

**OPINION
45-320**

January 30, 1945 (OPINION)

WELFARE

RE: Old Age Assistance - Amount of

Your letter of January 24 addressed to the attorney general has been received and contents of same noted. You call attention to that portion of chapter 257 of the Session Laws of 1939 which was incorporated in section 50-0713 of the North Dakota Revised Code of 1943. The language as it appears in said chapter 257 is as follows:

The amount of assistance shall be sufficient when added to all other income of the recipient to provide such person with a reasonable subsistence compatible with decency and health but shall not be less than a minimum of \$40.00 per month except that it shall not be less than a minimum of \$30.00 per month for each recipient when there is more than one recipient in a family."

The question raised then is as to whether the change in language, as it appears in section 50-0713 of the North Dakota Revised Code of 1943, is to be considered as a departure from the intent expressed in chapter 257 and as the same has been construed by our Supreme Court in the case of Eckroth v. Carl Borge et al., 69 N.D., page 1.

The specific question is as to whether or not the minimum of \$40.00 per month in the case of one recipient, or 430.00 a month where there is more than one recipient, applies to the amount of assistance to be furnished, regardless of the amount of other sources of support which the recipient may have, or whether it applies to subsistence compatible with decency and health. As revised by the code commissioners, the statutes reads, "The amount of assistance which any person shall receive under the provisions of this chapter shall be sufficient, when added to all other income of the recipient, to provide such person with a reasonable subsistence compatible with decency and health. The amount of such assistance to each recipient shall not be less than a minimum of \$40.00 per month unless there is more than one recipient in a family, in which case it shall not be less than \$30.00 a month for each recipient of the family."

In construing the statute in the Eckroth case, as it appears in said chapter 257, the Supreme Court took into consideration the general scope and purpose of the statute. One of these conditions is that the recipient has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health; and has no child or other relative of sufficient financial ability to support the applicant and responsible under the law for the support of the applicant. In other words, it is the specific intent of the law that in order to entitle an applicant to old age assistance, there must be an actual need, and it must be shown that the applicant has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health. These provisions are

still a part of the law and must be taken into consideration in construing its general intent and purpose.

When we consider the statute as it appears in chapter 257, supra, and as it appears in the Revised Code, there is really no change in the grammatical construction. In the opinion of the Eckroth case, it is stated that the statute is susceptible of the construction that all needy persons who have attained the age of sixty-five years shall be entitled either to assistance payments of the minimum amount fixed by the amendment or nothing. The court, however, took the view that the minimum of \$40.00 or \$30.00, as the case might be, was not a minimum of the amount of assistance to be furnished, but was the minimum of the amount of subsistence compatible with decency and health.

I am of the opinion, therefore, that the construction which the Supreme Court placed on chapter 257, supra, in the Eckroth case would apply as well to the statute as it appears in the Revised Code. It is a general rule of statutory interpretation that where a statute has once been construed by a court of last resort, such construction will apply to that statute although changed in form, if the substance, purpose, and general intent thereof are the same.

In this connection, I wish to call your attention to section 1-0226 of the North Dakota Revised Code of 1943, and particularly the following language therein, "notwithstanding the revision, shall remain in effect," etc. Said section reads as follows:

"Any provision of this code which was enacted as an initiated measure, or as a part of such a measure, notwithstanding the revisions, shall remain in effect as an initiated provision and shall be subject to amendment, reenactment, or repeal only as provided by section 25 of the constitution of this state."

It was not the purpose of the lawmakers in establishing the code revision commission to give it power to amend, reenact, or repeal any statute, nor was it given the power to do so. Its function was to revise and, when necessary, to clarify and harmonize the statutes where needed.

NELS G. JOHNSON

Attorney General