Estate of Zastrow, 42 W (2d) 390, 166 NW (2d) 251.

48.93 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.93; 1969 c. 366 s. 117 (1) (c).

Under 322.06, Stats. 1953, the board of public welfare cannot discuss closed records of adoption proceedings at any conference which is open to the public. 42 Atty. Gen. 339.

48.94 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.94.

48.95 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.95; 1959 c. 306; 1969 c. 366 s. 117 (1)(c).

48.96 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.96.

Legislative Council Note, 1955: This section would probably not be necessary in view of the definition of "parent" in s. 48.02 except for the specific references in s. 48.92 to natural parents. [Bill 444-S]

48.97 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.97.

Legislative Council Note, 1955: This section is copied from the uniform adoption act. It states the rule of the A. L. I. Restatement of Conflict of Laws, s. 143: "The status of adoption, created by the law of a state having jurisdiction to create it, will be given the same effect in another state as is given by the latter state to the status of adoption when created by its own law." See also, 1 Am. Jur., Adoption of Children, ss. 66 and 67. [Bill 444-S]

48.98 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.98; 1969 c. 366 s. 117 (1) (c).

Legislative Council Note, 1955: This section is the same as s. 48.42 of the present statutes except that the provision exempting persons who bring children into the state for adoption into their own families is deleted. The committee concluded that, since adoption placements within the state must be approved by the juvenile court unless made by an authorized agency [see s. 48.63], it would be inconsistent not to have some supervision of interstate placements. [Bill 444-S]

48.981 History: 1965 c. 333; Stats. 1965 s. 48.981; 1967 c. 230.

48.985 History: 1963 c. 401; Stats. 1963 s. 48.985.

48.99 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.99.

The right of a parent to the services and wages of his child may be forfeited by ill treatment or abuse, by leading an immoral and dissolute life or by failing to support when able to do so. The right is extinguished by the lawful marriage of the child while still a minor or by the emancipation, express or implied, of the child. Patek v. Plankinton P. Co. 179 W 442, 190 NW 920.

48.991 History: 1955 c. 300; Stats. 1955 s. 48.991; 1957 c. 76.

48.992 History: 1955 c. 300; Stats. 1955 s. 48.992; 1969 c. 366 s. 117 (1) (c).

48.993 History: 1955 c. 300; Stats. 1955 s. 48.993; 1969 c. 366 ss. 35, 117 (1) (c).

48.994 History: 1955 c. 300; Stats. 1955 s. 48.994; 1969 c. 366 s. 117 (1) (c).

48.995 History: 1955 c. 300; Stats. 1955 s. 48.995; 1969 c. 366 s. 117 (1) (c).

48.996 History: 1955 c. 300; Stats. 1955 s. 48.996.

48.997 History: 1955 c. 300; Stats. 1955 s. 48.997.

CHAPTER 49.

Public Assistance.

49.002 History: 1969 c. 154; Stats. 1969 s. 49.002.

49.01 History: 1945 c. 585; Stats. 1945 s. 49.01; 1947 c. 121; 1957 c. 190; Spl. S. 1958 c. 2; 1959 c. 597; 1961 c. 462; 1969 c. 366.

See note to 49.14, citing State ex rel. Nelson v. Rock County, 271 W 312, 73 NW (2d) 564.

See note to 52.01, citing In re Spigner, 26 W (2d) 190, 132 NW (2d) 242.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing Ramos v. Health and Social Services Board, 276 F Supp. 474, and Denny v. Health and Social Services Board, 285 F Supp. 26.

As long as a minor has property which can be used to provide for him maintenance and education he is not eligible for public relief; he is neither a "poor" or "indigent" person, nor in "need" of relief within the meaning of those words as used in 49.01, Stats. 1939. 28 Atty. Gen. 401.

One may be a "dependent person" under 49.01(4), even though he has a cause of action for damages against another, where such other denies liability. 43 Atty. Gen. 261.

For discussion of residence requirements for public assistance under amendments to ch. 49, made by ch. 190, Laws 1957, see 46 Atty. Gen. 177.

The legislative development of public assistance. Handler and Goodstein. 1968 WLR 414.

49.02 History: 1945 c. 585; Stats. 1945 s. 49.02; 1953 c. 513; 1957 c. 167, 190, 478.

The duty of a town to support its paupers is by sec. 1, ch. 34, R. S. 1858, made clear and indisputable, and may be enforced by an action. Meyer v. Prairie du Chien, 9 W 233.

Where the county system is not established the town remains liable, under sec. 1, ch. 34, R. S. 1858, for the support of its poor. Mappes v. Iowa County, 47 W 31, 1 NW 359.

Under 1513, R. S. 1878, the town in which a pauper happens to be, destitute and in absolute want, is primarily liable for his support when the supervisors have notice thereof; and this though they do not make a contract for his support and though the town in which he has a settlement is ultimately liable therefor. Davis v. Scott, 59 W 604, 18 NW 530.

A town is not liable to a respondent which provided hospital care of an indigent resident of a town beyond the term of a contract providing for care; if the person remained indigent the town had a duty to provide care and maintenance but it was not obliged to con-

tinue her at the hospital of the respondent. St. Joseph's Hospital v. Withee, 209 W 424, 245 NW 128. See also 23 Atty. Gen. 321.

Persons furnishing aid to an injured person have the burden of showing that the person had the status of a pauper in order to establish liability on the part of the county or municipality, in the absence of circumstances otherwise establishing such liability. Carthaus v. Ozaukee County, 236 W 438, 295 NW 678.

A retired and pensioned minister, removing from Green Lake county to Milwaukee county on April 1, 1927, and there residing in a Lutheran home for the aged, acquired a legal settlement in Milwaukee county on April 1, 1928, under 49.02 (4), Stats. 1927; he continued thus to reside in Milwaukee county until admitted as a mental patient to a state hospital in September, 1937; his legal settlement, for the purpose of charging or apportioning the expense of his maintenance under 51.08 as a patient in such hospital from September, 1937, was not affected by, and did not revert back to Green Lake county under an amendment made to 49.02 in 1933, providing that the time spent by any person as an inmate of any home for the care of aged persons, maintained by any society, shall not be included as part of the year necessary to acquire legal settlement in the municipality in which such home is located. Milwaukee County v. Dept. of Public Welfare, 258 W 113, 45 NW (2d) 82.

An Indian who has a legal settlement in a town, although he is still a member of an Indian tribe, if indigent, is entitled to relief from said town. 20 Atty. Gen. 534.

The subject of criminal and civil liabilities of local government officials in the administration of poor relief is discussed in 21 Atty. Gen. 1141.

Ambulance service is not included under 49.18 (2), Stats. 1935, and therefore there is no liability to person who renders such service without prior authorization by proper authorities. 24 Atty. Gen. 332.

The furnishing of medical aid and hospitalization in no way depends on whether a person is entirely destitute. The essential question is whether the person has sufficient means to furnish such needs for himself. 24 Atty. Gen. 802.

For discussion of allowable limits of discretion in granting or refusing to grant relief under various sets of circumstances, including conditions which may be imposed, see 25 Atty. Gen. 137.

Failure to give the required written notice under 49.18 (2), Stats. 1937, defeats a hospital's right to recover from a municipality. 28 Atty. Gen. 16.

Legal settlement is a device for determining ultimate financial responsibility of governmental divisions and is not a condition precedent to the granting of relief. 38 Atty. Gen. 531.

The provisions of chs. 45 and 49, Stats. 1949, provide for 2 separate systems of public assistance. A veteran is entitled to relief under proper circumstances under the provisions of ch. 49 in the same manner as any other dependent person. Municipal authorities are not relieved from their obligations under ch. 49 by the provisions of ch. 45. A municipality granting relief under ch. 49 to a veteran may not require reimbursement from the county for such relief by reason of any provisions of ch. 45. 39 Atty. Gen. 26.

A county is liable for medical and hospital care under 49.02 (5), Stats. 1949, only if it is established that the person receiving such care is a dependent person "entitled to" relief. 39 Atty. Gen. 75.

The county or municipality in which a dependent person is present is the one obligated to make the initial grant of relief. If the person does not have settlement in the county or municipality granting the relief, the question to what unit the relief should be charged is dependent on legal settlement, which is an issue of fact to be determined under 49.11 (7). 39 Atty. Gen. 295.

The charges which may be made against a county under 49.02 (5), in the absence of authorization by the county, are limited to the reasonable value of emergency services for which prior authorization could not be obtained without delay likely to injure the patient. The extent of permissible treatment and the amount of permissible charges will need to be determined on the basis of the facts in each case. 40 Atty. Gen. 74.

Although medical and hospital care given to a person receiving old-age assistance might constitute relief under proper circumstances, so as to be recoverable from the county of his legal settlement, that would be possible only upon strict compliance with 49.02 and in a case where no other provision had been made for such medical and hospital care. Since the enactment of ch. 702, Laws 1951, the expense of medical and hospital care given as relief may be recovered from the county of legal settlement even though the recipient has no legal settlement in any municipality in such county and even though the county does not operate under the county system. 41 Atty. Gen. 45.

Counties may provide for payment of taxes and interest on behalf of a dependent person who is the owner of an equity in the home in which he lives. They may advance payments on the principal in such a case only if they make provision under 49.06 and 49.08 for reimbursement to the county of the amount of any such payments resulting in increase of the recipient's property interest. 43 Atty. Gen. 144.

A county administering relief under 49.02 and 49.03 (1) has no right to condition the granting of relief upon authorization by a county court. 43 Atty. Gen. 162.

For discussion of residence requirements for public assistance under amendments to ch. 49, Stats., made by ch. 190, Laws 1957, see 46 Atty. Gen. 177.

Under 49.02 the town, city or village in which a dependent person is present must furnish relief where a county system under 49.03 has not been established and may be held liable for failure to do so, and the municipal officials may be personally liable in some cases. 53 Atty. Gen. 76.

49.03 History: 1945 c. 585, 588; Stats. 1945 s. 49.03; 1947 c. 121; 1957 c. 190.

Comment of Interim Committee, 1947: 49.03 (1) (b) is amended to harmonize it with change made in 49.01 (1). The repeal of 49.03 (1) (c) and the creation of 49.40 transfers the

subject matter from relief to the social security aids for better integration. It relates to medical services for recipients of aid to the aged, the blind, and dependent children. [Bill 34-A]

Under sec. 1, ch. 34, R. S. 1858, the primary liability of supporting the poor is upon the town; but when the county system has been adopted such liability is shifted to the county. Mappes v. Iowa County, 47 W 31, 1 NW 359.

49.15, Stats. 1933, permits the complete abolition of all distinction between county poor and town, village and city poor, and the assumption of complete responsibility by the county for their relief and support. In a resolution providing that the county go on the county system of outdoor relief "without in any way affecting the present town system for hospitalization of poor relief," the exception was so clearly intended to qualify the balance of the resolution that it could not be isolated and the resolution was ineffective to establish the county system of relief so that a town in caring for its poor was only discharging its own duty and had no cause of action against the county. City of Washburn v. Bayfield County, 235 W 215, 292 NW 912.

A resolution of a county board that the county "go entirely on the county system of relief," adopted by a majority of the members of the board, satisfied the terms of 49.15, Stats. 1937, and placed the county under the county system of poor relief. A city, in a county which has adopted the county system of poor relief, is not liable for emergency medical relief furnished to a poor person on the authorization of the mayor of the city. (City of Washburn v. Bayfield County, 235 W 215, applied.) Legault v. Owen, 235 W 675, 293 NW 920.

The county clerk can issue orders on the general fund for relief when a specific appropriation has been exhausted, since support of poor by the county is mandatory when the county system of relief has been adopted. 24 Atty. Gen. 384.

The county board is not authorized to pay to towns the balance of county relief funds upon changing from county to unit system of relief. 25 Atty. Gen. 92.

When a county changes from the county to the unit system of relief surplus moneys raised for the county relief system may be appropriated for other purposes. 25 Atty. Gen. 284.

The determination to adopt or abandon the county system of poor relief rests with the county board and is not subject to referendum, but the board may make its decision contingent upon the result of a referendum vote. 25 Atty. Gen. 533.

A county on the county system of poor relief has no general power under any and all circumstances to acquire title to real estate by purchase for the purpose of housing relief clients in individual housing units. Such power, however, is necessarily implied where circumstances are such that the county can meet the problem in no other practicable or feasible manner. A county may acquire property by tax deed and use the property so acquired for such purpose. 28 Atty. Gen. 372.

49.03 (1), Stats. 1947, requiring the affirmative vote of a majority of all members of a county board, must be strictly followed and a resolution passed by a mere majority of quorum is ineffectual. Subsequent passage of a budget containing an appropriation for purposes which were objects of an invalid resolution though by majority of all members of the board does not serve to confirm such resolution. 36 Atty. Gen. 342.

A resolution of a county board under 49.03 (1) (b), Stats. 1947, abolishing the distinction between county and municipal dependents as to sick care requiring services of a physician or surgeon or hospitalization and directing the county welfare department to administer such assistance, cannot operate to deprive the county judge of his exclusive right to designate the hospital under 142.01 to 142.04, Stats. 1947, where the indigent has legal settlement in the county. The welfare department must apply to the county judge under 142.02. This does not apply to social security aids under 49.40. 36 Atty. Gen. 438.

Where a county system of relief has been adopted under 49.03 (1), Stats. 1953, all relief as defined by 49.01 (1), must be administered by the same agency. It may be either the welfare department under 46.22 (5) (b), or such other official or agency as may be designated under 49.02. 43 Atty. Gen. 158.

An agreement by which a county furnishes its welfare department facilities to a city for administration of relief would probably be valid, even though the county has not elected to furnish relief under 49.02 (2) or 49.03, Stats. 1957. 47 Atty. Gen. 278.

49.04 History: 1945 c. 585; Stats. 1945 s. 49.04; 1947 c. 9; 1953 c. 251 s. 63; 1957 c. 190; 1959 c. 659 s. 79; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 366 s. 117 (1) (c).

Under 49.04, Stats. 1951, and the legislative plan for the handling of welfare matters in Milwaukee county, the state is liable to Milwaukee county for relief furnished by the county in the County General Hospital to a dependent person who did not have a settlement within any county in the state and who had resided in the state less than one year, although the admission of such person to the hospital was not authorized by the director of the county department of public welfare. Milwaukee County v. Dept. of Public Welfare, 273 W 516, 78 NW (2d) 884.

In making rules under 49.04 (2), Stats. 1949, filing of notices of claims for reimbursement from the state for relief of dependent persons who have no legal settlement in any county, the department may provide additional rules for filing notices but may not cut down the time allowed by a statute for the performance of any act which is governed by express statutory provisions. 38 Atty. Gen. 354.

Relief to a woman married to a man who has resided in Wisconsin less than a year and has no legal settlement in any county in Wisconsin is a state charge, even though the woman had resided in Wisconsin more than a year prior to the marriage. Relief to her children by a former marriage does not become a state charge in such a case, unless the husband has assumed liability for their support. 40 Atty. Gen. 385.

The specification in 49.04 (3) of the time during which claims are to be filed is not a statute of limitations and not in conflict with

the 2-year limitation of 49.11 (5) (g), Stats. 1953. 43 Atty. Gen. 127.

If a man married in Wisconsin leaves his family here, it is possible for him to be a resident of Wisconsin although he does not remain physically present in the state. A county cannot be reimbursed for aid granted to the family more than a year after the marriage, if it found that the man established and continued residence in Wisconsin. 46 Atty. Gen. 247.

49.046 History: 1951 c. 484; Stats. 1951 s. 49.046; 1959 c. 659 s. 83; 1965 c. 433 s. 121; 1965 c. 590 s. 24 (1), (3); 1967 c. 43; 1969 c. 55 s. 113.

A local agency administering aid to needy Indians under 49.046, Stats. 1951, is directly liable for workmen's compensation benefits if it elects to grant them work relief under 49.05, unless it contracts so as to transfer the liability to another agency under 49.05 (4). 41 Atty. Gen. 289.

49.05 History: 1945 c. 585; Stats. 1945 s. 49.05; 1965 c. 590; 1967 c. 9; 1969 c. 154.

In the absence of extraordinary circumstances, benefits are recoverable under the workmen's compensation law by one injured on work relief projects carried out under 49.05, Stats. 1951, although such person would otherwise be entitled to relief under 49.046. 41 Atty. Gen. 289.

49.06 History: 1945 c. 585; Stats. 1945 s. 49.06; 1947 c. 282, 534.

Under 49.06, Stats. 1951, county department of public welfare has authority to request assignment of a cause of action inuring to one seeking relief, as a condition of granting relief, only in cases where assignment of such cause of action is necessary to render the assignor eligible to receive relief. 42 Atty. Gen. 178.

See note to 49.02, citing 43 Atty. Gen. 144.

Where one has a cause of action on which liability is denied so that it cannot be established without litigation, the cause of action is not a source of "present available" means of support under 49.01 (4), Stats. 1953, and does not furnish a proper case for assignment under 49.06. Where one has a cause of action on which liability is admitted, it may be a proper subject for assignment. 43 Atty. Gen. 261.

49.08 History: 1945 c. 104, 459, 506, 585; Stats. 1945 s. 49.08; 1957 c. 399, 664, 699; 1965 c. 663; 1969 c. 334; 1969 c. 339 ss. 3, 27.

Editor's Note: On pleading statutes of limitations see the opinions of the supreme court in Estate of Kuplen, 209 W 178, 244 NW 623, and Estate of Cameron, 249 W 531, 25 NW (2d) 504.

Under the governing statutes of 1905, the entire property of an insane ward, living, and the entire estate of such ward, dead, is liable for his support and maintenance, and there is no exception, even of his homestead, except as the county judge is empowered to refuse, in his discretion, to enter judgment on any such claim where a parent, wife or child is dependent on such property or estate for future support. Johnson v. Door County, 158 W 10, 147 NW 1011. See also 20 Atty. Gen. 638.

Under 1499 and 1505a, Stats. 1915, the present ownership by a poor person of property which may subsequently become available to recompense a city for relief or support furnished does not create a want of power on the part of such city to furnish or contract for furnishing immediately needed assistance. Elkey v. Seymour, 169 W 223, 172 NW 138.

49.10, Stats. 1923, as amended in 1925 to provide that if an inmate of a state or municipal institution owns "or at any time thereafter" is the owner of property, the value of the relief received may be recovered from such person or his estate, imposed liability upon him if he acquires property subsequent to the time of receiving the relief, but does not apply to relief furnished prior to the enactment of the amendment. Estate of Pelishek, 216 W 176, 256 NW 700.

Insane patients having property are liable for maintenance furnished to them in county hospitals for the insane. Guardianship of Brennan, 245 W 235, 14 NW (2d) 28.

A county's claim for assistance furnished to a husband and wife from 1930 to 1940 was not barred by laches for failure to attempt any collection until the county filed a claim in the estate of the deceased husband following his death in 1958. Estate of Schubert, 9 W (2d) 236, 101 NW (2d) 95.

On the subject of adequacy of records under 49.08 (1), see Estate of Schubert, 9 W (2d) 236, 101 NW (2d) 95.

Under 49.10, Stats. 1931, a county cannot bring an action to recover from the estate of a recipient of blind pension furnished under 47.08. 21 Atty. Gen. 791.

Although a county has not yet paid the expense of maintaining an inmate of a county tuberculosis sanatorium, it may file a contingent claim under 313.22 against the estate of such deceased inmate. 24 Atty. Gen. 125.

A county may not simply credit the relief account of a family and refuse to pay the mother and another in the family, which family was on relief, money earned by them for work for the county. The statutory method of recovery must be followed. 25 Atty. Gen. 673.

49.08, Stats. 1945, does not authorize a county to make a claim against the estate of an incompetent for the expenses referred to in 51.07. 35 Atty. Gen. 320.

The homestead of a decedent and the proceeds from the sale thereof are not exempt from the claim of the county against the decedent's estate for direct relief furnished to her, but the court may refuse to allow such claim where a parent or child of the decedent is dependent on such property for support. 36 Atty. Gen. 143.

A homestead is not exempt from execution of a judgment in favor of a county for relief advanced by the county when a judgment provides that the homestead shall not be exempt. 39 Atty. Gen. 589.

A county which has a cause of action for the recovery of the value of relief granted a recipient does not have the basis for a garnishment action as required by 267.01 until judgment is obtained thereon. The county has a cause of action pursuant to 49.08 when the recipient has property in the form of a chose in action. 40 Atty. Gen. 349.

See note to 49.02, citing 43 Atty. Gen. 144.

49.085 History: 1959 c. 259; Stats. 1959 s. 49.085.

49.09 History: 1945 c. 585; Stats. 1945 s. 49.09; 1951 c. 725 s. 2; 1953 c. 268; 1957 c. 190; 1959 c. 597; 1967 c. 9.

An order of a county judge made in a proceeding instituted under 49.03 (9), Stats. 1933, is not appealable. In re Jeness, 218 W 447, 261 NW 415.

An order of removal is not conclusive upon parties and is not res adjudicata in an action to recover for relief furnished. The remedy of 49.03 (9), Stats. 1935, is intended to cover only situations where legal settlement is not disputed. The only question the judge can or need determine is whether such removal will be against the best interests of the poor person. Two Rivers v. Wabeno, 221 W 158, 266 NW 178.

The judge, under 49.03 (9), Stats. 1933, acts administratively and not in a judicial capacity. The order of the county judge is not a judgment or order of a court. The order is enforced by denial of further relief unless the terms of the order are complied with. Ashland County v. Bayfield County, 246 W 315, 16 NW (2d) 809.

49.03 (9), Stats. 1931, does not authorize removal of a poor person to another state. 21 Atty. Gen. 979.

An order of a county judge under 49.03 (9), Stats. 1933, that A and family, who require public relief, be removed from Milwaukee county to X county, the place of their legal settlement, is valid. A cannot receive further public relief from Milwaukee county. A may be prosecuted for neglect and nonsupport of his family for refusing to move to X county so as to obtain public relief if he does not otherwise support his family. One of A's children, under 18, may be held to be a neglected child because of the fault of his father in failing to abide by the judge's order. 23 Atty. Gen. 730.

Where there has been compliance with a removal order issued under 49.03 (9), and a relief recipient at some subsequent time again moves from the place of legal settlement to the county in which he had previously been ordered to leave, a new removal order is necessary to bar receipt of further relief in such place and to discharge the county of legal settlement from further liability. 29 Atty. Gen. 141.

For discussion of residence requirements for public assistance under amendments to ch. 49, Stats. 1955, made by ch. 190, Laws 1957 see 46 Atty. Gen. 177.

49.10 History: 1945 c. 585; Stats. 1945 s. 49.10; 1947 c. 343; 1951 c. 702; 1957 c. 155; 1957 c. 296 s. 15; 1957 c. 496, 560, 699; 1959 c. 102, 660.

Legislative Council Note, 1959: This bill is a complete revision of s. 49.10 of the statutes relating to the determination of legal settlement of individuals. The legal settlement of the individual, in turn, determines the liability of units of government, as between each other, for the charges incurred in furnishing relief to the individual.

This statute does not determine the eligibility of a person to obtain relief. It does fix the responsibility for support of a dependent individual upon the political subdivision which presumably benefited from his productive years.

Public assistance (relief) has traditionally been the primary responsibility of the municipality. [s. 49.02 (1)] Responsibility is imposed on the county [s. 49.11 (2)] when the person relieved has no settlement in any municipality.

Wisconsin statutes also provide for optional county systems whereby the county assumes responsibility for relief. Under s. 49.03 (1) (a) the county assumes responsibility for all relief; under s. 49.03 (1) (b) for all medical relief.

[Note to Sub. (1)] Since the family is a unit, a wife generally does not acquire settlement in her own right, but rather she derives the settlement status of her husband.

The first sentence of this subsection is the present s. 49.10 (1). The last sentence is an addition to the present law. It permits a wife to begin to acquire a settlement in her own right when she is separated from her husband and when he is no longer supporting her. In such instances the family is no longer a unit, and there is no reason for derivative settlement principles to apply.

[Note to Sub. (2) (a)] This paragraph is a revision of present s. 49.10 (2). A new provision permits the children to have the legal settlement of their mother when she has acquired settlement in her own right and has actual custody of them. Where a divorce has been granted and no award of custody made, a new provision permits children to have the settlement of the parent who has the actual custody of them. A further new provision covers the situation where custody has been awarded to a person other than the parents. In such a case no settlement is derived.

The term "settlement status" has been used throughout the paragraph instead of merely "settlement". Status includes both settled and nonsettled persons. The term "settlement status" is defined in the proposed s. 49.10 (12) (a).

[Note to Sub. (2) (b)] The term "illegitimate children" has replaced "children born out of wedlock" to clarify the situation where children born out of wedlock have been legitimatized. For further clarity "legitimate child" has been defined in proposed s. 49.10 (12) (b). The definition includes children born or conceived in wedlock or legitimated pursuant to law or legally adopted.

[Note to Sub. (2) (c)] An unemancipated minor cannot gain a settlement in his own right. Derivative settlement principles should not apply when the family is not a unit. Present statutes do not cover this situation.

[Note to Sub. (3) (a)] This paragraph is present s. 49.10 (12) with minor language modifications. The word "legal" used in the term "legal settlement" has been deleted throughout the paragraph because it is superfluous. Settlement means legal settlement.

In general, settlement in a county is gained by residing for a year in such county without receiving any aid. A new provision of this paragraph states that such residence must be "voluntary" which word is defined in proposed s. 49.10 (12) (d) as meaning "according to a person's free choice, if competent, or by choice of a guardian if incompetent." This is consistent with the law of domicile.

A new provision of this paragraph also states that the aid received may be either

"public or private". This provision is in conformity with the accepted principle that a person in a dependency (pauper) status is precluded from acquiring a new settlement. The fact that the aid furnished came from a private source rather than a public one does not change the dependency status. This principle was expressed by Justice Rosenberry in Rolling v. Antigo, 221 W 220, 225 (1933):

"While it may in some cases be material, the circumstance that the aid was furnished by a voluntary organization is not controlling. The question is not where the support came from, but on what ground and under what circumstances it was furnished."

[Note to Sub. (3) (b)] This paragraph clarifies administrative construction of the present law which does not specifically cover this situation.

[Note to Sub. (3) (c)] This paragraph is the last sentence of the present s. 49.10 (4). It logically extends the present law to include the county unit of government.

Thus, persons who work and reside at the Outagamie county home, which home is actually located in Waupaca county, may acquire settlement in Outagamie but not in Waupaca.

Then too, municipal employes and custodians who work and reside in institutions or at parks or dumping grounds that are located outside of the municipal boundaries may acquire settlement in the employing municipality but not elsewhere.

[Note to Sub. (4)] The requirements for the acquisition of a settlement as set forth under this subsection have been carried over from present s. 49.10 (4). The term "voluntarily resides" has been used instead of "continuously resides" to be consistent with laws relating to domicile. Case law has been codified by the use of new language providing that aid may be "public or private".

Paragraphs (a) to (f), with the exception of (d) and (e), incorporate the provisions of present s. 49.10 (4) which is not subdivided into paragraphs.

Paragraph (d) changes the following language of the present law which was passed in 1945: ". . . any Indian reservation over which the state has no jurisdiction . . .". In 1953 the state acquired such jurisdiction as a result of federal legislation, (18 USCA 1163) (28 USCA 1360), and thereby the original meaning of the present law was in effect changed. The proposed paragraph restores the original meaning of the 1945 enactment.

Paragraph (e) is in conformity with laws relating to domicile. Since the place of residence of prisoners, probationers and parolees is not voluntary, their settlement status should not change. Present statutes do not cover these situations, and case law is in conflict.

[Note to Sub. (5)] Present s. 49.10 (5) which excludes all time spent on active duty has been revised to recognize the short-term active duty programs of reservist organizations.

[Note to Sub. (6)] Present s. 49.10 (6) has been carried over.

[Note to Sub. (7)] This subsection is the same as the present s. 49.10 (7) except it has logically been extended to include settlements in counties as well as municipalities. Minor language modifications have also been adopted. The term "voluntarily residing" has been used instead of "continuously residing". The former term, which indicates that a free choice is exercised, is consistent with laws relating to domicile.

[Note to Sub. (8)] Present s. 49.10 (8) has been carried over.

[Note to Sub. (9)] Present s. 49.10 (9) has been carried over.

[Note to Sub. (10)] The purpose of this subsection is to make it clear that the provisions of proposed s. 49.10 are not to be given retroactive effect.

[Note to Sub. (11)] Present s. 49.10 (11) has been carried over.

[Note to Sub. (12)] This subsection of definitions to which reference has been made in other notes of this bill is new. It is designed to lend greater clarity to the proposed law.

In regard to the definition of "institutions" (paragraph (f)) it is to be noted that the common phraseology "without limitation because of enumeration" has not been employed. The committee felt this phrase would broaden the definition to such an extent that the word "institution" would not have a concise meaning. [Bill 14, A]

Where a pauper has a legal settlement in a town which is divided, each part being made a new town, the new town in which the pauper actually dwells when the division is made is thereafter liable for his support. Hay River v. Sherman, 60 W 54, 18 NW 740.

An aged pauper, supported for 10 years as a public charge in another town at the expense of the town of legal settlement and subsequently supported for 4 years by a private charity while continuing to reside in such other town, was supported as a pauper all of such time and his legal settlement was not changed. Saukville v. Grafton, 68 W 192, 31 NW 719.

A man whose only home and business has been in a town for more than one year gains a settlement therein although he may have contemplated leaving there in the future. A mother who is supported by her daughter is not supported as a pauper. Monroe County v. Jackson County, 72 W 449, 40 NW 224.

Whether a person who performs services and furnishes money for a family with which such person boards, while the family is receiving public support, is being "supported as a pauper" is a question of fact. Sheboygan County v. Sheboygan Falls, 130 W 93, 109 NW 1031.

Public support paid to a third party, without the knowledge or consent of the purported pauper, although presumably for her benefit, while the third party is supposedly supporting her under a contract between her and the third party, does not prevent her from gaining a legal settlement in the town where both parties reside pursuant to such support contract. Green Lake County v. Leon, 190 W 166, 208 NW 943.

A person who lived in a town 17 months without receiving public relief was not a "pauper" even though his financial condition became progressively worse and he received most of his family's support from his father-in-law. Town of Ellington v. Industrial Comm. 225 W 169, 273 NW 530.

The emancipation of a minor does not en-

able him to gain a legal settlement other than that of his father's. Grand Chute v. Milwaukee County, 230 W 213, 282 NW 127.

Treatment and care rendered to a wife in a county tuberculosis sanatorium, at public expense on application of the husband, he being a poor and indigent person who had shortly before received pauper relief from such county, constituted "pauper support," so that a full year's absence from that time by the husband, without pauper support, was necessary in order that his legal settlement in such county be lost so as to relieve the county from liability for poor relief under ch. 50, Stats. 1939. Milwaukee County v. Oconto County, 235 W 601, 294 NW 11.

The legal settlement of a widowed mother determines the legal settlement of her minor children for whose support she is responsible. Milwaukee County v. Waukesha County, 236 W 233, 294 NW 835.

Aid to dependent children, granted to a father, constitutes "support as a pauper" to the father so that he cannot gain a new legal settlement while receiving such aid. Jefferson County v. Dodge County, 236 W 238, 294 NW 838.

A husband's residence is presumed to be at the place where his family is located; and his absence therefrom for more than a year with intention to return does not defeat his legal settlement in such location. Waushara County v. Calumet County, 238 W 230, 298 NW 613.

A married adult son who is not self-supporting but lives with and shares in relief received by his mother is being "supported as a pauper," so that he does not gain a legal settlement during such period of support. Outagamie County v. Iola, 240 W 118, 2 NW (2d) 841.

49.02, Stats. 1943, governs the determination of legal settlement of a married woman living apart from her husband. Ashland County v. Bayfield County, 244 W 210, 12 NW (2d) 34.

Where a husband never lost his legal settlement in the defendant town his legal settlement continued to be in such town, so that it was liable for public aid furnished to his family while they were living apart from him in another town, their legal settlement following his. Fox Lake v. Trenton, 244 W 412, 12 NW (2d) 679.

The employment of a person as an enrollee in a CCC camp did not constitute "pauper support" so as to prevent the loss of his legal settlement. Milwaukee County v. Hurley, 245 W 77, 13 NW (2d) 520.

Relief furnished by charitable organizations as well as by municipalities, together with the background of the recipient and his immediately subsequent condition, may be considered in determining whether he is a pauper within the governing statute during the year of residence involved in acquiring a new legal settlement. Milwaukee County v. Stratford, 245 W 505, 15 NW (2d) 812.

The state department of public welfare properly determined that a man, having no legal settlement in this state, coming to Dane county to reside in 1931, there marrying a woman with 2 children and continuing to reside there, but having no financial resources, working intermittently with small average earnings, and applying for and receiving public assistance for his family, was in need of assistance and did not reside in Madison for one year without being supported as a pauper, hence, did not acquire a legal settlement. Dane County v. Barron County, 249 W 618, 26 NW (2d) 249.

Evidence that a person moved from a town to a village in November 1937, that from December 1937 to February 1945 she received treatment for tuberculosis in a county sanatorium and as an outpatient, all at public expense, that when she was not in the sanatorium she lived with her sister and brother-in-law in the village, that she at no time had any personal resources or income, and that 5 weeks after her discharge from the sanatorium in February 1945 she applied for and began receiving relief from the village, made it a question of fact as to her pauper status and warranted a finding of the department of public welfare that she was supported as a pauper from December 1937 to February 1945, and thereafter, so that she never lost her legal settlement in the town and the town was liable for the relief furnished by the village. Town of Mazomanie v. Village of Mazomanie, 254 W 597, 36 NW (2d) 696.

In 49.10 (9) the words "if absent, had his last dwelling place or home therein," refers to a permanent rather than a temporary absence, so that where a permanently absent person whose legal settlement was in a town and whose last dwelling place therein was in territory later annexed to a city, the annexation transferred his legal settlement to the city. The fact that prior relief to such absent person by a town was illegally furnished would not prevent a transfer of legal settlement. Madison v. Dept. of Public Welfare, 262 W 636, 56 NW (2d) 536.

In this state the determination of residence for legal settlement purposes is governed by the identical principles that determine residence for divorce and voting purposes. Although both personal presence and intention are required to establish residence, the continued personal presence thereafter is not essential to continuous residence, and the intention to retain a residence once established by a person is an important element in determining whether he in fact retained such residence. Although it is presumed that the place where a married man's family resides is his residence, nevertheless such presumption may be overcome by evidence showing the fact to be otherwise. Milwaukee County v. Dept. of Public Welfare, 271 W 219, 72 NW (2d) 727.

Even after arriving at majority, a mentally incompetent child, if no legal guardian of his person is appointed and he continues to live with his parent, has the same domicile as that of the parent so long as he remains mentally incompetent; and if no legal guardian of his person is appointed and he does not continue to live with his parent, his domicile remains in the place where he was domiciled at the time of his separation from his parent, and he does not acquire a new domicile in another place. A legally appointed guardian of the person of an adult incompetent may change the domicile of the ward within the state. Carlton v. Dept. of Public Welfare, 271 W 465, 74 NW (2d) 340.

The acquisition of a legal settlement for poor-relief purposes depends on residence, and

the term "residence" is the equivalent of the term "domicile" as generally used. Marathon County v. Milwaukee County, 273 W 541, 79 NW (2d) 233.

A municipality continues liable for the support of a pauper who has removed to another municipality wherein she has been supported as a pauper within a year of such removal and, therefore, was unable to acquire a new legal settlement. 17 Atty. Gen. 369.

A person loses his legal settlement when he voluntarily absents himself from a municipality for more than one year and does not ask or receive aid during such period. 20 Atty. Gen. 1103.

Guardianship of property does not incapacitate a person to change his residence and settlement; actual incompetency to have necessary intent must be shown. 20 Atty. Gen. 1230.

An ex-service man receiving aid under the provisions of 45.10, Stats. 1931, cannot gain a legal settlement. 22 Atty. Gen. 147.

Where one is sentenced but sentence is suspended and he is placed on probation, time on probation cannot be counted in determining his legal settlement in a town where he has been placed by the board of control. 22 Atty. Gen. 155.

One who had a legal settlement in Wisconsin but went into Iowa, where he was imprisoned for 2 years, and then returned to the place of legal settlement, has not lost his legal settlement. 22 Atty. Gen. 786.

The legal settlement of a minor and her illegitimate child is that of the parent having legal settlement in this state. The fact that a minor is emancipated is not material in determining legal settlement. 22 Atty. Gen. 977.

A person committed to a state public school and thereafter committed to the northern colony for feeble-minded children has not lost her legal settlement, as she was not voluntarily absent. 23 Atty. Gen. 580.

A mother living on $25 per month paid to her by the U. S. government as part of the remuneration of her son working in a CCC camp is not thereby prevented from gaining legal settlement. 23 Atty. Gen. 617.

A person employed by the Wisconsin veterans' home, compensated with money plus board and lodging on institution grounds, has gained a legal settlement in the town in which the institution is located by staying at the institution for one year. 24 Atty. Gen. 9.

A man under parole to a private citizen and allowed to choose his own residence is not prevented from gaining legal settlement by being on parole. 24 Atty. Gen. 221.

The legal settlement of a minor child after he becomes of age will take one full year to change. 24 Atty. Gen. 583.

A family must be self-supporting for one year in order to gain a legal settlement. 24 Atty. Gen. 719.

Receipt of books worth approximately $5 from a municipality by children of a man who is above the level of subsistence does not constitute "support as a pauper" so as to prevent the gaining of legal settlement. 25 Atty. Gen. 718.

Under the facts stated, where A has his family in one place and works in another but supports his family and visits them, he must be held to have a legal settlement in the village where his family lives. 26 Atty. Gen. 28.

Support given to the family of a man legally responsible for same constitutes support to the husband so as to prevent the gaining of legal settlement, even though such husband may be residing apart from his family. 27 Atty. Gen. 183.

Receipt of old-age assistance prevents the gaining of a legal settlement in accordance with 49.02 (4), Stats. 1937. 27 Atty. Gen. 576.

A person living in an automobile trailer with his family within the limits of a town may acquire a legal settlement there if during the period of his residence he carries on his usual vocation and does not receive poor relief. 28 Atty. Gen. 696.

Poor relief granted to the wife of a minor is not constructively pauper support to the minor's father, there being no obligation on the father to support his daughter-in-law. 29 Atty. Gen. 293.

Application for aid without receiving it does not constitute support as a pauper and does not prevent gaining a legal settlement. 33 Atty. Gen. 28.

A person settled in a Wisconsin municipality, who enlists in the army and thereafter deserts and remains without the state voluntarily for a period of over one year, loses his settlement in the Wisconsin municipality. 34 Atty. Gen. 32.

Free care of a minor child in a tuberculosis sanatorium under 50.03 (2a) and (2b) and 50.07 (2a), Stats. 1945, is not dependency support under 49.10(4) so as to prevent a parent from gaining or losing legal settlement. The derivative settlement of the minor does not change during the period of such care since he is supported in an institution as a public charge. On discharge the minor immediately takes the settlement his parent then has. 35 Atty. Gen. 222.

Under 49.10 (1) and (6), Stats. 1945, a minor female, resident of Wisconsin, who marries a nonresident of this state, loses her legal settlement in Wisconsin even though she continues to reside in Wisconsin and there is no conflict with the provisions of 49.10 (7). If she has resided in the state for less than one year after her marriage, she may be treated as a state dependent under 49.04. 35 Atty. Gen. 294.

A person who came to a city primarily for the purpose of attending school but who made his home in such city and remained there for more than a year after the attainment of his majority and, while completely self-supporting, established a legal settlement in such city which he did not lose by going therefrom into the U. S. Army in which he served for about 3 years. 36 Atty. Gen. 125.

Under 49.02 and 49.10, Stats. 1947, an Indian who has a legal settlement in a town is entitled to relief from said town if otherwise qualified, and such relief is not to be denied because of his race or because the federal government owns, in a proprietary capacity, the land upon which the Indian resides. 36 Atty. Gen. 619.

49.10 (11), Stats. 1947, applies only to counties in which general relief is wholly administered by the county under 49.03 (1) (a). 36 Atty. Gen. 621.

Under 49.10 (7), Stats. 1947, a person does not lose his legal settlement in a municipality

of this state where he goes out of the state for the sole purpose of receiving medical attention and intends to return as soon as cured, even though his absence is longer than one year. 37 Atty. Gen. 233.

A person whose home is divided by a town line has a legal settlement in the town where he habitually sleeps. 37 Atty. Gen. 561.

The mother of an illegitimate child is made responsible for its support by 351.30, Stats. 1949. Public support of such child in a foster home is attributable to the mother, thereby preventing transfer of the legal settlement of the mother. 38 Atty. Gen. 191.

See note to 49.37, citing 38 Atty. Gen. 494.

The legal settlement of children of a mother who has been granted their legal custody upon divorce from their father is the same as that of the mother under 49.10 (2), and if she remarries, their settlement becomes that of the second husband under 49.10 (1). 38 Atty. Gen. 624.

A wife whose nonresident husband has no legal settlement in this state cannot acquire a legal settlement here though they are voluntarily separated. 38 Atty. Gen. 626.

An insane person cannot voluntarily fix his residence or his legal settlement in any place. 39 Atty. Gen. 227.

The receipt of public assistance outside of this state by a nonresident who had legal settlement in Wisconsin does not stop the running of the one-year period of absence necessary to lose settlement. Settlement in a municipality in this state is lost by one year's residence in a foreign state even though the person involved is continuously supported as a dependent person. 39 Atty. Gen. 570.

An adult person who becomes mentally incompetent retains the legal settlement which he had at the time when he became incompetent. 39 Atty. Gen. 575.

Persons residing within a federal enclave ceded to the U. S. government do not acquire a legal settlement. 40 Atty. Gen. 122.

Absence from the place of residence for hospitalization and medical treatment does not interrupt residence nor defeat legal settlement in the community of residence when other requirements are met. 40 Atty. Gen. 168.

Children who had a legal settlement in B county, which was derived from their mother, did not lose such settlement by being placed in a foster home in A county where they were supported at public charge, although the mother left the state and continuously resided elsewhere for more than 2 years. In such case a petition for hospitalization under 142.01 should be filed in B county. 40 Atty. Gen. 380.

A municipality may recover for relief granted after the effective date of ch. 702, Laws 1951, on the basis of legal settlement in a county acquired by residence prior to the enactment of the law. 41 Atty. Gen. 30.

See note to 49.02, citing 41 Atty. Gen. 45.

A man is not precluded from acquiring a new legal settlement, under 49.10 (4), Stats. 1951, by public assistance given to the children of his wife by a former marriage, if he has not assumed liability for their support. 41 Atty. Gen. 113.

49.10 (12), created by ch. 702, Laws 1951, does not operate to render any county liable for relief granted prior to its enactment. 41 Atty. Gen. 142.

Under 49.10 (2), Stats. 1953, minor children whose legal settlement was derived from their mother, who obtained their custody upon her divorce, lost such settlement upon the death of the mother, the father having no settlement in this state. 43 Atty. Gen. 215.

A single instance of furnishing relief in the form of food and supplies, during a one-year period, may be sufficient in the light of attendant circumstances to prevent acquisition of a legal settlement under 49.10(4). 45 Atty. Gen. 241.

As to the legal settlement of an employe and inmate who resides in a county home see 48 Atty. Gen. 41.

For discussion of legal settlement of husband, wife, child, relative to probation and parole and effect on child in foster home see 50 Atty. Gen. 86.

Under 49.10 (2) (c), children whose custody has been transferred to the state welfare department have no legal settlement after termination of parental rights, whether or not transfer and termination occur at the same time. 53 Atty. Gen. 205.

49.105 History: 1959 c. 259; Stats. 1959 s. 49.105.

49.11 History: 1945 c. 511, 585, 588; Stats. 1945 s. 49.11; 1947 c. 9 s. 31; 1947 c. 121; 1951 c. 702; 1959 c. 104; 1959 c. 659 s. 59; 1961 c. 204; 1967 c. 323; 1969 c. 55; 1969 c. 366 s. 117 (2) (b).

Legislative Council Note, 1959: This bill is a complete revision of s. 49.11. It deals primarily with procedural aspects of legal settlement such as the filing and transmittal of notices and claims, the governmental unit to which notices and claims are to be sent, time limitations within which a governmental unit must act, and procedure to be followed in an administrative hearing.

An important substantive principle of legal settlement contained in this bill has been carried over from present law. The county unit of government is primarily responsible for the burden of relief charges when a relief recipient does not have settlement in the municipality which furnished the relief.

The revision effected by this bill changes the language and organization of s. 49.11. However the significant departures from present law are changes in time limitations. Generally the time limitations for such acts as transmitting notices, filing claims and bringing suit have been decreased. A short time limitation affords greater protection to the governmental unit which must ultimately bear the charges of relief. Invalid claims are more easily exposed when the facts are fresh.

[Note to Sub. (1).] Present s. 49.11 (1) has been rephrased. The word "furnished" has replaced "granted" since it is more precise. The last sentence of present s. 49.11 (3) (f), which directs that a copy of the sworn statement shall be filed with the nonresident notice, has been included as the last phrase of the proposed subsection.

[Note to Sub. (2) (intro. par.)] These provisions have been carried over from present s. 49.11 (2).

[Note to Sub. (2) (a) 1.] These provisions

have been taken from the first 2 sentences of present s. 49.11 (2) except that the appointment of the committee by the county board to audit the charges is new. Since county boards meet infrequently, and since they do not do the actual auditing, the new provision will eliminate unnecessary delay.

[Note to Sub. (2) (a) 2.] This provision has been taken from the 3rd sentence of present s. 49.11 (2). The time period within which the county must pay has been reduced from 8 months to 60 days. This delay is unnecessary if the county board is relieved of auditing the charges as is provided for in proposed s. 49.11 (2) (a) 1.

[Note to Sub. (2) (b)] The last sentence of present s. 49.11 (2) has been carried over.

[Note to Sub. (2) (c)] These provisions have been taken from the first sentence of present s. 49.11 (2) and from s. 49.04 (1).

[Note to Sub. (3)] The defenses are enumerated in paragraphs (a) through (d) and have been carried over from the 4th and 5th sentences of present s. 49.11 (2) which is not subdivided.

[Note to Sub. (4) (intro. par.)] The provision regarding the nonresident notice has been carried over from present s. 49.11 (3) (f). However, the proposed subsection requires that the notice contain additional information (residence, birth dates and facts upon which the settlement claim is based) to facilitate investigation.

The provision that the nonresident notice shall lapse if no general relief is furnished for a period of 6 months is new. It is designed to prevent charges from accruing in cases where a nonresident notice had been given but no relief furnished until years later. This places the political subdivision where settlement is claimed at a disadvantage in protecting itself from invalid charges. This provision has its counterpart in present s. 49.11 (3) (i) which provides that the nonresident notice is terminated by voluntary absence of the relief recipient for one year from the municipality or county originating the notice. This provision does not give the protection desired since it requires absence of the recipient.

The proposed subsection also provides for the reinstatement of a nonresident notice by a new notice within 30 days after new relief is furnished. This is a new provision designed to eliminate the necessity of serving another elaborate nonresident notice.

[Note to Sub. (4) (a)] This provision has its counterpart in present s. 49.11 (3) (h) which has been rephrased for purposes of clarity. However, the effect of the proposed law is the same as present law.

[Note to Sub. (4) (b) 1.] The initial transmittal by the municipality to the county clerk is in keeping with primary responsibility of the county to bear the burden of relief for persons having no settlement in a furnishing municipality. The next transmittal to the clerk of the county wherein settlement is claimed is necessary because some counties operate on the county system of relief. The final transmittal to the municipality of settlement is necessary if the county wherein settlement is claimed operates on the municipal system of relief.

This system of transmittal incorporates the provisions of present s. 49.11 (3) (b) and (c).

[Note to Sub. (4) (b) 2.] This provision clarifies present s. 49.11 (3) (h). It clearly indicates that the chain of transmittal used to send notices is to be by-passed in the reply to such notices.

[Note to Sub. (4) (b) 3.] These provisions have their counterpart in present s. 49.11 (4). However, the present law has been altered in that the county clerk initially receiving the claim from a municipality has 75 days instead of 30 days in which to forward the claim to the clerk of the county wherein settlement is claimed. Additional time is given at this stage of transmittal so that the claim may be corrected and paid before being sent on. In the long run time should be saved by this new provision.

Present law is also altered in that the clerk of the county wherein settlement is claimed has 7 days instead of 20 days in which to forward the claim to the chargeable municipality. Since he merely relays the claim, 7 days should provide sufficient time to perform this duty.

[Note to Sub. (4) (b) 4.] The language of the present s. 49.11 (5) (d) has been clarified by requiring that the notice be sent directly to the "clerk of the furnishing county" instead of "clerk of the claimant". This county wherein relief was furnished is always the claimant in this situation.

[Note to Sub. (4) (c)] This provision broadens the language of present s. 49.11 (3) (d) to include replies and claims as well as nonresident notices.

[Note to Sub. (4) (d)] These provisions are in conformity with present s. 49.11 (3) (a) and (e).

[Note to Sub. (4) (e) 1.] Present s. 49.11 (7) (d) has been broadened to include certified mail. The committee desired to make it perfectly clear that certified mail may be used. (It is to be noted that there is a general statutory provision, section 990.001 (13), which permits the use of certified mail when the statutes authorize the use of registered mail.)

In order to decrease delay in the chain of transmittal, the subdivision provides that forwarding agents have but 7 days instead of 20 days in which to relay notices. No hardship should result from this decrease of time in which to perform a purely ministerial function.

[Note to Sub. (4) (e) 2.] The same time limitation is imposed by present s. 49.11 (3).

[Note to Sub. (4) (e) 3.] Present law distinguishes between intra-county claims [s. 49.11 (5) (b) which imposes a 1-year limitation] and inter-county claims [s. 49.11 (5) (c) which imposes a 2-year limitation]. The committee felt that one year was a sufficient amount of time in either situation. It should be noted that short time limitations enable a unit to better protect itself against invalid claims.

[Note to Sub. (4) (e) 4.] The time limitation imposed by present s. 49.11 (5) (d) has been increased from 30 days to 60 days in order to afford ample time for an investigation of the claim.

[Note to Sub. (4) (f) 1.] The penalties im-

posed by present s. 49.11 (3) (g) [nonresident notice] and s. 49.11 (3) (h) [notice of denial] have been carried over. The provision making it possible to file an amended nonresident notice is new. It is designed to cover the situation where a relief recipient has claimed a city as his former residence although he actually resided in an adjoining town or village.

[Note to Sub. (4) (f) 2.] This provision imposes the same penalty as present s. 49.11 (5) (a), (b) and (c).

[Note to Sub. (5) (a)] This time limitation is also imposed by present s. 49.11 (5) (d).

[Note to Sub. (5) (b)] The time limitation imposed by present s. 49.11 (5) (d) has been increased from 6 months to one year in recognition of the fact that some units, though slow to acknowledge claims, actually do not wish to disallow them.

[Note to Sub. (5) (c)] The time limitation imposed by present s. 49.11 (5) (f) where relief has been furnished under a nonresident notice has been decreased from 6 years to 2 years as a protective measure on behalf of units which must bear the cost. A 6-year-old claim may be invalid, but after a long period of time errors in the claim are difficult to establish.

The 2-year limitation for claims against the state is the same under present s. 49.11 (5) (g).

[Note to Sub. (6) (a)] This provision carries over the language of present s. 49.11 (6) (a). The word "proceeding" has replaced "action" for purposes of clarity and uniformity.

[Note to Sub. (6) (b)] This provision is the same as present s. 49.11 (6) (b).

[Note to Sub. (7) (a)] These provisions have been carried over from present s. 49.11 (7) (a). However, the proposed subsection is entitled "procedure" rather than "proceedings" inasmuch as it relates to more than the actual administrative hearing. The first sentence of the proposed paragraph rephrases the language of present s. 49.11 (7) (a) for clarity and conciseness. The second sentence includes new language which provides that the county which has furnished relief or paid the claim is to be named as the plaintiff in inter-county proceedings, and further that all counties and municipalities presently or ultimately liable shall be joined as party defendants. This new language is in conformity with present practice although the same is not spelled out in existing statutory provisions. The last sentence of the paragraph provides the following new language: "The order of the department shall determine the ultimate liability of all parties in the proceeding . . .". This language emphasizes the necessity for all concerned to be present at the hearing. Witness fees have been raised from $2 per day to $5 per day in conformity with established witness fee schedules in other cases.

[Note to Sub. (7) (b)] The language of present s. 49.11 (7) (b) has been carried over. Service by "certified" mail has been added as an alternative to service by "registered" mail throughout the proposed paragraph. Also, the word "then" has replaced "thereupon" in the following phrase as a language improvement: "the department shall then note such services upon the original complaint . . .".

[Note to Sub. (7) (c)] The language of present s. 49.11 (7) (c) has been carried over. The word "or" has been used in the enumeration of counties as a language correction: ". . . La Crosse, Dane or Milwaukee, . . .".

[Note to Sub. (7) (d)] Present s. 49.11 (7) (d) has been broadened to include certified mail.

[Note to Sub. (7) (e)] Present s. 49.11 (7) (e) has been carried over. [Bill 16, A]

On judicial power generally see notes to sec. 2, art. VII; on jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03.

At common law no remedy exists against the town wherein the person relieved has a legal settlement; hence the statute creating the liability and giving the statutory procedure must be strictly followed. Milwaukee County v. Sheboygan, 94 W 58, 68 NW 387.

In proceedings before the state department of public welfare, findings of the department as to residence of the person involved, taken as relating to residence affecting legal settlement, were "conclusions of law" from undisputed evidence, which must give way to the conclusions of law reached by the court on review, and were not "findings of fact," which must be sustained if there is evidence to support them. Waushara County v. Calumet County, 238 W 230, 298 NW 613.

In a proceeding before the state department of public welfare to determine controversies between municipalities and counties as to liability for poor relief furnished, the department is but an administrative body authorized to find the facts; and in such a proceeding rules which might govern in court trials do not necessarily apply. When the stipulation of the parties made the question of legal settlement of the relief recipient the sole issue, and where the department properly confined its determination to a decision of such question, the circuit court, on appeal could not disregard the stipulation and decide on the record that the relief recipient was not entitled to relief. Fox Lake v. Trenton, 244 W 412, 12 NW (2d) 679.

Estoppel is an equitable doctrine, and there are no equities between municipalities in respect to liability for supporting paupers, in that the whole matter is purely statutory. Milwaukee v. Stratford, 245 W 505, 15 NW (2d) 812.

A notice served 8 days before the first aid was actually furnished, but within 10 days after application for aid had been approved, was not misleading or prejudicial to the county of legal settlement under the facts, and was not fatally defective for failing to comply strictly with the statute. Brown County v. Green Bay, 245 W 558, 15 NW (2d) 830.

A transient person in a certain county, who was totally without financial means of her own, was a "poor person" entitled to relief if in need thereof, although she had relatives liable for her support, and such county furnishing needed medical care and treatment to her was entitled to reimbursement from the county of her legal settlement. Milwaukee County v. Green Bay, 249 W 90, 23 NW (2d) 487.

In the absence of fraud, a finding by the

state department of public welfare as to the need of a family for support as poor and indigent persons was not open to question on appeal. Support furnished under poor-relief statutes to a member of a family is deemed to be furnished to the person who is under a duty to support the family. Dane County v. Barron County, 249 W 618, 26 NW (2d) 249.

In 49.11 (3) (h) the provision that the notice denying legal settlement shall state the facts on which legal settlement is disputed, is mandatory, so that a notice of denial which does not state such facts is fatally defective. Marathon County v. Eau Claire County, 3 W (2d) 662, 89 NW (2d) 271.

The sworn statement of facts relating to legal settlement required by 49.11 (1), Stats. 1947, may be made at any time within the period of 20 days before notice of claimed settlement must be given as prescribed by 49.11 (3). 38 Atty. Gen. 254.

The state may not reimburse a county which has reimbursed a municipality for relief furnished an indigent without legal settlement where such claim was filed by the municipality more than one year late and barred by 49.11 (5) (a), Stats. 1949. 39 Atty. Gen. 69.

One county may not recover from another for relief given under 49.02, except as provided in 49.11, even though the need for relief was the result of the latter county's denial of an application under 49.19 for aid to dependent children, which denial was later reversed by the department of public welfare. 40 Atty. Gen. 116.

See note to 49.04, citing 43 Atty. Gen. 127.

49.12 History: 1945 c. 585; Stats. 1945 s. 49.12; 1949 c. 292; 1951 c. 331; 1953 c. 376; 1955 c. 696 s. 12A; 1957 c. 163, 218, 220, 591; 1961 c. 167; 1965 c. 78; 1967 c. 134.

As to the prosecution of persons who make false representations with the intent to secure relief for themselves or others, see 28 Atty. Gen. 380.

The term "proper officer or agency" as used in 49.12 (6), Stats. 1953, means the officer or agency administering the public assistance program in the particular county. 44 Atty. Gen. 82.

49.14 History: 1945 c. 585; Stats. 1945 s. 49.14.

Under 49.01 (1) and 49.14 (1), a county operating under the county system of relief administration authorized by 49.03, and acting through its public welfare department, could discharge its obligation to provide dependent persons with relief and support by offering to provide a dependent person with suitable housing and food at the county home, or through the facilities of a privately operated boarding house, in lieu of making cash payments directly to him. State ex rel. Nelson v. Rock County, 271 W 312, 73 NW (2d) 564.

Where a person has been committed to and is an inmate of a county home, a contract by the county providing for support and maintenance of such person in a private institution in another county is void. 26 Atty. Gen. 483.

When authorized by the county board, a portion of a county tuberculosis sanatorium may be used as a unit of the county home for the aged, provided that, as required by 46.18, responsibility for management and operation of each section is separate, and proper accounts and records are kept. 43 Atty. Gen. 338.

49.15 History: 1945 c. 585; Stats. 1945 s. 49.15; 1947 c. 121; 1955 c. 506 s. 4.

Comment of Interim Committee, 1947: New 49.15 (4) permits counties to bear the cost of county home care without charge-back to towns, cities and villages. [Bill 34-A]

In view of 49.15 (2), the county public welfare department was not required to proceed to have a dependent person committed to the home by court order under 49.15 (1) as a condition precedent to making relief available to him in the form of enjoyment of the facilities of the home. State ex rel. Nelson v. Rock County, 271 W 312, 73 NW (2d) 564.

While the superintendent of a poorhouse must receive a person, duly committed, afflicted with tuberculosis, appropriate provision should be made for such patient under provisions of sec. 1417, Stats. 1915. 4 Atty. Gen. 1117.

No person other than the judge of a court of record can commit a person to the poorhouse. The superintendent of the poorhouse may pursue and retake a person escaping therefrom. 5 Atty. Gen. 301.

Under 49.15 (1), Stats. 1945, it is not necessary that a person be a pauper to be committed to a county home. Admission to a county home under 49.15 (2) is governed by the board of trustees, and commitment by a court is unnecessary. 36 Atty. Gen. 166.

The charge which may be made against a person residing at his own expense in a county home, established and operated pursuant to 46.18 to 46.21, Stats. 1951, is not limited to the actual cost of maintenance. The board of trustees may establish a scale of fees under which such person who requires medical care may be charged a higher rate reasonably related to the additional expense of his maintenance. 41 Atty. Gen. 208.

"Written approval" under 49.15 (2), Stats. 1957, is discussed in 48 Atty. Gen. 41.

49.16 History: 1945 c. 585; Stats. 1945 s. 49.16; 1967 c. 101.

A county hospital may be established under this section and the hospital facilities (land, buildings and equipment) may be acquired by gift. 37 Atty. Gen. 100.

A county may establish a county hospital within the limits of a county tuberculosis hospital with one superintendent for both institutions, provided proper accounts and records are kept so as to accurately reflect the cost of operating and maintaining each unit, including shared costs, and provided that each unit is operated in compliance with the statutory provisions applicable to each. 45 Atty. Gen. 75.

49.17 History: 1945 c. 585; Stats. 1945 s. 49.17; 1947 c. 121.

Comment of Interim Committee, 1947: New 49.17 (3) permits counties to bear the cost of county hospital care without charge-back to towns, cities and villages. [Bill 34-A]

49.171 History: 1951 c. 724 s. 11; Stats. 1951 s. 49.171; 1969 c. 366 s. 117 (1) (c).

49.172 History: 1951 c. 724 s. 12; Stats. 1951 s. 49.172; 1953 c. 61; 1955 c. 506 s. 5; 1969 c. 366 s. 117 (1) (c).

49.173 History: 1951 c. 724 s. 13; Stats. 1951 s. 49.173; 1965 c. 659 ss. 23 (2), 24 (10), (11); 1969 c. 366 s. 117 (1) (c).

The rate which may be charged for maintenance of persons in county infirmaries is in all cases limited to actual per capita cost of treatment, care and maintenance. 41 Atty. Gen. 208.

49.174 History: 1951 c. 724 s. 14; Stats. 1951 s. 49.174; 1963 c. 6.

49.18 History: 1945 c. 193, 585; Stats. 1945 s. 49.18; 1947 c. 9 s. 31; 1947 c. 121, 286; 1949 c. 468, 497; 1951 c. 228, 432; 1951 c. 725 s. 3 to 7; 1953 c. 31 s. 45; 1953 c. 61, 286, 330, 513, 583; 1955 c. 160, 559; 1957 c. 366; 1959 c. 440; 1959 c. 659 s. 79; 1961 c. 462, 524, 543, 578; 1963 c. 170; 1965 c. 78, 138; 1965 c. 433 ss. 67, 121; 1965 c. 590 ss. 4, 4m, 5, 24 (1); 1967 c. 9, 69, 147, 295; 1969 c. 154, 345; 1969 c. 366 s. 117 (1) (c).

Comment of Interim Committee, 1947: The repeal of 49.18 (3) eliminates the one-year charge-back in aid to the blind and places it on a current residence basis like old-age assistance. [Bill 34-A]

A husband and wife, both blind and having no separate income, may each receive the same blind pension as if single. 24 Atty. Gen. 445.

A person who is not committed to a county home but who is living there and paying for his keep is not an inmate. 25 Atty. Gen. 433.

The opinion in 21 Atty. Gen. 791, holding that recovery may not be had from the estate of a person receiving a blind pension, is reviewed and followed in 27 Atty. Gen. 141.

The amendment of 49.18 (1), by ch. 432, Laws 1951, so as to change the maximum amount of grant for blind aid to $75 was not nullified by the repetition of the deleted words and omission of those substituted, in ch. 725, Laws 1951, where the failure to strike and italicize in the manner prescribed by 35.08 (2) and other circumstances indicate that the repetition of the words as they appeared in the later law was due to inadvertence. 40 Atty. Gen. 390.

Since enactment of ch. 725, Laws 1951, medical care may be furnished. The limitations in amount of aid which may be paid as blind and old-age assistance under 49.18 (1) (a) and 49.21 apply to medical care as well as to cash payments made to recipients under those sections; but medical care under 49.40 may be furnished "in addition," even though it exceeds such fixed maximum. Reimbursement under 49.18 (10) and 49.38 (1), of "30 per cent of any amount paid to an eligible recipient" can be made only with respect to aid furnished in the form of cash payments to the primary beneficiaries of aid to the blind and old-age assistance. 41 Atty. Gen. 184.

Where a county grants to a recipient of a social security aid amounts in excess of those fixed by statute or valid departmental rule, the state department of public welfare should exercise its power under 49.18 (10), 49.19 (8) (b), 49.38 (1), and 49.61 (9), Stats. 1953, to disallow the county's claim with respect to the excess payment. Where a county's grant to a recipient of a social security aid is less than the proper amount established under state regulations, the state department of public welfare should exercise its power under said sections to disallow the county's claim with respect to the total amount. 43 Atty. Gen. 108.

49.19 History: 1945 c. 585; Stats. 1945 s. 49.19; 1947 c. 9 s. 31; 1947 c. 121, 526, 614; 1949 c. 468; 1951 c. 725 s. 8 to 10; 1953 c. 31 s. 46; 1953 c. 286, 513; 1955 c. 160, 257, 652, 653; 1957 c. 190, 366, 592, 610, 616, 621, 665, 672; Spl. S. 1958 c. 2; 1959 c. 440, 483, 641; 1959 c. 659 s. 79; 1961 c. 379, 462, 505, 576; 1963 c. 412; 1965 c. 138, 157, 361; 1965 c. 433 ss. 68, 121; 1965 c. 450, 590; 1965 c. 602 s. 4; 1965 c. 604, 625; 1967 c. 9, 43, 167; 1967 c. 291 s. 14; 1967 c. 295; 1969 c. 40 s. 2 (1); 1969 c. 154; 1969 c. 255 s. 65; 1969 c. 345; 1969 c. 366 s. 117 (1) (c).

Comment of Interim Committee, 1947: The legal settlement mentioned in old 49.19 (1) (b) is not legal settlement as generally understood. See 27 Atty. Gen. 285 and 30 Atty. Gen. 9. It stems from 48.33 (5) (b), Stats. 1929. It does not provide for charge-back but does present an administrative difficulty which is obviated by change to a residence basis as in old-age assistance. The amendments in (4) (d) are minor but result in uniformity, plus a reference to the appropriate abandonment provision, 351.30. See 29 Atty. Gen. 89. The portions stricken from (8) (a) and (b) relate to 49.19 (4) (c) which is repealed by this bill. The repeal of 49.19 (4) (b) and (c) places aid to dependent children on a current residence basis as in old-age assistance. [Bill 34-A]

Revisor's Note, 1959: When the section on reciprocal enforcement of support was amended by chapter 321 (541, S), laws of 1959, a section was included authorizing the use of the procedure between counties in Wisconsin. To avoid any implication that the aid to dependent children program applies in such cases, the reference to 52.10 is limited to the sections referring only to the interstate provisions of 52.10. Requested by the department of Public Welfare. [Bill 685-S]

An illegitimate child may be a dependent child within the meaning of sec. 573f, Stats. 1915, and a family otherwise entitled to aid under the law is not disqualified by the fact that a member of the household is an illegitimate child. 5 Atty. Gen. 787.

A widow who receives a pension from the U. S. government is not necessarily ineligible to aid under sec. 573f, Stats. 1917. 6 Atty. Gen. 160.

Dependent children living with their grandmother may, in the discretion of the court, receive aid while the mother is living and working to support other children. 7 Atty. Gen. 212.

Where a deceased husband left $700 to $1,000 in life insurance to a widow or children as beneficiaries, it is discretionary whether aid is granted. 7 Atty. Gen. 668.

An Indian not living on a reservation and not receiving aid from the government may receive aid under sec. 573f, Stats. 1919, if otherwise qualified. 8 Atty. Gen. 659.

A mother earning $40 a month, with $11 from other sources, may receive aid under sec. 573f, Stats. 1919, if the circumstances warrant it. 8 Atty. Gen. 772.

The fact of residence (not merely physical presence or legal settlement) of a mother and children in a county determines the right to aid. 12 Atty. Gen. 385.

Illegitimate children while in the custody of their mother are entitled to aid under 48.33, Stats. 1927. The fact that the mother has two illegitimate children does not necessarily make her an unfit person for their care and custody. 17 Atty. Gen. 268.

Relief under 48.33, Stats. 1929, may be granted where the mother having custody of the children is unable to support them upon the amount awarded for such support in a divorce action, the husband being financially unable to pay more. 19 Atty. Gen. 184.

Aid may be given to an illegitimate child after the marriage of the mother to one other than the father of the child if such child is in custody of a grandmother and all conditions of the statute are present. 20 Atty. Gen. 62.

Under 48.33, Stats. 1931, a mother or stepmother of children receiving aid may continue to receive aid after she remarries if her husband is incapacitated for gainful work. 20 Atty. Gen. 80.

The fact that a veteran receives $30 each month from the U. S. government and is committed to a sanatorium does not disqualify his wife from receiving aid under 48.33, Stats. 1933, if she is otherwise qualified to receive it. 22 Atty. Gen. 772.

To qualify for aid for dependent children it is not necessary that the mother's husband be totally incapacitated, but it is sufficient if his incapacity affects his ability properly to support the children. 26 Atty. Gen. 289.

The aid provided by 48.33, Stats. 1937, is for children and not for relatives, and if a child is living with any of such relatives and meets all other conditions, such aid may be granted. 26 Atty. Gen. 304.

A county pension agency may not require as a condition precedent to the granting of aid to dependent childen under 48.33, Stats. 1939, that the applicant contract to reimburse the county or convey or pledge present or future property for such reimbursement. This does not preclude the placing of funds in escrow or joint account to be used for future needs of a beneficiary where the county pension agency is otherwise free to deny aid until such funds are exhausted. 28 Atty. Gen. 135.

Aid to dependent children may be granted where the father, who has been sentenced to a penal institution for a period of one year, is either placed on probation or paroled. To qualify for aid in such cases the children must also be dependent upon the public for proper support. 28 Atty. Gen. 419.

A defendant in an action under 247.095, Stats. 1939, is not "legally charged with abandonment" in the meaning of 48.33 (5) (d), since the term "charged with crime" applies only to criminal proceedings. 29 Atty. Gen. 89.

Aid for dependent child cannot be granted to a mother whose husband is absent from home in the armed forces of the United States unless such absence is coupled with one of the circumstances enumerated in 48.33 (5) (d), Stats. 1941. 30 Atty. Gen. 153.

Aid for dependent children need not be denied because of the applicant's possession of proceeds from the sale of a homestead (within the limitation of 49.19 (4) (e)), when such proceeds are being held for the purchase of a home. An agreement providing security for reimbursement of aid granted for dependent children under this section is unenforceable. 36 Atty. Gen. 187.

The term "county agency" as used in 49.19 (1), Stats. 1947, includes the juvenile court as well as county administrative agencies, but excludes state and private agencies. 36 Atty. Gen. 366.

Under 49.19(1), Stats. 1947, a child living with relatives resides in the county of their residence, but a child placed in a foster home by a county agency does not thereby gain residence in the county in which such home is located. The county where such child "resides" is responsible for furnishing aid and may not escape liability by placing such child in a foster home in other counties. 37 Atty. Gen. 66.

An Indian mother on a reservation may receive aid to dependent children for her children, if she meets the requirements of 49.19 (4) (d), Stats. 1947. Indian custom marriage and divorce are recognized by the courts, and state law does not apply to domestic relations of Indians on the reservation. An Indian mother cannot be required to start proceedings for nonsupport under 351.30, as a condition precedent to receiving aid to dependent children, since the Indian father is not subject to state law in this respect. 37 Atty. Gen. 213.

A father applying for aid to a dependent child is not required to initiate legal proceedings charging the mother with abandonment. 38 Atty. Gen. 37.

Aid for dependent children may not be granted to a mother with a husband who does not meet any of the conditions set out in 49.19 (4) (d), Stats. 1947, even though her children are those of a divorced former husband and she has been unable to compel him to support the children. 38 Atty. Gen. 257.

Where children, whose custody has been awarded to a parent by decree of divorce, do not reside with the parent but live with another relative in a different county, the county in which they reside with such relative is the one in which request for aid should be made. 39 Atty. Gen. 345.

Where a person is receiving aid to dependent children, supplementary aid for hospitalization and medical care is available under 49.19 (5) and 49.40, and not under general relief, 49.02 (5) or 49.17. 40 Atty. Gen. 78.

The transfer of dependent children from the home of their parents in one county to the home of another relative in another county, for a temporary period, by order of the juvenile court of the first county which by its order retained jurisdiction, did not operate to change the residence of those children for purposes of aid to dependent children. 40 Atty. Gen. 144.

Neither the state department of public welfare nor the county authority administering aid to dependent children has power to establish an arbitrary administrative maximum for grants under 49.19 (5), Stats. 1949. 40 Atty. Gen. 190.

Since enactment of ch. 725, Laws 1951, medical care may be furnished "in behalf of" beneficiaries of aid to dependent children. 41 Atty. Gen. 184.

Wages of unemancipated minor children

living in the home are to be considered in preparation of the family budget under 49.19 (5), Stats. 1951, upon which the amount to be granted as aid for dependent children is based. A county agency might require as a condition to a grant of aid to dependent children that a parent resume authority over an emancipated minor child, if the circumstances are such that the emancipation is revocable and if the county agency deems the revocation in the best interests of the child for whom aid is being given. 41 Atty. Gen. 309.

The residence of a child on parole from the Wisconsin school for boys is in the county where he is residing with his uncle, for purposes of aid to dependent children. 42 Atty. Gen. 7.

The state department of public welfare has the responsibility under 49.19 (8) (b) to prevent any county from receiving reimbursement from state and federal funds for aid to dependent children which is given in a manner not conforming with the provisions of 49.19 (5), requiring that such aid be the only form of public assistance granted to the family for the benefit of such child. 43 Atty. Gen. 51.

A parolee from the Wisconsin school for girls who has been placed in her sister's home, but who has not been deprived of parental support or care by reason of the death, continued absence from the home, or incapacity of a parent, is not a dependent child within the meaning of 49.19 (1) (a). 43 Atty. Gen. 71.

Funeral expenses may be paid as aid to dependent children under 49.19 (5) only if eligibility for aid exists at the date of death. Funeral expenses for a mother may be paid as aid to dependent children under 49.19 (5) only if eligibility for aid exists at the date of the mother's death. 43 Atty. Gen. 197.

See note to 49.18, citing 43 Atty. Gen. 108.

A county may contract for the services of a private social welfare agency on an individual case basis for care of an unwed mother and child at the time of confinement. 45 Atty. Gen. 235.

While a brother is not liable under 52.01 for the support of a child for whose benefit aid to dependent children is granted under 49.19, he may be held liable to contribute to the support of his mother to whom such aid is being paid. 46 Atty. Gen. 74.

The validity of marriage and divorce under Indian tribal law or custom and the bearing of status acquired by tribal law or custom, in relation to requirements for granting aid to dependent children, are discussed in 47 Atty. Gen. 171.

Children committed to the state department of public welfare as dependent or neglected under 48.35, Stats. 1959, and placed by the department in a home of a relative of the children are eligible for aid under 49.19 provided all other conditions are met. 49 Atty. Gen. 18.

"Resided" as used in 49.19 (4) (b) is not synonymous with "domicile"; and the one-year limitation is to prevent abuses of the statute. 51 Atty. Gen. 54.

A child is eligible for aid under 49.19 (1) (a), Stats. 1961, if either natural parent is absent from the home, provided other statutory conditions are met. 51 Atty. Gen. 170.

The state department of public welfare cannot determine that a woman is without a husband within the meaning of 49.19 (4) (d), Stats. 1961, in situations contrary to 245.03 (2) and 245.10, and where a marriage has not been annulled or held void. 52 Atty. Gen. 175.

Aid to dependent children may be granted under 49.19 (4) (d), Stats. 1965, to a remarried mother unable by law to compel her former husband to support the children, and whose present husband who has not legally adopted the children is unable or unwilling to support them. 55 Atty. Gen. 157.

49.195 History: 1969 c. 154, 424; Stats. 1969 s. 49.195.

49.20 History: 1945 c. 585; Stats. 1945 s. 49.20; 1951 c. 725 s. 11, 12; 1953 c. 330, 513, 631; 1965 c. 590 ss. 11, 24 (5); 1967 c. 26, 69; 1969 c. 345; 1969 c. 366 s. 117 (1) (c).

Since the enactment of ch. 725, Laws 1951, medical care may be furnished "in behalf of" beneficiaries of old-age assistance. 41 Atty. Gen. 184.

49.22 History: 1945 c. 585; Stats. 1945 s. 49.22; 1951 c. 305; 1953 c. 31 s. 45, 337; 1953 c. 667 ss. 1, 2; 1955 c. 19; 1961 c. 22, 462; 1965 c. 138, 433; 1965 c. 590 ss. 12, 24 (1), (6); 1967 c. 147, 295; 1969 c. 154.

Indians living on reservations can qualify for old-age pensions under 49.20-49.38, Stats. 1935. 24 Atty. Gen. 591.

An old-age assistance beneficiary, under proper circumstances, may be cared for in an institution outside the state. 25 Atty. Gen. 165.

Membership on a county board does not preclude a person from receiving old-age assistance. 25 Atty. Gen. 171.

The intent of old-age assistance laws is to assist not only those absolutely destitute but also those having property not readily convertible into case without undue hardship and loss. The discretion of the administrative agency is limited by the provisions of the law and must be reasonably used so as to carry out the intent of the law. Such agency may not grant assistance without securing the public if there is danger that the applicant's property will be placed without the reach of the public's claim for reimbursement. 25 Atty. Gen.205.

For discussion of factors to be considered under an earlier provision similar to 49.22 (1) (e), see 28 Atty. Gen. 234.

The combined property of husband and wife must be considered in determining eligibility for relief under 49.23, Stats. 1941, even though they may be living separately. 32 Atty. Gen. 25.

If the value of property exceeds the stated amount there is no discretion to grant aid; if the value is within the amount stated there is discretion. 40 Atty. Gen. 161.

A county board has no authority to establish an arbitrary minimum to be granted in all cases. The amount is to be determined by the designated agency. 40 Atty. Gen. 479.

See note to 49.18, citing 41 Atty. Gen. 184.

One who is receiving old-age assistance, and who owns a homestead subject to lien under 49.26 (4) and (5), Stats. 1953, renders himself ineligible for receipt of further assistance if he transfers such homestead with out adequate consideration. 42 Atty. Gen. 279.

49.22, Stats. 1955, does not require a county to turn over to an old-age assistance recipient the sum of $500 out of the proceeds of the sale of such person's home where the county's lien under 49.26 exceeds the sale price, but the county's lien may be released in whole or in part under 49.26 (8) if the facts so warrant. 44 Atty. Gen. 302.

The circumstances under which a county agency might discontinue the payment of premiums on an insurance policy under which it is the beneficiary pursuant to 49.22 (3) (b) and (c), or permit a change in beneficiary, are discussed in 44 Atty. Gen. 311.

49.235 History: 1951 c. 718; Stats. 1951 s. 49.235.

49.25 History: 1945 c. 585; Stats. 1945 s. 49.25; 1947 c. 121; 1969 c. 339 s. 27.

Comment of Interim Committee, 1947: Medical and funeral expenses are referred to by section numbers and included in the old-age assistance claim, but without preference over other public claims. [Bill 34-A]

The old-age pension law subjects a decedent's homestead to liability for advances thereunder to a decedent by a county, notwithstanding the law does not refer to 237.02, providing for the descent of the homestead, and 272.20, providing for exemption thereof from liability for the owner's debts, "except as otherwise provided in these statutes." Estate of Wickesberg, 209 W 92, 244 NW 561.

It is the duty of the agency administering old-age assistance to file a claim against the estate of a deceased beneficiary. 25 Atty. Gen. 187.

Where a county has taken title to personalty under 49.26 (1), or taken a lien on real estate under 49.26 (4), Stats. 1937, either or both of which are sufficient to satisfy a claim for old-age assistance, a claim filed pursuant to 49.25 has priority even as to claims having priority under 313.16, except administration expenses and allowances made from personal property under 313.15. The court has full power to waive any such claim or part thereof or to release a real estate lien as provided by 49.25 and 49.26. Where a claim for old-age assistance cannot be satisfied out of personalty or realty to which the county has title or a lien or where no such title or lien has been taken as permitted by 49.26 (1) and (4), such claim or excess not covered by a lien is treated as an unsecured claim, except claims for funeral expenses paid pursuant to 49.30 and expenses of last sickness. 27 Atty. Gen. 751.

49.25, Stats. 1941, does not permit assistance furnished to a wife to be recovered from the separate estate of her husband, though both were pensioners. 31 Atty. Gen. 151.

Property acquired by a wife upon the death of her husband, consisting of her dower and homestead rights, is subject upon her death to a claim under 49.25, Stats. 1943, for old-age assistance given her, except for her homestead rights when such rights are limited to a life estate. 32 Atty. Gen. 10.

The director of a county pension department acts as an agent for the county in the administration of old-age assistance. Where such agent recovers property the proper percentages must be paid to state and federal governments by the county. Subsequent defalcations by an agent for the county does not relieve the county of this liability. 32 Atty. Gen. 313.

Funds recovered by a county in satisfaction of, or for the release of, its old-age assistance lien, may not be applied by the state department of public welfare in payment of subsequently accruing claims to the exclusion of claims existing at the time of the recovery and secured by the lien. 34 Atty. Gen. 213.

Under 49.25 and 49.26, Stats. 1943, only counties, which have filed a claim in the estate or a lien in the county where the real estate of the old-age recipient is found, may share in the recovery. 35 Atty. Gen. 41.

Old-age assistance liens are cut off by tax deeds taken by a county. A county taking a tax deed to premises on which it also has an old-age assistance lien must account for the surplus over taxes to the United States and the state under 49.25, Stats. 1945. 35 Atty. Gen. 429.

Funds received from an insurance policy on the death of a recipient of old-age assistance are part of the final estate of the decedent and must be prorated between claims of a county for relief and claims for old-age assistance. 45 Atty. Gen. 6.

49.26 History: 1945 c. 496, 549, 562, 585, 588; Stats. 1945 s. 49.26; 1947 c. 121, 143, 282; 1949 c. 290; 1951 c. 319 s. 204; 1951 c. 708; 1951 c. 725 s. 15, 16; 1951 c. 727 s. 9; 1953 c. 337, 513; 1955 c. 160; 1957 c. 425, 433, 610; 1959 c. 500; 1961 c. 566, 622; 1963 c. 114; 1965 c. 252; 1965 c. 590 s. 24 (1); 1967 c. 295; 1969 c. 339 ss. 4, 27.

Comment of Interim Committee, 1947: 49.26 (3) is amended to permit payment of attorney fees to part-time district attorneys who serve as administrators of estates involving old-age assistance claims. The collection of claims is the district attorney's duty. The probating the estate is not. The amount of work in these cases has greatly increased. It is felt that the work will be expedited by allowing the part-time district attorney to retain such attorney fee for this probate work as the court allows him. In (4) medical and funeral expenses are referred to by section numbers as included in the old-age assistance lien. (6) is amended as to fee for filing release or satisfaction of the lien. New 49.26 (7a) provides that public claims shall share pro rata. [Bill 34-A]

Under 49.26 (4) (prior to amendment in 1945), when a husband and wife, owning certain real estate in joint tenancy, applied individually for old-age assistance, and it was granted and liens to secure its repayment were filed on June 12, 1941, the joint tenancy was thereby severed and a tenancy in common resulted, so that, on the death of the wife, the surviving husband did not become the sole owner of the entire property subject to the lien but, instead, an undivided half of the property became a part of the estate of the deceased wife subject to the lien. (Goff v. Yauman (1941), 237 W 643, 298 NW 179, adhered to as having been relied on in assigning real estate in probate proceedings up to 1945, when the legislature amended the statute to provide that such lien shall not sever a joint tenancy nor affect the right of survivor-

ship except that the lien shall be enforceable to the extent that the beneficiary had an interest prior to his decease.) Estate of Feiereisen, 263 W 53, 56 NW (2d) 513.

A grantee is chargeable with constructive notice of the existence of a recorded lien for old-age assistance on the property conveyed. Fitzgerald v. Buffalo County, 264 W 62, 58 NW (2d) 457.

A judgment docketed in a county in which real property of A is located prior to the filing of an old-age pension certificate has priority over an old-age pension lien as to all property of A except the homestead. As to the homestead, an old-age pension lien by virtue of the certificate filed prior to improvements made and with respect to which a mechanic's lien is subsequently filed, an old-age pension lien has priority. While an old-age pension lien may not be at present enforceable it nevertheless exists as a lien, and foreclosure of the mechanic's lien must be subject to the old-age pension lien. 28 Atty. Gen. 230.

Where a daughter and son-in-law agree to support and maintain an old-age pensioner for the balance of his life if the pension department will release property owned by the pensioner from existing old-age pension lien, the county pension administrative officers may release from such lien, but are not obliged to do so even though the municipality having financial burden by virtue of county chargeback under 49.37 (2), Stats. 1941, desires and requests the release of existing lien and handling of future support and maintenance of pensioner in such manner. 31 Atty. Gen. 97.

A lien held by a county under 49.26 (4), Stats. 1941, does not of itself give the county a lien upon proceeds of a fire insurance policy issued to the owner of property. The county's lien may be protected by means of a loss payable clause in an insurance policy. 31 Atty. Gen. 308.

A lien attaches to the consummate dower right of a widow but not to the inchoate dower right of a wife during the life of her husband. 32 Atty. Gen. 10.

Old-age assistance paid to a wife or a widow constitutes a lien on her consummate dower right even though she dies before dower is assigned. 32 Atty. Gen. 165.

See note to 49.25, citing 32 Atty. Gen. 313.

The provisions of 49.26 (4), Stats. 1943, do not prevent a court from allowing more than $300 for items enumerated but prevent more than $300 of the amount so allowed from being satisfied out of the proceeds of property on which there is an old-age assistance lien, unless such lien is first satisfied in full. 33 Atty. Gen. 102.

49.26 (7), Stats. 1943, does not cover attorney fees in securing certificates of heirship. It is proper to pay such fees either to a part-time district attorney or private attorney only where the value of the property exceeds the county's old-age assistance claim. If the purchaser of property against which there is an old-age assistance lien insists upon merchantable title in administrator's or foreclosure sale, a district attorney should take reasonably necessary steps to perfect title in order to complete sale and secure payment of the county's claim without charge, and the county is entitled to no extra compensation out of the claim on division with the state and federal governments by reason of the fact that it furnished the legal services of the district attorney in clearing up title defects. 34 Atty. Gen. 172.

Where an old-age assistance recipient has a life estate in real property with power to sell or incumber but does not exercise such power during his lifetime, the old-age assistance lien in 49.26 (4), Stats. 1945, is not enforceable after the death of the beneficiary. The same result follows where the real property is held in trust for the life tenant with power in the trustees to sell or incumber for the benefit of the life tenant. 34 Atty. Gen. 222.

49.26 (10) leaves to the discretion of county authorities the question whether tax certificates shall be purchased on property on which the county has an old-age assistance lien. The state welfare department may not require county authorities to purchase such certificates. 34 Atty. Gen. 333.

Under 49.26 (8), a county pension director may release an old-age assistance lien so as to permit the use of proceeds from the sale of realty for the maintenance of recipient in county asylum to which he has been committed. 36 Atty. Gen. 236.

Where tax delinquent lands, subject also to an old-age assistance lien, are deeded to the county, the county's lien for such taxes and old-age assistance is merged in the county's title and interest on the delinquent taxes ceases to run. 36 Atty. Gen. 297.

Under 49.26 (3) a part-time district attorney is entitled to retain the fee allowed to him by the county court as attorney for the administrator in probating an old-age pensioner's estate but no district attorney is entitled to retain any fee for filing and prosecuting a claim on behalf of a county against such an estate. The only collection fee in such case is 10 per cent but not in excess of $50 which may be allowed by the court for the district attorney's services and which must be paid into the county treasury. 36 Atty. Gen. 469.

Funds recovered from the proceeds of realty subject to lien for old-age assistance are subject to 49.26 (7a), even though the property is sold prior to the death of the beneficiary of the assistance. Funds recovered from the estate of an old-age assistance beneficiary after the effective date of 49.26 (7a) are subject to its provisions even though the beneficiary died before that date. 37 Atty. Gen. 295.

A sum reasonably necessary for perpetual care of the grave or cemetery lot is part of the funeral expenses as that term is used in 49.26 (5) where the cemetery lot is acquired after enactment of 157.11 (7) (b) and (c), or if acquired prior thereto where the deed to such lot contains a provision providing for such care. 38 Atty. Gen. 248.

A certificate filed under 49.26 (4) is constructive notice of the lien for old-age assistance covering payments to the beneficiary after, as well as before, conveyance of his realty. 38 Atty. Gen. 380.

Curtesy rights are now quite similar to dower rights of a widow and stand on the same footing so far as enforcement of an old-age assistance lien is concerned. 39 Atty. Gen. 148.

When a county takes a tax deed to realty on which it has an old-age assistance lien the lien is extinguished so that there is no need to execute a release. 39 Atty. Gen. 402.

A lien for old-age assistance attaches only to property owned by the recipient at the time the lien is filed or thereafter acquired. Where a bona fide conveyance has preceded the initial assistance, there can be no present interest in existence upon which the lien may properly attach. 39 Atty. Gen. 432.

A "special tax" assessed by a city under 144.06 is a tax lien under 49.26 (5). 39 Atty. Gen. 479.

A claim of the United States does not have priority under 31 U. S. C. A. s. 191 over an old-age assistance lien if the lienor has not become insolvent prior to establishment of such lien. 40 Atty. Gen. 253.

Funds recovered by payments under 49.26 (8), to discharge an old-age assistance lien, are subject to the proration provisions of 49.26 (7a). When a county takes a tax deed to premises on which it has an old-age assistance lien, the surplus over the amount necessary to satisfy the tax claims is to be prorated under 49.26 (7a) until liquidated public assistance claims are met in full. 41 Atty. Gen. 55.

Administrator's fees paid into the county treasury pursuant to 49.26 (3) (b) are to be computed as a reduction in the expenditures incurred in administration of old-age assistance, in determining the state and federal aid to be paid under 49.51 (3). 41 Atty. Gen. 155.

If the personal property of a decedent who was a beneficiary of old-age assistance is insufficient to pay debts and costs of administration, the lien of a county for old-age assistance must be enforced by filing a claim in administration proceedings pursuant to 49.25 and 49.26 (5), if such proceedings are undertaken. 41 Atty. Gen. 300.

The old-age assistance lien as it affects rights of a vendee under an executory land contract is discussed in 41 Atty. Gen. 319.

Transfers of real estate to county as security for old-age assistance under 49.26 (1), before the amendment thereof by ch. 7, Laws Special Session 1937, were in the nature of mortgages with legal title remaining in the grantors. Where legal title was solely in the husband and the county purported to release its lien by a quit claim deed in joint tenancy, no joint tenancy was created. A county's release does not have to be signed by the county clerk under 59.67 (2), but may be by the county pension department or other agency mentioned in 49.51 (5) as created by said ch. 7, upon designation by the county board. 42 Atty. Gen. 61.

No fees for services of an attorney in connection with sale of property subject to old-age assistance liens in administration proceedings have priority over the lien except such as may be included within the $300 allowed by 49.26 (5). 41 Atty. Gen. 369.

Authority to compromise an old-age assistance claim secured by a lien on a joint tenancy interest may be exercised only by the officials and in the manner prescribed by 49.26 (3), in the absence of circumstances which would warrant the administrator to grant a release under 49.26 (8). 42 Atty. Gen. 182.

The county agency administering old-age assistance has no authority to release the lien given by 49.26 (4), for the sole purpose of giving priority to the debt of a third person not included within the purview of 49.26 (8), where the effect of the release is to jeopardize collection of the county's claim. 42 Atty. Gen. 193.

The county may, in lieu of foreclosing an old-age assistance lien, take conveyance from heirs of the old-age assistance beneficiary under circumstances in which merger by conveyance from mortgagor to mortgagee would be proper. 43 Atty. Gen. 44.

A lien for old-age assistance, under 49.26 (4) and (5), upon realty owned solely by the beneficiary, has priority over the rights of the widow in the absence of the release of the lien, or of administration proceedings. 43 Atty. Gen. 336.

Where old-age assistance was applied for, by husband and wife individually, before 1945, this act severed a joint tenancy and converted it to a tenancy in common. Thereafter, claims for the support and care of each of them individually receive prorated shares of their separate estates. 44 Atty. Gen. 181.

Where a county agency administers an estate to enforce an old-age assistance lien, the county is not entitled to fees for services of its corporation counsel as attorney for the administrator. 44 Atty. Gen. 247.

See note to 49.22, citing 44 Atty. Gen. 302.

A county administrator of old-age assistance may release liens under circumstances described in 49.26 (8) without specific authorization from the county board. The residue of proceeds from the sale of realty under 49.26 (5) is subject to assignment by the county court after the lien of the county is satisfied. 46 Atty. Gen. 12.

A recipient of old-age assistance or his guardian may not contract for the sale of land which is subject to a lien under 49.26 (5) in order to give broker's fees priority over a county's lien where proceeds are insufficient to satisfy the lien in full. Under 49.26 (9) a county may contract to pay broker's fees where title has been taken by the county to liquidate its lien. A county cannot pay legal fees incidental to sale. 47 Atty. Gen. 120.

When realty subject to an old-age assistance lien under 49.26 (5) is sold in administration proceedings, proceeds may not be used for payment of administration and funeral expenses until all personalty of decedent has been exhausted. Funeral expenses may not be allowed in excess of $300 where any debts of the estate are paid from such proceeds. 49 Atty. Gen. 115.

Costs of sale may be deducted from proceeds from a sale of property subject to an old-age assistance lien, and claims enumerated in 49.26 (5)(b), not to exceed $400, may be allowed after such deduction. 52 Atty. Gen. 346.

Under 49.26 (3)(c) the only county agency authorized to receive property subject to an old-age assistance lien is the county welfare agency. 52 Atty. Gen. 349.

49.27 History: 1945 c. 585; Stats. 1945 s. 49.27; 1947 c. 121; 1951 c. 219; 1951 c. 725 s. 17, 18; 1953 c. 61; 1955 c. 160; 1957 c. 413, 672; 1965 c. 78; 1965 c. 590 s. 24 (7).

Comment of Interim Committee, 1947: 49.27 is amended to clarify what is believed to have been the original legislative intent—that the exception in the second sentence was to apply only to nonprofit institutions or homes for the aged, and tax exemption is a test of their nonprofit character. [Bill 34-A]

Applicants for old-age assistance under 49.20-49.38, Stats. 1935, should file their applications in counties where they actually reside. They need not have legal settlement there. The term "residence" does not always mean actual physical presence. 24 Atty. Gen. 711.

The state pension department may prescribe rules for making an application for old-age assistance on behalf of a person who is mentally or physically incapacitated to make such application personally. 25 Atty. Gen. 119.

One receiving old-age assistance from one county loses the right to the same by removal to another county. The application for assistance must be made in the county to which such person moves. 25 Atty. Gen. 165.

Persons living in private institutions may, under proper circumstances, qualify for old-age assistance, the former restriction having been eliminated. Inmates of county homes may be eligible for old-age assistance grants whether "committed" or "admitted" under 49.15. 39 Atty. Gen. 622.

For discussion of the subject of county responsibility for aid to a disabled person where the recipient moves from one county to another, see 51 Atty. Gen. 186.

49.28 History: 1945 c. 585; Stats. 1945 s. 49.28.

49.29 History: 1945 c. 585; Stats. 1945 s. 49.29; 1961 c. 462.

A rule of the state pension department that old-age assistance shall not be allowed for any period prior to date of certificate is valid. 25 Atty. Gen. 151.

49.30 History: 1945 c. 585; Stats. 1945 s. 49.30; 1947 c. 418; 1953 c. 413, 513; 1953 c. 631 s. 36; 1959 c. 440; 1967 c. 295.

Under 49.30, Stats. 1935, it is a function of an old-age administrative agency in proper cases to direct payment of funeral expenses. Counties are entitled to reimbursement from the state for moneys so expended. 25 Atty. Gen. 270.

It is doubtful whether a county board can control the discretion of an administrative officer when he acts within the limitations of 49.30, Stats. 1939. 29 Atty. Gen. 344.

156.14 does not control the discretion vested in public officers nor in the director of a county pension system under 49.30, Stats. 1939, in those cases where burial of a deceased person is to be made at county expense and following of desires and instructions received by such public officials conflict with public interest. 29 Atty. Gen. 436.

When the proper county official has directed an undertaker to bury the body of a recipient of old-age assistance for a specified sum, in accordance with 49.30, Stats. 1939, the undertaker may recover from the county under his contract. In the absence of fraud or other special circumstances it is no defense upon a contract that the family of the decedent has paid the undertaker for additional services agreed upon between them. 30 Atty. Gen. 51.

49.30, Stats. 1945, limits the amount which may be paid by a county for funeral expenses of an old-age assistance recipient. It leaves to the discretion of county administrators the question whether, and to what extent, contribution may be made by friends or relatives for services additional to those compensated by the county. 34 Atty. Gen. 191.

Under 49.30, funeral expenses may be paid as old-age assistance, even though monthly payments may have been deferred or suspended during the lifetime of the decedent, since the status required is that of "beneficiary" and not "recipient." 37 Atty. Gen. 60.

Funeral expenses may not be paid as old-age assistance under 49.30, for a person who dies after the county agency has discontinued his grant because of ineligibility arising during a month for which a money payment has been made, since his status as a "beneficiary" terminated when the certificate was revoked. 43 Atty. Gen. 197.

49.33 History: 1945 c. 585; Stats. 1945 s. 49.33.

49.34 History: 1945 c. 585; Stats. 1945 s. 49.34.

49.35 History: 1945 c. 585; Stats. 1945 s. 49.35; 1965 c. 590 s. 24 (8).

49.36 History: 1945 c. 585; Stats. 1945 s. 49.36.

49.37 History: 1945 c. 585; Stats. 1945 s. 49.37; 1953 c. 513; 1965 c. 117; 1965 c. 590 s. 24 (1).

A county board is subject to mandamus for its failure to arrange for payment of old-age pensions. If no special provision has been made by a county board, old-age pensions are to be paid out of the county's general fund. 24 Atty. Gen. 280.

Payments under the old-age pension law are to be out of the general fund in the county treasury, regardless of the sum appropriated by the county board. 22 Atty. Gen. 269; 24 Atty. Gen. 453.

A county board must take affirmative action in order to charge the cost of assistance to cities, towns and villages. 24 Atty. Gen. 764.

49.10 (11), Stats. 1949, does not alter the liability of the municipalities to reimburse counties on the county system of relief for old-age assistance granted to persons having legal settlement in such municipalities pursuant to 49.37 (2) and (3). 38 Atty. Gen. 494.

49.41 History: 1947 c. 121; Stats. 1947 s. 49.41; 1967 c. 9.

Comment of Interim Committee, 1947: The exemption provided by new 49.41 is similar to 49.32 but applies to all security aids. [Bill 34-A]

49.45 History: 1965 c. 590; Stats. 1965 s. 49.45; 1967 c. 141; 1969 c. 154, 276, 366, 377; 1969 c. 392 s. 84g; 1969 c. 424.

49.46 History: 1965 c. 590, 602; Stats. 1965 s. 49.46; 1967 c. 9; 1969 c. 366.

The department of public welfare may pay

medicare premiums only for recipients of aid as listed in this section. 55 Atty. Gen. 221.

Each county is legally obligated to make an appropriation for its pro rata share of medical expenses paid by the state under 49.46 and 49.47, Stats. 1967. 57 Atty. Gen. 20.

49.47 History: 1965 c. 590; 1965 c. 602; Stats. 1965 s. 49.47; 1967 c. 9; 1969 c. 154, 366, 377.

49.50 History: 1945 c. 585; Stats. 1945 s. 49.50; 1947 c. 121; 1951 c. 725 s. 19, 19m; 1953 c. 354, 513; 1959 c. 604; 1959 c. 659 s. 76; 1961 c. 460; 1965 c. 590 s. 24 (1); 1967 c. 9, 26; 1969 c. 154, 276.

Comment of Interim Committee, 1947: The last sentence of old 49.50 (3) may limit reimbursement to the bureau of personnel to expenditures on account of examinations. The bureau performs other services for the department of public welfare under the merit rule, notably the hearing of appeals of discharged personnel. 49.50 (3) is broadened by this amendment to permit the bureau to be reimbursed for such necessary outlays without question. Many functions are prescribed by the rules and regulations adopted by the department under 49.50 (2). The word "agency" in (5) is corrected to read "department". [Bill 34-A]

See note to 227.15, citing Stacy v. Ashland County Dept. of Pub. Welfare, 39 W (2d) 595, 159 NW (2d) 630.

The state department of public welfare may adopt a rule under 49.50 (2), Stats. 1943, as to what may be regarded as a prima facie showing of need for old-age assistance provided the rule does not preclude the exercise of discretion in individual cases. 32 Atty. Gen. 53.

No rule adopted by the state department of public welfare under 49.50 (2), Stats. 1943, requires a county board to delegate its authority to fix the compensation of county pension department employes. 33 Atty. Gen. 109.

A decision of the state department of public welfare denying an application for old-age assistance under 49.50 (8), Stats. 1949, may contain suggestions for removing obstacles standing in the way of a grant, but may not preclude independent action upon a future application. 38 Atty. Gen. 351.

Under 49.50 (2) and 46.016, the state department of public welfare is authorized to establish uniform standards for the granting of old-age assistance, aid to dependent children, aid to the blind, and aid to the totally and permanently disabled, and under 49.50 (7) county agencies administering these programs are required to use such standards in determining eligibility and need. 39 Atty. Gen. 403.

See note to 49.19, citing 40 Atty. Gen. 190.

The state department of public welfare may order payment for medical care for a person outside the state in the same circumstances as it could order cash payments. 41 Atty. Gen. 158.

49.51 History: 1945 c. 585; Stats. 1945 s. 49.51; 1947 c. 121, 584; 1949 c. 393; 1951 c. 314; 1951 c. 725 s. 20; 1953 c. 513; 1963 c. 265, 571; 1965 c. 433 s. 121; 1965 c. 590 ss. 18, 19, 24 (1); 1967 c. 9; 1969 c. 154; 1969 c. 366 s. 117 (1) (c).

Comment of Interim Committee, 1947: The amendments to 49.51 (3) revise and simplify the reimbursement formula for administration costs and distributes the allotments without regard to personal costs or grants to beneficiaries. The total amount disbursed is not affected. [Bill 34-A]

On county public welfare departments see notes to 46.22.

When the state reimburses a county for a deficiency in past months, payments are made by the county to beneficiaries as provided in 49.51 (4), Stats. 1939, except in cases where a beneficiary is dead or is no longer eligible for assistance. 28 Atty. Gen. 499.

Counties are not entitled to reimbursement under 49.51 (3), Stats. 1945, for any part of the salary of a county judge who administers old-age assistance. 34 Atty. Gen. 428.

The existing salary of a county judge cannot be apportioned between judicial functions and administration of public assistance as a basis for reimbursement to a county under 49.51 (3), Stats. 1947. A county paying a county judge a sum in addition to his present salary as judge for services rendered in administering public assistance may be reimbursed for such sum under 49.51 (3). 36 Atty. Gen. 444.

49.52 History: 1945 c. 585; Stats. 1945 s. 49.39; 1947 c. 9 s. 31; 1947 c. 121; 1951 c. 432; 1959 c. 228 s. 66; 1959 c. 659 s. 83; 1965 c. 433 s. 121; 1965 c. 590 ss. 14, 20; Stats. 1965 s. 49.52; 1967 c. 9, 43, 166; 1967 c. 291 s. 14; 1969 c. 154, 200, 392.

Comment of Interim Committee, 1947: The amendment to 49.39 makes state aid available to distressed counties for the local share of aid to totally and permanently disabled persons. [Bill 34-A]

Where a recipient of medical assistance under the statutes has no legal settlement in the state, no county is liable for a pro rata share nor eligible for a share of federal reimbursement. 56 Atty. Gen. 165.

The language contained in 49.52 (2) (a), Stats. 1967, requires that the department of health and social services shall exclude general relief from all consideration. 57 Atty. Gen. 4.

49.53 History: 1945 c. 585; Stats. 1945 s. 49.53; 1951 c. 725; 1953 c. 185; 1959 c. 129, 470; 1959 c. 660 s. 43; 1967 c. 9.

Permitting a representative of the state department of public welfare to testify, in an action to set aside deeds executed by a father, concerning an application of the defendant daughter for mother's aid, was error, but such testimony is deemed to have been disregarded by the trial court in view of other competent evidence to sustain its findings. Plainse v. Engle, 262 W 506, 56 NW (2d) 89.

49.53, Stats. 1947, prohibits the state department of public welfare from furnishing a list of blind persons to a private agency. 36 Atty. Gen. 409.

Under 47.10, 49.53, and Public Law 113, 78th Congress, ch. 190, First Session, and the rules, regulations and plan adopted pursuant thereto, the state department of public welfare may not lawfully include the names and addresses of adult blind persons aided when reporting to the legislature its accomplishments and expenditures in providing places of employment for the adult blind. Any person disclosing such information is subject to fine

and imprisonment and federal aids may be withheld. 38 Atty. Gen. 251.

A county pension director may not furnish to a county board member a list of names of persons in his district with amounts of aid they have received monthly as aid to the blind, aid to dependent children, or old-age assistance. 39 Atty. Gen. 205.

49.53 (1) does not prohibit the applicant for public assistance from disclosing the facts relating to the same, nor does it prevent a representative of the department of public welfare from testifying regarding aid to dependent children in a prosecution for nonsupport under 52.05, against a parent responsible for their support. 46 Atty. Gen. 316.

49.61 History: 1945 c. 578, 588; Stats. 1945 s. 49.61; 1947 c. 9 s. 31; 1951 c. 595; 1951 c. 725 s. 22 to 25; 1953 c. 31 s. 45; 1953 c. 61, 286, 330, 558, 631; 1955 c. 160; 1957 c. 366; 1959 c. 344, 440; 1959 c. 659 s. 79; 1961 c. 370, 462, 524, 542, 565, 578, 682; 1965 c. 138, 362; 1965 c. 433 s. 121; 1965 c. 590; 1967 c. 9, 69, 295; 1969 c. 154, 193, 345; 1969 c. 366 s. 117 (1) (c).

The amendment of 49.61 (2) (a), by ch. 595, Laws 1951, so as to eliminate the maximum age limit, was not nullified by the repetition of the deleted words by ch. 725, Laws 1951, where the failure to italicize the words as provided in 35.08 (2) and other circumstances indicate that the repetition of the words in the later law was due to inadvertence. 40 Atty. Gen. 268.

See note to 49.18, citing 43 Atty. Gen. 108.

Where the federal government has disallowed federal aid for payments by a county under 49.61 because federal regulations were not complied with, the state department of public welfare is obligated to recoup any payments advanced to the county as federal aid; but if the payments made by the county complied with state regulations, the county is to be reimbursed in the prescribed percentage for state aid. 43 Atty. Gen. 125.

See note to 49.27, citing 51 Atty. Gen. 186.

49.65 History: 1967 c. 55; Stats. 1967 s. 49.65.

49.70 History: Spl. S. 1963 c. 2; Stats. 1963 s. 49.70; 1969 c. 283 s. 20.

CHAPTER 50.

Tuberculosis Sanatoriums.

Revisor's Note, 1939: Sections 46.27 (2) and 50.09 (3) (created by chapters 233 and 473) direct the revisor of statutes "to make the necessary changes in the language of the statutes so as to indicate the transfers" of specified functions, powers and duties from the state board of control to the state board of health made by chapters 233 and 473. Changing the "language of the statutes" is a new function for the revisor and a very delicate one. Heretofore statutes have been printed literally in the language found in the acts of the legislature. There have been directions by the legislature to the revisor to substitute specific terms for other specific terms in the statutes. That task is merely clerical; it is simple. However, the task assigned by chapters 223 and 473 is not a simple one. The changes indicated are not entirely clear in all particulars. Extracting some of the powers given by a section of the statute and leaving others mutilates the section. It is best to make the changes in the "language of the statutes" by bill rather than have the revisor do it. A change made by a bill is the law and is binding on everyone. A change made by the revisor is merely his opinion and binds no one. In the 1939 Wisconsin Statutes, the revisor has made what he considers to be the "changes in the language of the statutes" necessary to carry out the order of the law. In the execution of that command he has somewhat changed the language of sections 46.03 (1), 46.05 (1), 46.16 (1) (a), (c), 46.17 (1), 46.20 (3), (8), 50.03, 50.04, 50.05 and 50.07; has created section 140.055; and has rewritten sections 50.01 and 50.06.

50.01 History: 1911 c. 457; Stats. 1911 s. 1421—9 sub. 1, 3, 1421—11 sub. 2; 1913 c. 328; 1915 c. 544; 1917 c. 298 s. 2; 1919 c. 122; 1919 c. 346 s. 10; 1919 c. 679 s. 38; Stats. 1919 s. 50.06; 1923 c. 113; 1939 c. 233, 473; 1943 c. 326; 1945 c. 155, 559; 1953 c. 213; 1957 c. 526 s. 7; Stats. 1957 s. 50.01; 1969 c. 366 ss. 41, 117 (1)(a).

Revisor's Note, 1939: Subsection (4) is from 46.17 (1), (2); (5) is from 46.17 (3); (7) is from 46.18 (7) (d). Paragraphs (b) and (c) of subsection (7) of section 46.18 are obsolete. See revisor's note to chapter 50.

See note to 46.17, citing 21 Atty. Gen. 996.

Creation of a sanatorium under this section does not automatically establish within such sanatorium an outpatient department as authorized under 50.06, Stats. 1961. 52 Atty. Gen. 98.

50.02 History: 1955 c. 223; Stats. 1955 s. 50.065; 1957 c. 526 s. 8 to 11; Stats. 1957 s. 50.02; 1969 c. 366 s. 117 (1)(a).

50.03 History: 1957 c. 526 s. 5; 1957 c. 698; Stats. 1957 s. 50.03; 1969 c. 366.

50.04 History: 1957 c. 526 s. 5; 1957 c. 672, 698; Stats. 1957 s. 50.04; 1959 c. 255; 1961 c. 329; 1965 c. 419; 1965 c. 659 ss. 23 (2), 24 (9); 1969 c. 276 s. 584 (1)(b); 1969 c. 366 s. 117 (1) (a), (b).

The expense of preparing for burial the body of an indigent patient who died in a county tuberculosis sanatorium is part of the "maintenance" expense within 50.07, Stats. 1921. 11 Atty. Gen. 336.

A prisoner who has a legal settlement in Sheboygan county and is sentenced to jail in Manitowoc county may, upon developing tuberculosis, be transferred to the tuberculosis sanatorium of Manitowoc county; and maintenance may be charged to Sheboygan county under 50.07, Stats. 1929. 18 Atty. Gen. 277.

A person admitted as a "pay patient" under the provisions of 50.07, Stats. 1941, and who later fails to pay his bill is not kept as a public charge within the meaning of 50.07 (3). 30 Atty. Gen. 324.

The state board of health may not approve an allowance of state funds for care of a patient in a county tuberculosis hospital unless a county judge has made a determination that support of such patient should be a public charge. Where application is made for treatment at public charge and evidence is given which would warrant necessary findings by