

Opinion No. 55

PUBLIC WELFARE; Silicosis payments; amount may not be diminished by department of public welfare—SILICOSIS; Silicosis payments; amount may not be diminished by department of public welfare—Section 71-1004, R.C.M., 1947

Held: The State Welfare Board has no power to change the amount of the monthly payments to victims of silicosis.

March 8, 1960

Mr. John C. Harrison
Lewis and Clark County Attorney
County Courthouse
Helena, Montana

Dear Mr. Harrison:

You advise me that the Lewis and Clark Board of County Commissioners has requested your opinion on whether the amount of benefits received by silicotics under the Public Welfare Act can be reduced from \$75.00 per month for all recipients. You state that you have advised the board that this cannot legally be done.

I have studied your opinion and I concur with your conclusion for the following reasons.

Payments to persons having silicosis is provided for in Chapter 10, Title 71, Revised Codes of Montana, 1947. The chapter indicates that eligibility for payments depends upon a finding that the applicant has been a Montana resident for ten years and has a fibrotic condition of the lungs due to the inhalation of silica dust which results in total disability to do manual labor.

If these conditions are met, and the applicant is neither an inmate of a penal or mental institution, nor the recipient of payment over \$65.00 under the Workmen's Compensation Act, he then is entitled to payments as provided by Section 71-1004, RCM, 1947:

"Amounts of Payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this part, and who has, subject to the regulations and standards of the state and county departments, been determined by the state department to be entitled to a payment under this part for silicosis, shall be granted a payment by the said state department of seventy-five dollars (\$75.00) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein."

This section expressly provides for a payment of \$75.00 per month. Compliance with this provision is mandatory unless some other provision of the act allows payment of a lesser or greater amount or unless the statute itself is construed to be directory, permissive or discretionary.

The deductions authorized by the act itself apply to individuals rather than to all recipients of silicotic benefits. For instance, individual monthly payments must be reduced by the amount the individual receives under Workmen's Compensation. No other statutory authority to vary the amount of the monthly payment for all recipients can be found.

Is the statute merely directory? Its language, history and relation to other welfare statutes pertaining to payments indicates not.

Rules of statutory construction are not applicable where the language and meaning of a statute is plain, unambiguous, direct and certain. Our court said in *United Missouri River Power Co. v. Wisconsin Bridge & Iron Co.* (44 Mont. 343, 119 Pac. 796): "An unambiguous statute should not be interpreted, but should be enforced according to its clear language."

Section 71-1004, RCM, 1947, is such a statute. It plainly says a silicotic entitled to payments under the act "shall" be paid \$75.00 per month. The term "shall" is used.

This term is a word of command. The editors of *Corpus Juris* state:

"In its ordinary signification, 'shall' is a word of command, and is the language of command, and is the ordinary, usual, and natural word used in connection with a mandate. In this sense 'shall' is inconsistent with, and excludes, the idea of discretion, and operates to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless an intent to the contrary appears; but the context ought to be very strongly persuasive before it is softened into a mere permission." (80 C.J.S., p. 137)

This rule has long been accepted in Montana. Our Court in *State ex rel. McCabe v. District Court*, (106 Mont. 272, 76 Pac. (2d) 634) stated:

"We are reluctant to contravene or construe away terms of a statute which in themselves are mandatory upon their face, except where the intent and purpose of the legislature are plain and unambiguous and clearly signify a contrary construction; the synonymous terms 'must' and 'shall', in that connection, being generally interpreted as mandatory, and the term 'may' being generally construed as permissive or directory only."

The mandatory character of Section 71-1004 further is pointed up when we note that it pertains to the only state welfare program where a specified amount of payment is fixed by law. In each of the other assistance programs the amount payable is an amount "to provide such person with a reasonable subsistence compatible with decency and health", or an amount fixed: "according to the rules and regulations and standards of assistance established by the state department as required by the federal social security act."

The lack of discretion to fix the amount payable is further indicated by the amendments to the act. In 1947 when the amount of the payment was increased the legislature added the following sentence to the act:

"The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided for herein." (71-1004, RCM, 1947, as amended by Chapter 216, Laws of 1947).

This act has been amended five times since its original enactment. Each time the legislature has expressly made the above provision.

Where a statutory provision relates to matters of substance, affects substantial rights and goes to the very essence of what is required, the provision is mandatory. (See *Sutherland, Statutory Construction*, § 2803, 2804). This rule too has been accepted in Montana.

Section 71-1004, RCM, 1947, goes to the very essence of what is required. It does not pertain to form, or method of administration. It

grants a legal right to the person whose right to payment has been determined. The statute is for the public good and grants private rights. Such a statute is regarded as mandatory. (50 Am. Jur. Statutes § 34, 35).

The statute here uses mandatory language. Its history and relation to other provisions for welfare payments indicates a mandatory intent. The provision does not involve the insubstantial, immaterial act usually found to be directory.

For these reasons it is clear that the amount of payment fixed by Section 71-1004, RCM, 1947, is mandatory and cannot be increased or reduced except by the legislature.

It is therefore my opinion that the state welfare board has no power to change the amount of the monthly payments to silicotic victims provided by Section 71-1004, RCM, 1947.

Very truly yours,

FORREST H. ANDERSON

Attorney General