

Opinion No. 91**Welfare, County Board of—Powers and Duties of—Old Age Assistance—Gifts—Contributions—Income.**

Held: The County Welfare Board has the power to inquire into facts and circumstances surrounding any contribution received by a recipient and to adjudge whether such contribution is of sufficient regularity and certainty to be considered as an item in the budget of such recipient.

That in making such determination, the County Welfare Board is directed by the State Department's regulations to disregard any contribution which is occasional, and any contribution is occasional which is by its nature not certainly regular and predictable.

May 31, 1952.

Mr. Charles B. Sande
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Sande:

You have requested my opinion on the question whether or not monetary gifts by a fraternal organization to a recipient of old age assistance constitutes income under Section 71-410, Revised Codes of Montana, 1947.

The facts submitted are as follows:

"For many months "X" has been receiving Old Age Assistance under the Public Welfare Act, in the amount of \$78.00 per month, of which \$18.00 was for room rent. Said recipient was transferred from Golden Valley County to Yellowstone County, and at that time an investigation was made showing that "X" admitted receiving the sum of \$50.00 per month from a Fraternal Organization for some months prior to February,

1952. This sum was and is in nowise money from insurance or annuity benefits from the lodge, but it is purely a donation and a gift, and is not in any manner contractual in nature. Upon receipt of this information the Welfare Board, on the advice of the case-worker, reduced the payment being made by the amount of the room rent, and the recipient is now getting \$60.00."

Section 71-410 (f), Revised Codes of Montana, 1947, defines old age assistance as used in part III, Public Welfare Act (Chapter 82, Montana Session Laws of 1947, as amended) as meaning money payments to needy individuals. Old Age Assistance is based on need.

Section 71-403, Revised Codes of Montana, 1947, reads as follows:

"The amount of old age assistance granted any person shall be determined by the county department of public welfare according to the rules and regulations and standards of assistance, established by the state department, as required by the Federal Social Security Act."

In the Department of Public Welfare Staff Manual, Volume IV, Social Work Policies and Procedures, Section 4120, Organizations, appears the following: (Lodges, fraternal orders, clubs, etc.) Regular contributions in cash or kind, from such organizations are to be entered in the budget and considered a resource. Occasional contributions in cash or kind are not to be considered.

Section 71-410, Revised Codes of Montana, 1947, states:

"If, at any time during the continuance of old age assistance, the recipient thereof or the husband or wife (if living together) of the recipient, becomes possessed of any property or income in excess of the amount enjoyed at the time of granting the assistance, it shall be the duty of the recipient immediately to notify the county department of the receipt and possession of such property or income, and the county board may, on inquiry, either cancel the assistance or vary the amount thereof in accordance with the circumstances . . ."

Thus it is clearly within the power of the County Welfare Department to inquire into the nature of the property or income of a recipient and to vary

the amount in accordance with the circumstances.

Whether any particular item is representative of a sufficient change in circumstances to move the discretion lodged in the county department by Section 71-410, supra, is a decision which the statute contemplates will be made by the county department. Such decision and inquiry, in accordance with Section 71-403, supra, must be "according to the rules and regulations and standards . . . established by the state department."

The county department is therefore not bound to vary the aid as a matter of course upon receiving information that a recipient has been otherwise assisted, but should inquire into the nature of the property or income. The statute (Section 71-410, supra) specifically provides that the county department "may" cancel the assistance or vary the amount in accordance with the circumstances. Thus, the county department should inquire into the nature of the property or income.

Under the rules of the State Department only contributions from a fraternal organization which are regular should be entered into the budget and considered as a resource. Occasional contributions are not to be considered. I quite agree with your expressed view that there should be some element of contractual or continuing obligation which would remove the particular item of income from the occasional class and yield the conclusion that the contribution is "regular" and will continue.

It is, therefore, my opinion that the County Welfare Department has the power to inquire into facts and circumstances surrounding any contribution received by a recipient and to adjudge whether such contribution is of sufficient regularity and certainty to be considered as an item in the budget of such recipient; that in making such determination the County Department is directed by statute and regulation of the State Welfare Department to disregard any contribution which is occasional.

A contribution is occasional and not regular which by its nature is not certain and predictable of future continuity.

Very truly yours,
ARNOLD H. OLSEN
Attorney General