considered herein. First, the unexpected increase in the number of recipients of Old Age Assistance is one emergency. Second, the also unexpected increase in the cost of living is the second emergency. It is my opinion that upon receipt of a request in the proper form, the State Board of Examiners in the exercise of its discretion may declare that either or both of the above mentioned conditions are emergencies and may authorize an expenditure in excess of the amount appropriated to the State Department for the purpose of providing Old Age Assistance benefits.

Not only do I think that such a course of action is permissive, but I believe that it is mandatory in view of the language of Section 71-403, supra, wherein the Legislature has ordered that the amount of Old Age Assistance to be granted to eligible recipients shall be sufficient to provide such person with a reasonable subsistence compatible with decency and health.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.