

CHAPTER 49.

RELIEF AND SUPPORT OF THE POOR.

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49.01 Municipalities must support the poor. Every town, village and city shall relieve and support all poor and indigent persons lawfully settled therein whenever they shall stand in need thereof, except as hereinafter provided. The ownership of a home or an equity therein shall not bar the granting of relief, in the discretion of the authorities in charge of such relief, to any person who by reason of unemployment or sickness stands in need of such relief. The town board, village trustees or common council, respectively, in each town, village or city shall have the oversight and care of all such poor persons and indigents so long as they remain public charges; and shall see that they are properly relieved and taken care of in the manner required in this chapter. Whenever a person receiving poor relief is residing in a homestead which is mortgaged, the relief authorities are authorized to pay the interest on such mortgage or taxes on such mortgaged homestead, or both, in cases where to do so will result in preventing the relief authorities from paying a larger sum as shelter allowance for the relief recipient if such recipient were to lose such homestead for failure to pay such interest or taxes. [1931 c. 187; 1937 c. 99; 1939 c. 82, 464]

Note: The duty to relieve and support all poor includes furnishing of insulin to indigent person affected with diabetes. 20 Atty. Gen. 140.

It is duty of town under town system of poor relief to provide all medical relief for which person has not means to provide himself. 20 Atty. Gen. 162.

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

County may not require needy person, as condition of relief, to contract to reimburse county and to convey present and future property as security therefor. 21 Atty. Gen. 596.

Poor relief officials are criminally liable for wilful failure to care for needy persons as required by law, and are liable in damages to any person damaged by neglect to provide care of needy persons required by law; unreasonable exercise of judgment in finding of fact and extent of need is neglect. 21 Atty. Gen. 1141.

County may require applicants for poor relief to furnish labor on public projects and may fix wage scale on such projects. Applicants for poor relief cannot be compelled to sign agreement providing for pledging of property or reimbursement of amounts expended. 22 Atty. Gen. 277.

All cases coming under provisions of chapter 142 are excepted from provisions of this section, and county will be liable for treatment under chapter 142 and cannot charge its portion of expense back to local municipality. 22 Atty. Gen. 875.

Members of family of person working on WPA project are entitled to county medical aid. 24 Atty. Gen. 802.

Relief department may refuse relief to individual who will not accept reasonable offer of employment. He may be prosecuted for nonsupport under 351.30. Violence and attempted intimidation of relief workers do not of themselves justify cutting off relief, but subject guilty parties to criminal prosecution. Matter of publicity in answering relief complaints is one of policy, and rule of reason should govern in such matters. Relief may be refused applicant who fails to furnish information reasonably required. Applicant may be required to turn in license and title to car in proper cases before granting relief. 25 Atty. Gen. 137.

Money earned by wife and another in family, which family was on relief, may not be credited by county to relief granted. 25 Atty. Gen. 673.

Estate of minor whose parents are on relief must be expended for his support and education before he is entitled to public relief. 28 Atty. Gen. 401.

49.011 Work relief projects. (1) Wherever used or referred to in this section, unless a different meaning clearly appears from the context:

(a) "Municipality" means any town, city or village granting relief and shall include counties in which the county board has adopted the county system of relief pursuant to section 49.15.

(b) "Relief" means any money or equivalent given to those in need by municipalities pursuant to section 49.01 only.

(c) "Work Relief" means any moneys paid to persons entitled to relief whenever such persons have been required by any municipality to perform work on any work relief project.

(d) "Work Relief Project" means any undertaking which may be performed in whole or in part by persons receiving work relief.

(2) Any municipality required by law to administer poor relief shall be empowered to require persons legally entitled to relief to perform work on any work relief project, authorized and sponsored by the governing body of such municipality, which such person or persons are physically and mentally capable of performing. Whenever a work relief project is initiated which requires the employment of skilled tradesmen, and the number of persons possessing such skills listed on the relief roll of the municipality sponsoring such work relief project is not sufficient to meet the requirements of the project, such municipality may hire persons possessing such skills who are not receiving public relief. Persons so hired shall be paid at the prevailing wage for such labor in the sponsoring municipality.

(3) The basis of payment of persons granted work relief shall be determined by the governing body of the municipality granting such work relief.

(4) Municipalities may authorize work relief projects for the performance of any work not prohibited by the constitution of Wisconsin, provided that such projects shall not be operated so as to supplant regular employes of such municipalities or the other municipal units hereinafter mentioned. Municipalities may by mutual agreement assign persons entitled to work relief to work on work relief projects operating in other municipalities, school districts, drainage districts, utility districts, metropolitan sewerage areas or other governmental units. Such agreement may or may not provide for full or partial work relief reimbursements to the municipality loaning such persons by the municipality to which such persons are loaned.

(5) Municipalities granting work relief shall be directly liable to persons granted work relief for any benefits legally recoverable under the workmen's compensation law of Wisconsin, but may contract with another municipality or other governmental unit, for whose benefit such work relief project is primarily designed, to share such liability or wholly assume the same, and such other municipality or governmental unit is hereby authorized to make such contracts of sharing or total assumption of liability.

(6) Municipalities may authorize the sale of products made on any work relief project to governmental units, and to religious, charitable and educational institutions.

(7) Municipalities may operate work relief projects which will serve to rehabilitate disabled persons so as to enable such persons to qualify for employment in public or private industry. [1943 c. 282]

49.015 [Renumbered section 74.77 under 43.08 (2)]

49.02 Legal settlements. Legal settlements may be acquired in any town, village, or city so as to oblige such municipality to relieve and support the persons acquiring the same in case they are poor and stand in need of relief, as follows:

(1) A married woman shall always follow and have the settlement of her husband if he have any within the state; otherwise her own at the time of marriage, and if she then had any settlement it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement and the husband shall want relief he shall receive it in the place where his wife shall have her settlement.

(2) Legitimate children shall follow and have the settlement of their father if he have any within the state until they gain a settlement of their own; but if the father have no settlement they shall in like manner follow and have the settlement of their mother if she have any.

(3) Illegitimate children shall follow and have the settlement of their mother at the time of their birth if she then have any within the state; but neither legitimate or illegitimate children shall gain a settlement by birth in the place where they were born unless their parent or parents had a settlement therein at the time.

(4) Every person of full age who shall have resided in any town, village or city in this state one whole year shall thereby gain a settlement therein; but no residence of a person in any town, village or city while supported therein as a pauper or while employed on a federal works progress administration project or while enrolled in the civilian con-

reservation corps or while residing in a transient camp or while employed on any state or federal work relief program shall operate to give such person a settlement therein. The time spent by any person as an inmate of any home, asylum or institution for the care of aged, neglected or indigent persons, maintained by any lodge, society or corporation, or of any state or United States institution for the care of veterans of the military and naval service shall not be included as part of the year necessary to acquire a legal settlement in the town, city or village in which said home, asylum or institution is located, nor shall such time so spent be included as part of the year necessary to lose a legal settlement in any other town, city or village of this state. The time spent by any person, while residing or while employed on any Indian reservation over which the state has no jurisdiction, shall not be included as part of the year necessary to acquire a legal settlement in the town, city or village in which said reservation is located, nor shall such time so spent be included within the year necessary to lose his legal settlement in any other town, city or village of this state.

(4m) (a) After September 16, 1940, the time spent in any city, village or town of this state by any person while in the service of the United States army, navy, marine corps, coast guard, or any branch thereof, shall not be included as a part of the year necessary to acquire a legal settlement in such city, village or town nor after said date shall the time spent in such service by any person who had a legal settlement in any city, village, or town of this state at the time of his entrance or induction into such service, be included within the year necessary to lose such legal settlement.

(b) The provisions of paragraph (a) are retroactive, except that payments or determinations made before July 11, 1943 on the basis of legal settlement under this section before said date are not affected except that any findings or determinations on legal settlement made before such effective date shall not be determinative of legal settlement in subsequent cases where the application of the provisions of paragraph (a) would result in a different finding or determination on legal settlement.

(5) Every minor whose parent and every married woman whose husband has no settlement in this state who shall have resided one whole year in any town, village, or city in this state shall thereby gain a settlement therein.

(6) Every minor who shall be bound as an apprentice to any person shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

(7) Every settlement when once legally acquired shall continue until it be lost or defeated by acquiring a new one in this state or by voluntary and uninterrupted absence from the town, village, or city in which such legal settlement shall have been gained for one whole year or upward; and upon acquiring a new settlement or upon the happening of such voluntary and uninterrupted absence all former settlements shall be defeated and lost.

(8) Whenever any territory shall be organized into or attached to any town, village, or city every person having a legal settlement in such territory, and who actually dwells or has his home, or if absent, had his last dwelling place or home therein, shall thereafter have a legal settlement in such new town, village, or city or in the town, village, or city to which such territory is so attached, as the case may be. The organization into or attachment to any town, village, or city of any territory shall not prevent any person from acquiring a legal settlement therein within the time and by the means by which he would have gained it there if no such new town, village, or city had been organized or such territory had not been attached. [1933 c. 378, 408; 1933 c. 491 s. 8; 1935 c. 520, 527; 1937 c. 16; 1943 c. 413, 496]

Note: Person who lived in town seventeen months without receiving public relief was not a "pauper" while there and hence acquired a settlement, even though his financial condition became progressively worse and he received most of his family's support from father-in-law. *Town of Ellington v. Industrial Commission*, 225 W 169, 273 NW 530.

The expression "of full age" in statutes relating to legal settlement has generally been interpreted to mean "of age." *Grand Chute v. Milwaukee County*, 230 W 213, 282 NW 127.

The emancipation of a minor does not enable him to gain a legal settlement other than that of his father's legal settlement. *Grand Chute v. Milwaukee County*, 230 W 213, 282 NW 127.

Under 49.02 (2), (4) to (6), Stats. 1933, 1935, the legal settlement of a minor son for relief purposes continued to be, during his minority, the same as the legal settlement of his father, notwithstanding his

emancipation by reason of his marriage. *La Crosse County v. Vernon County* 233 W 664, 290 NW 279.

Treatment and care rendered to a wife in a county tuberculosis sanatorium, at the expense of the county, on the 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. *Milwaukee County v. Oconto County*, 235 W 601, 294 NW 11.

Under 49.02 (2) the legal settlement of a widowed mother determines the legal settlement of her minor children for whose support she is responsible. Under 48.33 the mother's pension can rightfully be granted only where the head of a family is indigent and dependent on the public for support, and a grant of such aid constitutes "public

assistance" to the family and "public relief" to the parent responsible for the support of the minor children. Milwaukee County v. Waukesha County, 236 W 233, 294 NW 835.

Aid granted in the form of dependent children's aid under 48.33 to a father constituted "support as a pauper" to the father, within the meaning of 49.02 (4), so that the father, while continuing to receive such aid, was prevented from acquiring a legal settlement in a different county from that in which he had his legal settlement when such aid was first granted. Jefferson County v. Dodge County, 236 W 238, 294 NW 838.

The fact that a husband remained voluntarily away from the village of his legal settlement more than a year without receiving poor relief would not defeat his legal settlement in the village, under (4) and (7), if his "residence" away from the village, before returning there to live, was less than a year. Waushara County v. Calumet County, 238 W 230, 298 NW 613.

In proceedings brought by O. county under 49.03 (8a) to recover for relief furnished to a person residing therein but allegedly having a legal settlement in another county, the evidence warranted a determination of the state department of public welfare that such person, removing to O. county with his mother and living there with her while he was a minor, and sharing in relief received by her, and continuing to live with her after attaining his majority and being married, and not being self-supporting but continuing to share in relief received by the mother, did not reside in O. county without being supported as a "pauper" for a year before receiving relief directly therefrom, and hence, under 49.02 (4), he did not acquire a legal settlement therein. Outagamie County v. Iola, 240 W 118, 2 (2d) NW 841.

One placed on probation with the board of control and put to work in certain municipality cannot acquire legal settlement therein, as his act is not voluntary in locating in that locality. 19 Atty. Gen. 41.

Absence of wife from husband when not legally separated from him does not defeat wife's settlement at place of legal settlement of her husband. 20 Atty. Gen. 231.

Mother who was abandoned by her husband in Minnesota and thereafter moved to Fond du Lac, where she has resided with her children for fifteen months acquired legal settlement under (4). 20 Atty. Gen. 244.

One who had legal settlement in Oneida county but moved into Forest county, living in one town about six months, then moved into another town in Forest county and all together has lived one year in Forest county, has not acquired legal settlement in Forest county. 20 Atty. Gen. 622.

Person loses his legal settlement when he voluntarily absents himself from municipality for more than one year and does not ask or receive aid during such period. Municipality to which it is sought to remove poor person is entitled to notice of proceedings. 20 Atty. Gen. 1103.

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

Minor having mother with legal settlement in this state cannot acquire legal settlement of his own under (5). 21 Atty. Gen. 547.

Time spent in prison by person who has residence in certain county will be counted in establishing his legal settlement and that of his wife and children, although his wife and children may live in another locality. 21 Atty. Gen. 780.

Legal settlement of two minor children living with their mother, who has legal settlement different from that of father, follows that of father instead of mother under (2). 21 Atty. Gen. 1095.

Where husband has abandoned his wife and lives in another county for one year without receiving aid from such county, he establishes legal settlement there for himself and family (Monroe County v. Jackson County, 72 W 449) even though his family was receiving support from county where

husband formerly had legal settlement. 22 Atty. Gen. 128.

Ex-service man receiving aid under provisions of 45.10 cannot gain 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 town where he has been placed by board of control. 22 Atty. Gen. 155.

Advancement by town of groceries and rent with requirement that recipient perform work to value of such advancements constitutes poor relief. 22 Atty. Gen. 198.

Indigent person who receives employment from village operating under Reconstruction Finance Corporation and industrial commission outdoor relief plan receives poor relief within meaning of chapter 49. 22 Atty. Gen. 218.

Minor child of mother, who lives in Beloit and who has placed child in orphanage in Illinois, has a legal settlement in Beloit. 22 Atty. Gen. 225.

Minor child cannot acquire legal settlement in county where she stays so long as her parents have legal settlement in another county. 22 Atty. Gen. 279.

Husband who has resided in town for more than one year, although his wife has been treated during said year in Wisconsin general hospital at county expense, has acquired legal settlement in such town. 22 Atty. Gen. 665.

One who had legal settlement in Wisconsin but went into Iowa, where he was imprisoned for two years and then returned to place of legal settlement, has not lost his legal settlement as he was not voluntarily absent. 22 Atty. Gen. 786. See 22 Atty. Gen. 45, 75.

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

Receipt of mothers' pension does not prevent mother from gaining legal settlement. 22 Atty. Gen. 1041.

Upon marriage wife acquires settlement where her husband has settlement and her children follow her settlement. 23 Atty. Gen. 113.

Indigent person who receives work from municipality and is paid in cash is not supported as pauper and may acquire legal settlement. [Stats. 1931, 1933] 22 Atty. Gen. 145; 23 Atty. Gen. 382.

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

Mother living on twenty-five dollars per month paid to her by government as part of remuneration of her son working in Civilian Conservation Corps camp is not thereby prevented from gaining legal settlement. [Stats. 1933] 23 Atty. Gen. 617.

Mere application for aid without receiving it does not prevent establishing legal settlement. 23 Atty. Gen. 702, 25 Atty. Gen. 243.

Minor orphans may acquire legal settlement in their own right despite fact that they had derivative settlement from that of their deceased parents. 24 Atty. Gen. 5.

Person employed by Wisconsin Veterans' Home, compensated with money plus board and lodging on institution grounds, has gained legal settlement in town in which institution is located by staying at institution for year. 24 Atty. Gen. 9.

Receipt of old-age assistance prevents gaining of legal settlement in accordance with (4). 24 Atty. Gen. 163; 27 Atty. Gen. 576.

Man under parole to private citizen and allowed to choose his own residence is not prevented from gaining legal settlement by being on parole. 19 Atty. Gen. 41, distinguished. 24 Atty. Gen. 221.

Man who maintains his home in one county while working in another and who returns to his family week ends acquires legal settlement in former county at end of year. 24 Atty. Gen. 251.

There is no such thing as legal settlement in county; settlements are acquired in town, city or village even though county is on county system of poor relief. 24 Atty. Gen. 416.

Legal settlement of minor child follows that of father and after he becomes of age it will take one full year to change this settlement by minor. 24 Atty. Gen. 533.

Family must be self-supporting for one year in order to gain legal settlement under (7). 24 Atty. Gen. 719.

Minor daughter of divorced husband living with him has same legal settlement as her father. After his death her legal settlement immediately becomes that of mother. 25 Atty. Gen. 430.

Settlement of minor child of divorced parents follows settlement of father in this state, although custody of child has been given to mother. 25 Atty. Gen. 686.

Receipt of books worth approximately five dollars from municipality by children of man who is above level of subsistence does not constitute "support as a pauper" within meaning of (4), so as to prevent gaining of legal settlement. 25 Atty. Gen. 718.

Under 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 legal settlement in village where his family lives. 26 Atty. Gen. 23.

Mere fact that children receive aid under 48.33 does not prevent father from gaining legal settlement in another municipality. 26 Atty. Gen. 472.

Under (2) municipality furnishing relief to transient poor person sends bill to county in which such municipality is located and must look entirely to county for payment. 26 Atty. Gen. 538.

Where county changes from county system to township system of poor relief, municipalities are not liable to reimburse county for relief to poor persons receiving relief in outside counties until county clerk notifies municipality in accordance with (4). 26 Atty. Gen. 538.

Homeless person or transient supported in transient camp as such does not gain legal settlement in municipality in which camp is located. 26 Atty. Gen. 574.

Receipt of assistance under 47.08 prevents gaining of legal settlement. 27 Atty. Gen. 51.

One employed on federal works progress administration project can neither gain nor lose legal settlement while so employed. 27 Atty. Gen. 177.

Support given family of man legally responsible for same constitutes support to husband so as to prevent gaining of legal settlement, even though such husband may be residing apart from his family. 22 Atty. Gen. 128 is modified. 27 Atty. Gen. 183.

Treatment at Wisconsin general hospital at public expense of person or his family does not interfere with loss of legal settlement under 49.02 (7). Person having no legal settlement must be cared for at expense of county in which he resides under sec. 49.04. 27 Atty. Gen. 198.

Under (1) husband may receive direct relief from place of his wife's legal settlement, but this section does not authorize

granting of relief in some other community with charge back to place of wife's legal settlement. 27 Atty. Gen. 214.

Under (3) illegitimate child has and retains legal settlement of his mother at time of his birth, even though mother may have changed her legal settlement. 27 Atty. Gen. 469.

Infant whose father and mother are dead and who is of sufficient age and mental capacity to form intent to change her place of residence may lose legal settlement by voluntarily and uninterruptedly absenting herself from place of her legal settlement for period of one year or more. County's liability under 49.04 (1) for care of poor persons includes infants whose parents are dead and who have no legal settlement. 27 Atty. Gen. 574.

Various farm aids administered by rural rehabilitation division of FSA analyzed from standpoint of nature of specific form of aid and whether it is essentially pauper aid and evidentiary value of such aids appraised as bearing upon question of legal settlement under (4). 27 Atty. Gen. 777.

Minor girl takes and follows legal settlement of her husband and retains that settlement during year immediately following granting of absolute divorce from bonds of matrimony. 28 Atty. Gen. 65.

A minor enjoying a derivative settlement in the city of Waupaca does not lose that settlement by marriage to a person not settled in Wisconsin, nor by acquiring a legal settlement in another state. 28 Atty. Gen. 584.

Husband does not obtain derivative settlement from his wife's settlement. Children of such husband and wife derive their settlement from that of their mother. 28 Atty. Gen. 675.

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

(5) applies to illegitimate as well as to legitimate minors. Settlement of minor will not be lost under (7) if he is supported as pauper at any time during year of absence, and voluntary character of absence of young children will be serious question of fact. 29 Atty. Gen. 80.

At least prior to enactment of ch. 16, Laws 1937, person uninterruptedly absent from his place of legal settlement for one year lost his settlement, under 49.02 (7), even though enrolled in CCC during that time. 29 Atty. Gen. 165.

Poor relief granted to wife of minor is not constructively pauper support to minor's father, there being no obligation on father to support his daughter-in-law, and will not prevent father from losing his legal settlement by year's absence under (7), nor from gaining new one by year's residence under (4). 29 Atty. Gen. 293.

For discussion of gaining or losing settlement under (4) and (7) because of absence for purpose of hospitalization at tuberculosis sanatorium or camp, see 29 Atty. Gen. 395 and 428.

49.025 Effect of equity in home or insurance policy. No person shall be denied relief as a poor person on the ground that he has an equity in the home in which he lives or a cash or loan value not in excess of three hundred dollars in a policy of insurance. No applicant for relief shall be required to assign such equity or insurance policy as a condition for receiving relief. [1933 c. 299]

Note: Veteran's adjusted service certificate is "policy of insurance" within meaning of this section. 25 Atty. Gen. 104.

49.026 State reciprocity. This state reserves the right to deal with neighboring states on a reciprocal basis in regard to the question of a legal settlement for the purpose of support and relief of the poor. [1933 c. 408]

49.03 Local relief of transient paupers. (1) When any person not having a legal settlement therein shall be taken sick, lame or otherwise disabled in any town, city or village, or from any other cause shall be in need of relief as a poor person and shall not have money or property to pay his board, maintenance, attendance and medical aid and

shall make a sworn statement setting forth the facts relating to his legal settlement, the town board, village board or common council shall provide such assistance to such persons as it may deem just and necessary, and if he shall die, it shall give him a decent burial. It shall make such allowance for such board, maintenance, nursing, medical aid and burial expenses as it shall deem just, and order the same to be paid out of the town, city or village treasury.

(2) Where the person so relieved claims a legal settlement in a county other than the county where the relief is being granted or claims to have no legal settlement the expenses so incurred shall be a charge against the county containing the municipality which furnished the relief. The account therefor shall be audited by the county board and paid out of the county treasury, and may be recovered by such county from the county where such person has his legal settlement, and such county in return, except when operating under the county system of relief, may in the same proceeding and under the same order recover from the town, village or city of such person's legal settlement. If the county wherein the aid is granted fails to audit and pay the account within 8 months after the account is filed with the county clerk, the town, city or village which furnished the relief may commence a proceeding against said county under section 49.03 (8a) to recover for the relief granted. In such a proceeding the county may set up and prove the defenses that legal settlement of the recipient is in the town, city or village which granted the aid or that the recipient was not in need of aid that was furnished or that the notices required to be served were defective to the prejudice of the county. If a county is unable to recover due to the negligence of the town, city or village which granted the relief in ascertaining the facts relating to the recipient's legal settlement or in giving the notices required under this section or in ascertaining the need for the aid or because the town, city or village granting the aid is actually the place of legal settlement of the recipient, the state department of public welfare may enter an order providing for reimbursement to the county from said town, city or village. Where the person so relieved has his legal settlement in the county where relieved, and the county system of relief is not in operation, the city, village or town furnishing the relief may recover therefor from the town, city or village of legal settlement.

(3) (a) If a county grants relief to a person claiming legal settlement in another county, the county clerk shall within 10 days after such person becomes a public charge file with the county clerk of such other county a notice as is provided for in paragraph (f).

(b) If a town, city or village grants relief to a person claiming legal settlement in another county the clerk of such town, city or village shall within 10 days after such person becomes a public charge file with the county clerk of his county a notice as is provided for in paragraph (f) and the county clerk shall within 10 days after the receipt thereof file a copy of said notice with the county clerk of the county in which such person claims a legal settlement.

(c) When the clerk of a county receives a notice from the county clerk as provided for in section 49.03 (3) (a) and (b) and his county is not operating under the county system of maintaining its poor, the said county clerk shall within 10 days after the receipt of such notice file a copy of the notice with the clerk of the town, city or village in which the person being relieved claims a legal settlement. If the county is operating under the county system of maintaining its poor, the county clerk need not file the notice with the clerk of the town, city or village in which the person being relieved claims legal settlement until the county ceases to operate under the county system of maintaining its poor and begins operating on the local system of maintaining its poor.

(d) If a town, city or village grants relief to a person claiming legal settlement within the county wherein said town, city or village is located, the clerk of such town, city or village granting the relief shall within 10 days after such person becomes a public charge file with the clerk of the town, city or village in which the recipient claims a legal settlement a notice as is provided for in paragraph (f) and shall at the same time file a copy of said notice with the county clerk of his county.

(e) If a town, city or village grants relief to a person who appears to be without a legal settlement in any town, city or village in the state of Wisconsin, a copy of the sworn statement of said person together with a notice as is provided for in paragraph (f) shall be filed with the county clerk of the county within 10 days after such person becomes a public charge.

(f) The nonresident notice which the clerk of the town, city, village or county is to file under section 49.03 (3) (a), (b), (c), (d) and (e) shall be a written notice which shall state the name of the municipality granting the relief, the name of the person and members of his household who have received public aid, the name or designation of the town, city or village where such person claims a legal settlement, or if such place could not, after due diligence, be ascertained, a statement of such fact, and the date on which the aid or support was furnished. Along with the nonresident notice the clerk shall also file a copy of the sworn statement taken from the relief recipient.

(g) In case the nonresident notices provided for above are not given within 10 days after the person becomes a public charge the notices may be given at any other time but the municipality so notified shall be liable only for the expense incurred for the support of such person from and after the time of the giving of such notice. Failure of the clerk of any municipality to file a nonresident notice within the periods provided for shall make such municipality responsible to any municipality damaged because of such neglect until the notice is filed.

(h) If the clerk of the town, city or village with whom such notice is filed, or the clerk of the county if the county is operating on the county system of relief or the recipient is claimed to be without legal settlement in the state of Wisconsin, shall fail to file a denial that the recipient's legal settlement is in the designated municipality within 20 days from the time of the receipt of the nonresident notice, such town, city, village or county shall be liable for the expense and support of such poor person until said denial is filed with the clerk of the town, city, village or county originating the nonresident notice. The denial shall state the facts and other data upon which legal settlement is disputed and any information which the denying municipality has regarding the recipient's legal settlement.

(4) Verified claims for relief granted shall be filed with the same parties and the procedure for the filing of claims shall be the same as is provided in section 49.03 (3) for the filing of nonresident notices. Where a defendant county operates on the town, city and village system of poor relief administration, a copy of the verified claim shall be filed by the clerk of the defendant county with the clerk of the town, city or village of alleged legal settlement within 30 days after such claim has been filed with him, and failure to so file with the town, city or village shall bar any right of a defendant county to recover over from the town, city or village.

(5) The authorities having charge of the poor of the municipality in which such person claims a legal settlement, and until they shall do so, the authorities having charge of the poor of the county in which such person may be, may take charge of such poor person and relieve him in such other manner as they deem proper.

(6) (a) Where poor relief is administered by towns, cities and villages, accounts against the county must be filed within one year from the date the relief grant is issued or be barred and the county relieved of its duty to audit and pay the same.

(b) Where the recipient's legal settlement is claimed to be in the county wherein the relief is granted, claims shall be filed with the town, city or village of alleged legal settlement within 6 months after the granting of the relief or recovery of the same shall be barred.

(c) Where the legal settlement is alleged to be in another county verified claims must be filed within 2 years from the date the relief grant is issued or be barred.

(d) Where a verified claim for poor relief has been disallowed either by action or lapse of time, the clerk shall within 30 days file a notice of disallowance with the clerk of the unit filing the claim, and action to recover the amount claimed must be commenced within 90 days from the date of the filing of such notice of disallowance, but until such notice of disallowance is filed the 90 days within which action may be brought to recover the amount disallowed shall not begin to run. In no event can an action be maintained to recover for any relief grant more than 6 years after its issuance.

(e) An account for any relief granted prior to July 1, 1943 which is valid on said date shall be subject to the provisions of this subsection in like manner as if such relief had been granted on said date, except that filing of a claim for such relief prior to said date in the manner prescribed in section 49.03 (3) shall for all purposes satisfy the filing requirements of this section, and except that nothing in this subsection shall be construed to affect the tolling of the 6-year statute of limitations on any such account for relief.

(f) Any right or claim growing out of a relief account of claim, not barred by the 6-year statute of limitations, which a county or municipality had against another county or municipality prior to July 1, 1943 may be enforced by said county or municipality against such other county or municipality in a proceeding before the state department of public welfare as provided in section 49.03 of the 1943 statutes.

(7) Upon receipt of notice of the disallowance of the claim of any county, the county clerk receiving such notice shall forthwith notify the district attorney of his county, who shall be authorized and empowered to institute an action in the name of the county, for the recovery of so much of said claim as shall have been disallowed, and in such action no county shall be required to give bond for the faithful prosecution thereof or payment of costs adjudged therein. Provided, however, that upon receipt of disallowance of the claim of any municipality upon another municipality within the same county the clerk receiving such notice shall notify the governing body of his municipality which may thereupon cause to be instituted a proceeding under subsection (8a) before the state department of public welfare for the recovery of so much of the claim as shall have been disallowed.

(8) The mailing within such 10 days, of any notice herein provided for, in the manner provided by section 269.34 shall be a sufficient service of such notice.

(8a) (a) All relief claims by one municipality or county against another municipality or county, which have been disallowed or which have not been acted upon as required by statute, may be prosecuted before the state department of public welfare which is hereby given the exclusive power and duty to hear, try and determine such controversies and to render its findings therein. In any such proceeding all municipalities or counties in any respect liable presently or ultimately, or connected with the controversy shall be deemed to be necessary parties and shall be parties to such proceeding. The parties shall have the right to be present at any hearing, by attorney, or any other authorized agent approved by the department, and to present such testimony and argument as may be pertinent to the controversy before the department. The department may appoint examiners to hold and conduct such hearings. The department or an examiner thereof, for the purpose of carrying out such powers and duties, may issue such subpoenas as shall be necessary to fully hear and determine such claims. The department may make such rules and regulations and adopt such rules of practice and pleading not inconsistent herewith as will enable it to effectually perform its duties and powers hereunder, and it shall not be restricted because of failure of enumeration of powers. The department may grant to the prevailing party and against the losing party actual expenses incurred for witnesses but not to exceed \$2 per day for witness fees nor 5 cents per mile for travel.

(b) Such proceedings shall be commenced by complaint which shall be entitled "Before the State Department of Public Welfare of the state of Wisconsin." Such complaint shall contain the names of the parties and matters and prayers as in complaints generally. Such complaint may be served, with sufficient copies, upon the department by registered mail; the department shall thereupon make note of such service upon the original complaint and so notify the claimant. The department shall immediately transmit a copy by registered mail to the defendant county or municipality, which shall have 15 days from the time of the mailing of such copy to serve by registered mail an answer, with sufficient copies, upon the department. The department shall acknowledge such service and mail a copy of such answer to the claimant. When the department has determined that the matter is finally at issue, it shall notify the parties of the time and place of hearing thereon and in its discretion may continue or adjourn such hearing for a period not exceeding 15 days. The department shall make its findings and order and transmit copies thereof to the parties by registered mail as soon as possible after such hearing.

(c) Such order shall be subject to review in the manner provided in chapter 227, except that the appeal shall be taken to any one of the following circuit courts in the following counties: (1) Douglas, (2) Eau Claire, (3) Marathon, (4) Brown, (5) La Crosse, (6) Dane, (7) Milwaukee, and may be heard at a regular or special term in any one of such circuit courts.

(g) When a matter is finally determined by appeal, or if no appeal is taken within the prescribed time, the amount owing by a county or municipality shall be certified by the department to the secretary of state and shall thereafter be collected as are other special state charges against counties and municipalities, with interest at the rate of 6 per cent per annum to be computed to the time when the secretary of state shall collect such amount. The state treasurer shall remit to the prevailing county or municipality such amount as soon after March 1 of each year as may be upon order of the secretary of state.

(h) Whenever a county is a party to any proceeding under this subsection the district attorney thereof or one of his assistants shall proceed with or defend such action, as the case may be.

(9) When a poor person is given relief in some other county or municipality than the one in which he has a legal settlement, either county or municipality involved may apply to the county judge or municipal judge of its county or municipality for an order directing such poor person to return to the county or municipality of his legal settlement, all expenses of removal to be paid by the county or municipality in which such poor person has a legal residence or settlement. Upon the filing of such petition the county or municipal judge shall issue an order directing the poor person to return to such municipality, unless it shall clearly appear that such removal would be against his best interests. Upon issuance of any such order no further public relief shall be given to the person to whom it is directed until he shall comply therewith. [1931 c. 92; 1935 c. 453; 1937 c. 338, 344, 400; 1939 c. 13, 242; 1943 c. 93; 1943 c. 375 s. 10, 11; 1943 c. 418, 515]

Note: The law does not permit a private party to aid an indigent person at the expense of a town without a contract to that effect between him and the town. *St. Joseph's Hospital v. Withee*, 209 W 424, 245 NW 128.

Proceeding on petition to county judge pursuant to 49.03 (9), Stats. 1933, for deter-

mination of municipality responsible for pauper's support being purely statutory, such judge's order, directing pauper's return to county determined to be her legal settlement, is not appealable; no appeal being provided for by statute. *Chippewa County v. Outagamie County*. 218 W 447. 261 NW 415.

Subsection (9) is construed as applying

only where the place of legal settlement is not in dispute; and hence a decision of a county judge determining the place of legal settlement of a poor person in a proceeding brought by a county pursuant to the statute is not res adjudicata as to the place of legal settlement in actions between interested municipalities to determine liability for relief given to such poor person. *Two Rivers v. Wabeno*, 221 W 158, 266 NW 178.

In determining the liability of municipalities for poor relief the commission is vested with a purely judicial function and has no interest in maintaining its decision upon review, and is not a proper party to such a proceeding. The fundamental difference between an appeal and an action to review is that in the case of appeal the tribunal by which the first determination was made is not a party to the proceeding, but in an action to review the tribunal which made the determination is a party to the proceeding. *Milwaukee County v. Industrial Commission*, 228 W 94, 279 NW 655.

Subsection (8a), Stats. 1937, is constitutional. A town may appeal to the supreme court from the circuit court judgment affirming industrial commission's determination which affects a town's liability for poor relief. The liability of towns, cities, villages and counties for poor relief and the remedies for enforcing such liabilities and furnishing such relief are discussed at great length, pro and con, in this case. *Town of Holland v. Cedar Grove*, 230 W 177, 282 NW 111.

Proceedings before the industrial commission by a city against the county to recover relief furnished by the city to paupers were void as 49.03, Stats. 1937, makes no provision for action by anybody except the county. *Greenbush v. Plymouth*, 230 W 210, 282 NW 126.

In a proceeding before the industrial commission to determine which of two counties was liable for poor relief furnished, a finding that the recipient of the relief had lost his legal settlement in the one county by absence therefrom for more than one year in the other county without receiving pauper support is a conclusion of law which may and should be disturbed if grounded on an erroneous view of the law. *Milwaukee County v. Oconto County*, 235 W 601, 294 NW 11.

Where a county, in proceedings instituted by it under 49.03 (8a) against a town, brought an "action to review" the determination of the industrial commission by service of a summons and complaint on the commission and the town, instead of taking the "appeal" authorized by paragraph (c), the circuit court properly dismissed the action for want of jurisdiction on the town's motion on its special appearance solely for such purpose after the expiration of the period for taking the statutory appeal. [*Milwaukee County v. Industrial Comm.* 228 Wis. 94, and *Holland v. Cedar Grove*, 230 Wis. 177, distinguished.] *Milwaukee county v. Industrial Comm.* 236 W. 252, 294 NW 809.

In proceedings before the state department of public welfare under 49.03 (8a), Stats. 1939, 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.

Expense of medical aid and burial of indigent person who, while passing through town or city other than city of his residence, but within same county, becomes ill, dies and is buried by such town or city, is paid in first instance by that municipality and then is collected from county and by county charged to municipality where indigent had legal settlement. (Stats. 1929) 19 Atty. Gen. 312.

Procedure must be strictly followed to enable county paying for care of transient pauper to collect same from town of legal settlement of such pauper. (Stats. 1931) 20 Atty. Gen. 1034.

Such person having no legal settlement in state cannot be transported to another state, even though he may have legal settlement in such state. 21 Atty. Gen. 979.

County of Fond du Lac, where person has legal settlement, cannot be charged with hospitalization and doctor bill incurred in another county when no affidavit has been filed and no notice has been sent to Fond du Lac county until some six months after expense has been incurred. 23 Atty. Gen. 321.

Order of county judge that A and family, who require public relief, be removed from Milwaukee county to X county, place of their legal settlement, is valid. A cannot receive further public relief from Milwaukee county. A may be prosecuted for neglect and non-support of 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 eighteen, may be held to be neglected child because of fault of his father in failing to abide by court's order, but said child cannot be placed in Milwaukee county institution; may be committed to state public school. 23 Atty. Gen. 730.

Under (9), only question that can be decided by county judge is whether or not removal will be against best interests of poor person. 25 Atty. Gen. 686.

See note to 143.05, citing 27 Atty. Gen. 532.

Chapter 242, laws 1939, repealed and created (8a) of 49.03. Sections 3 and 4 of chapter 242 read as follows:

"Section 3. All actions and appeals pending under subsection (8a) of section 49.03, repealed by section 1 of this act, are hereby transferred and continued and shall proceed under the provisions of subsection (8a) of section 49.03 created by section 2 of this act. Decisions of the circuit court of Dane County under subsection (8a) of section 49.03 repealed by section 1 of this act, rendered since June 1938, may be appealed in accordance with the provisions of subsection (8a) of section 49.03 created by section 2 of this act, at any time within thirty days from the effective date hereof, unless the time for appeal has expired.

"Section 4. If section 2 of this act is held to be unconstitutional, then and in that event sections 1 and 3 of this act shall be of no effect except that paragraph (f) of subsection (8a) of section 49.03 of the statutes of 1937 is then repealed."

Relief under this section may be given by town, city or village or directly by county. If proper notice is given, place of legal settlement is liable for such care whether relief is given by municipality or county. 28 Atty. Gen. 27.

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

As repealed and recreated by ch. 242, Laws 1939, 49.03 (8a), confers jurisdiction upon industrial commission over relief claims by town, city or village against county in which it is situated, for relief furnished to transient pauper. Industrial commission does not make orders under 49.03 (8a). Its duties are restricted to making findings and certification dealt with in *Town of Holland v. Village of Cedar Grove*, 230 W 177. Consequently where more than one party is before commission in proceeding no question arises as to form of order imposing liability nor as to proper party against whom order should be drawn. Law provides that certain liability shall exist upon basis of said findings. When commission makes its findings and certification its function has ceased. Secretary of state is thereupon required to exercise certain functions which are dependent upon application of law to facts as found by commission. Under ch. 435, Laws 1939 all powers, duties and functions of industrial commission under 49.03 (8a) were transferred to state de-

partment of public welfare. 29 Atty. Gen. 184.

Failure or neglect of county clerk to forward nonresident relief notice, as required

by (4), to county wherein nonresident relief recipient claims legal settlement renders clerk and his bondsmen liable to county for damage resulting to it. 30 Atty. Gen. 440.

49.04 County relief of transient and local paupers. (1) The county board of each county shall have the care of all poor persons in said county who have no legal settlement in the town, city or village where they may be, except as provided in section 49.03, and shall see that they are properly relieved and taken care of at the expense of the county.

(2) The board may make regulations, not inconsistent with law, in relation to the support and maintenance of such persons and may also contract with any town, village, or city in said county to keep and maintain at the place where the poor supported by the county are kept, such poor persons as may be a charge upon such municipality, at a stipulated price, the amount of which shall be levied and collected in such municipality in the manner county taxes are levied and collected therein.

(3) The board may also, by resolution adopted at its annual or special meeting, at the expense of the county, relieve and take care of all permanent poor persons who may be a charge upon any municipality in such county and cause them to be committed to the county home of such county, pursuant to section 49.07.

Note: Poor commissioner has right, in granting temporary relief, to take over automobile of applicant as security for repayment of money advanced. County board has power to stamp order issued for groceries directing at what store to cash such order; board may refuse to pay said order if such condition is not complied with. Poor commissioner may refuse to give additional aid to persons who violate such terms until reasonably assured that terms will be lived up to. 20 Atty. Gen. 334.

Minors who have no living parents may acquire settlement; they may lose their legal settlement by voluntary and uninter-

rupted absence from town, village or city in which such legal settlement shall have been gained for one whole year. If said children have no legal settlement then county where they reside is required to support them. 20 Atty. Gen. 1109.

Person having no legal settlement must be cared for at expense of county in which he resides. 24 Atty. Gen. 416.

County cannot charge against town expenses incurred by town officers for relief of transient who has no legal settlement anywhere, as county is liable for such relief. 28 Atty. Gen. 1.

49.05 [*Repealed by 1929 c. 439 s. 1*]

49.06 Bringing paupers into the state. Any person who shall bring or remove or cause to be brought or removed any poor person from any place without this state into any municipality within it, with intent to make such municipality chargeable with his support, shall forfeit fifty dollars; and the justice or court before whom such person shall be proceeded against for a violation of the provisions of this section shall, by its judgment, require of such person satisfactory surety that he will, within a reasonable time to be fixed, transport such poor person out of the state or indemnify such municipality for all charges and expenses which have been or may be incurred in his support; and in case of neglect or refusal so to do commit such person to the county jail until he shall comply with said judgment, but for a term not exceeding three months.

Note: No person has authority to bring feeble-minded child into this state for purpose of placing it in state institution. 22 Atty. Gen. 111.

49.07 Commitments to the county home. (1) Whenever it shall appear to the satisfaction of any judge of any court of record by a petition signed by the officer, if there be but one, or by any 2 officers charged with the care of the poor in any town, city, village or county that any person having a legal settlement therein is without sufficient means of support and necessary care and is by reason of sickness, infirmity, decrepitude, old age, drunkenness or pregnancy likely to become a public charge, either temporarily or permanently, or that such person lives in a state of indigence, squalor or filth likely to induce disease, or has removed to another town, city, village or county and has applied for and received temporary relief therein, and that the town, city, village or county represented by the petitioner or petitioners has reimbursed the municipality affording such relief, or that such person is an inebriate or drug addict, such judge may commit such person to the county home of his county, if there be one therein, otherwise to the county home of some other county for a definite time, not less than 60 days, or for an indefinite time, subject to such further order as he may make; but no person shall be so committed without having an opportunity to be heard in person or by some one in his behalf. Any order or process issued by such judge under this section may be served and such commitment may be made by any officer charged with the care of the poor in the county where the proceedings are had.

(2) The term "inebriate" person as used in this section means a person given to excessive use of intoxicating drink, who has lost the power or will, by frequent indulgence, to control his appetite for it. The term "drug addict" as used in this section means a person given to the excessive use of drugs, who has lost the power or will, by frequent indulgence, to control his appetite for it. [1935 c. 353; 1941 c. 178]

Note: A municipality which is liable for support of poor person has not power to remove such person and family from some other town, city or village to its own town, city or village. Such person may be committed to county home and children taken care of by juvenile court. 19 Atty. Gen. 84.

49.08 Reports to county judge. Any officer charged with the care of a poor person whose support may be chargeable in whole or in part to any county or any municipality therein and who shall place such person in any institution shall forthwith report to the county judge of the said county the name and age of said person, the institution in which he is placed, the terms of the contract made for his support or care, and any other information necessary to show the extent of the liability which may thereby rest upon the municipality liable for such support or care; and shall also report to said judge the fact that such person has ceased to be a public charge as soon as he is aware thereof. Each such judge shall keep a record of the information received by him pursuant to the above provisions.

Note: Sheriff is not officer charged with care of poor persons within this section. 28 Atty. Gen. 16.

49.09 Estimates and expenditures for town poor relief. The town boards of the several towns shall present at each annual town meeting therein a report showing the amount of money expended by them for the relief and support of poor persons in such town during the then preceding year, the name of each poor person or family relieved and the amount appropriated for the support of each, together with all such other items of expenditures incurred agreeably to the provisions of this chapter; they shall also in said report present an estimate of such sum as in their opinion will be required for the support of the poor in such town for the then ensuing year.

49.10 Property of indigent chargeable; recovery; statutes of limitation. If any person at the time of receiving any relief, support or maintenance at public charge, under this chapter or as an inmate of any county or municipal institution in which the state is not chargeable with all or a part of the inmate's maintenance or as a tuberculosis patient provided for in chapter 50 and subsection (2) of section 58.06, or at any time thereafter, is the owner of property, the authorities charged with the care of the poor of the municipality, or the board in charge of the institution, chargeable with such relief, support or maintenance may sue for and collect the value of the same against such person and against his estate. In any such action or proceeding the statutes of limitation shall not be pleaded in defense, except that nothing contained herein shall be construed to eliminate the bar of the nonclaim statute (section 313.08); but the court may, in its discretion, refuse to render judgment or allow the claim in favor of the claimant in any case where a parent, wife or child is dependent on such property for future support. The records kept by the municipality or institution for the purpose of showing the names and value of the relief, support and maintenance furnished shall be prima facie evidence. [1935 c. 336; 1939 c. 65; 1943 c. 437]

Note: The statute eliminates the bar of the nonclaim statute, 313.08, as well as the general statute of limitations, 330.18, both operating to destroy the right as well as the remedy; the effect of the nonclaim statute is to limit the time within which an action must be begun and the filing of a claim against the estate of a deceased person is equivalent to the commencement of an action. Estate of Kupien, 209 W 178, 244 NW 623.

Section 49.10, 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 Pellishek, 216 W 176, 256 NW 700.

Estate of person held for criminal offense was not liable to state for care and maintenance furnished to accused while he was committed to hospital for observation as to his sanity, although he was subsequently adjudged insane. Amount of recovery from estate of insane person for care and maintenance furnished to him at central state hospital was governed by 49.10 and not by 51.08. Guardianship of Sprain, 219 W 591, 263 NW 648.

The estate of an insane person, who was sentenced to state prison and subsequently ordered transferred to the central state hospital for the insane on a finding of insanity made by the state board of control, was not liable to the state for his maintenance while confined in such hospital, since he was con-

fined therein pursuant to his sentence. Guardianship of Gardner, 220 W 490, 264 NW 647.

The estate of a person charged with a criminal offense is liable to the state for his care and maintenance while confined in the central state hospital for the insane pursuant to an order of commitment which, although not containing an express finding of insanity, found in effect that the accused was presently insane, and disclosed that the commitment was for hospitalization and treatment; as against the contention that the order was one for commitment merely for purposes of observation, in which case there would have been no such liability. Guardianship of Radoll, 222 W 539, 269 NW 305.

This statute does not give a lien to the state on an estate of an inmate supported or maintained in a state institution. Section 46.10 (7) does not give the state a preference against the estate of an incompetent for maintenance furnished prior to the enactment of said subsection, since the statute, if given a retroactive effect, would be unconstitutional as to other creditors as impairing the obligation of contracts. Guardianship of Banski, 226 W 361, 276 NW 626.

Section 49.10 contains no indication of an intent to have the statute operate retrospectively and therefore section 370.06 operates to preserve the old limitation as to all causes which had accrued prior to the enactment of the first named section. In re Tinker's Estate, 227 W 519, 279 NW 83.

Homestead of insane person may be subjected to claim of county for support and care of such person. 20 Atty. Gen. 638.

County cannot bring action to recover

from estate of recipient of blind relief furnished under 47.08, Stats. 1931. 21 Atty. Gen. 791.

Board of control is creditor of inmate of central state hospital for insane. 22 Atty. Gen. 20.

See note to 51.08, citing 22 Atty. Gen. 164.

Although county has not yet paid expense of maintaining one in county tuberculosis sanatorium, it may file contingent claim against estate under 313.22. Section 49.10 applies to claims for maintenance in tuberculosis sanatoriums. 24 Atty. Gen. 125.

See note to 46.10, citing 24 Atty. Gen. 797.

49.11 Liability of relatives; enforcement. (1) The father, mother, husband, children and wife of any poor person who is blind, old, lame, impotent or decrepit so as to be, or for any other reason is, unable to maintain himself, shall relieve and maintain such poor person, so far as they are able, having due regard for their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age, in a manner approved by the authorities having charge of the poor in the municipality, or by the board in charge of the institution, where such poor person may be; but no child of school age shall be compelled by this section to labor contrary to the child labor laws.

(2) Upon failure of any such relative so to do the said authorities or board shall apply to the county judge of the county of which such poor person is a resident for an order to compel such relief.

(3) At least fourteen days prior to the hearing on said application notice thereof shall be served upon the person to whom it is directed in the manner provided for the service of summons in courts of record.

(4) At the time and place fixed in said notice the county judge shall in a summary way hear the allegations and proofs of the parties and by order require relief and maintenance from such relatives, if living and of sufficient ability, having due regard for their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age, in the following order: First the husband or wife; then the father; then the children; and lastly the mother. Such order shall specify a sum which will be sufficient for the support of such poor person, to be paid weekly, during a period fixed therein, or until the further order of the court. If satisfied that any such relative is unable wholly to maintain such poor person, but is able to contribute to his support, the judge may, in his discretion, direct two or more such relatives to maintain him and prescribe the proportion each shall contribute and if satisfied that such relatives are unable together wholly to maintain such poor person, but are able to contribute something therefor, the judge shall direct a sum to be paid weekly by each such relative in proportion to his ability. At any time during the pendency of said order, upon application of any party affected thereby and upon like notice and procedure, the said judge may modify such order. The costs and expenses of the original application shall be paid by such relative or relatives. Full obedience to every such order may be enforced by proceedings as for a contempt.

(5) Any party aggrieved by any such order may appeal therefrom to the circuit court pursuant to the provisions of chapter 324, so far as applicable and necessary; but when the appeal is taken by the authorities having charge of the poor person an undertaking need not be filed. [1939 c. 506]

Note: The liability of a child to support its parent is purely statutory. Where the statutory procedure for enforcing such liability was not followed in a proceeding against a son's estate, the order charging him with support of his mother was invalid. *Guardianship of Heck*, 225 W 636, 275 NW 520.

The provisions in 46.10 (8) and (9) that the collection and deportation counsel for the state shall investigate the financial condition of relatives of inmates of state and

county institutions in order to determine the ability of such relatives to pay for the maintenance of such inmates, and that counsel may subpoena witnesses and take testimony, are not a substitute for the procedure found in 49.11, relating to the liability of relatives for the support of dependents and proceedings for the determination thereof by the county judge. *State Department of Public Welfare v. Shirley*, 243 W 276, 10 NW (2d) 215.

49.12 Action against relatives. If any relative who shall have been required by such order to relieve or maintain such poor person shall neglect to do so as prescribed in said order, the said authorities or board may recover in an action on behalf of the municipality or institution against such relative the sum so prescribed for every week the said order shall have been disobeyed up to the time of judgment, with costs of suit, for the use of the poor.

49.124 Penalties. (1) Any person who, with intent to secure relief whether for himself or for some other person, shall wilfully make any false representations shall, if the amount of relief so secured shall not exceed the value of \$50, be punished by imprisonment in the county jail not more than 6 months or by a fine of not to exceed \$100, and if the amount of the relief so secured shall exceed the value of \$50, by imprisonment in the state prison not more than 5 years nor less than one year, or by a fine of not to exceed \$100.

(2) Any person who wilfully does any act designed to interfere with the proper administration of relief shall be guilty of a misdemeanor and upon conviction shall be

fined not less than ten nor more than one hundred dollars or be punished by imprisonment in the county jail for not less than ten nor more than sixty days.

(3) Any dependent person who shall sell or exchange supplies or articles furnished him as relief or who shall dispose of such supplies or articles in any other way than as directed, with intent to defraud the county or municipality furnishing him poor relief, and any person who shall purchase any article knowing it to have been furnished to another person as relief shall be guilty of a misdemeanor and upon conviction shall be punished as provided in subsection (2).

(4) Any person who without legal authority shall send or bring, cause to be sent or brought, or advise any dependent person to go into any municipality for the purpose of making him a charge upon such municipality in order to relieve himself or his municipality from responsibility for the relief of such dependent person shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in subsection (2).

(5) Any person in charge of poor relief or any of his assistants who shall receive or solicit any commission or derive or seek to obtain any personal financial gain through any purchase, sale, disbursement or contract for supplies or other property used in the administration of relief shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in section 348.28. [1933 c. 468; 1941 c. 303]

Note: (1) should be followed in the prosecution of persons who make false representations with the intent to secure relief for themselves or others. (2) applies to all other acts intended to interfere with the proper administration of relief, regardless of whether or not the offender is a relief recipient. 28 Atty. Gen. 380.

49.13 Abandonment of wife or children. (1) Whenever the father, or mother, being a widow or living separate from her husband, shall abscond or be about to abscond from his or her children, or a husband from his wife, or when such father, mother, or husband shall be about to remove permanently from the town, village, or city in which he or she may reside, leaving a wife or children, or both, chargeable or likely to become chargeable upon the public for support, or shall neglect or refuse to support or provide for such wife or children, the mayor of the city, president of the village or supervisors of the town where such wife or children may be may apply to the county judge or any justice of the peace of any county in which any estate, real or personal, of the said father, mother or husband may be situated for a warrant to seize the same.

(2) Upon due proof of the facts aforesaid such judge or justice shall issue his warrant authorizing such mayor, president or supervisors, respectively, to take and seize the goods, chattels, effects, things in action, lands and tenements of such person, wherever found in said county; and they shall, respectively, be vested with all the rights and title, as limited in this section, to any such property and things in action which such person had at the time of his departure; and may seize and take the same into their possession. They shall immediately make an inventory thereof and return the same with said warrant and their proceedings thereon to the county court. All sales and transfers of any real or personal property or things in action left in the county from which any such person shall have absconded, made by him after the issuing of such warrant, whether in payment of an antecedent debt or otherwise, shall be absolutely void.

(3) Upon such return the county court may inquire into the facts and circumstances and may confirm such seizure or discharge the same; and if the same be confirmed shall from time to time direct what part of the personal property shall be sold and how much of the proceeds of such sales and the rents and profits of the real estate shall be applied toward the maintenance of the wife or children of such person. All such sales shall be at public auction.

(4) The mayor, president or supervisors, respectively, shall receive the proceeds of all property so sold and the rents and profits of the real estate of such person and apply the same to the maintenance and support of the wife or children of such person; and they shall account to the said court for the moneys so received and for the application thereof from time to time.

(5) If the person whose property shall have been so seized shall return and support the wife or children so abandoned or give security to the mayor, president or supervisors, respectively, to be approved by them, that such wife or children shall not thereafter be chargeable to such city, village, or town the said court shall discharge such warrant and order the restoration of the property seized by virtue thereof and remaining unappropriated, or the unappropriated proceeds thereof, after deducting the expenses of such proceedings.

49.14 County home; officers. (1) Each county, whether having abolished the distinction between county poor and town, village or city poor or not, may establish a county home for the relief and support of the county poor, pursuant to the provisions of section 46.17.

(2) In all counties whose population is less than two hundred and fifty thousand such county home shall be governed pursuant to sections 46.18, 46.19 and 46.20; and the trustees and superintendent of the county home shall also have charge of all county poor relief outside of the county home, or the county board may employ some competent person who shall have charge of all such outdoor poor relief.

(3) In all counties in which a county home is not established the county board may place all county relief of the poor in charge of a board of trustees and superintendent governed pursuant to sections 46.18 and 46.19, so far as applicable; or may provide for the support and maintenance of the county poor in such other manner as they shall direct.

(4) Each municipality in which a county home is established shall not contract with any person to conduct the same or to support and maintain the inmates thereof; and all agreements in violation of this subsection are void.

(5) The board of trustees or any person employed by the county board pursuant to the provisions of subsection (2) of this section, may administer oaths concerning any matter submitted to him or them, in connection with their functions.

Note: See note to 46.18, citing 24 Atty. Gen. 75.

County relief director appointed under (2) may be discharged by county board at its pleasure by majority vote. 24 Atty. Gen. 633.

County home is not authorized to house paying guests. 25 Atty. Gen. 433.

Where person has been committed to and is inmate of county home contract by county providing for support and maintenance of such person in private institution in another county is void under (4). 26 Atty. Gen. 433.

49.145 County hospital. (1) Every county may, pursuant to section 46.17, establish a county hospital for the treatment of the following:

(a) Indigent persons.

(b) Persons, having a legal settlement therein, who are afflicted with any disease, malady, deformity or ailment, which can probably be remedied, or which can be advantageously treated by proper medical, dental or surgical care, in all cases where such person, or in the case of a minor, the parent, guardian, trustee or other person having lawful custody of his person, as the case may be, is financially unable to provide such care and treatment.

(2) Persons who are not indigent shall be received for treatment subject to such conditions and at such rates not exceeding the actual cost to said county, as shall be determined by the governing authority of said hospital, and subject to such rules and regulations as it may prescribe. In counties with a population of two hundred fifty thousand or more, such institution shall be governed pursuant to section 46.21. In all other counties it shall be governed pursuant to sections 46.18, 46.19 and 46.20. The name of the hospital may be changed from county hospital to such other name as the county board, by ordinance, shall designate.

49.15 Adoption of county system. The county board of any county may, at an annual meeting or at a special meeting called for that purpose, by a resolution adopted by an affirmative vote of a majority of all the supervisors entitled to a seat in such board, abolish all distinction between county poor and town, village and city poor in such county and have the expense of maintaining all the poor therein a county charge; and thereupon the county shall relieve and support the poor in said county, and all the powers conferred and duties imposed by this chapter upon towns, villages and cities shall be exercised and provided for pursuant to section 49.14; provided, that in the alternative, a county board may at such meeting, by a resolution adopted by an affirmative vote of a majority of all the supervisors entitled to a seat in such board, abolish all distinction between county poor and town, village and city poor in such county as to sickness care requiring the services of a physician and surgeon, or hospitalization, and while such resolution remains in force have the entire expense of such care and hospitalization a county charge. [1941 c. 204]

Note: Section 49.15, Stats. 1933, permits only 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 the statute (sec. 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. Sec. 49.18 merely authorizes the proper executive officer to act for the governmental unit he represents when that unit has a liability to discharge. (Washburn v. Bayfield County, 235 W 215, applied.) Legault v. Owen, 235 W 675, 293 NW 920.

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

Determination to adopt or abandon county system of poor relief rests with county board and is not subject to referendum, but board may make its decision contingent upon result of referendum vote. Notice of such referendum can be published in accordance

with 10.43 so far as applicable. Provisions of 10.43 (8) are not applicable on question of revocation within two years. 25 Atty. Gen. 533.

County on county system of poor relief has no general or necessarily implied power under any and all circumstances to acquire title to real estate by purchase for the pur-

pose 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. County may acquire property by tax deed and use property so acquired for such purpose. 28 Atty. Gen. 372.

49.16 Abandonment of county system. Any such county may, at an annual meeting or at a special meeting called for that purpose, by a similar vote repeal said resolution; and thereafter the poor of such county shall be supported in the same manner as if such distinction had never been abolished.

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

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

49.17 Special laws not repealed. Nothing in this chapter shall be construed to repeal any law making special provisions for the management and support of the poor in any county.

49.18 Emergency medical relief. (1) Unless the board or council shall have designated some other official therefor, the town chairman, village president, mayor or chairman of the county board, when in his opinion reason therefor exists, shall provide temporary medical relief for a poor person, and liability for expenses so incurred shall be the same as though incurred by the board or council.

(2) Except in counties having a population of 250,000 or more, the town, city, village or county, as the case may be, shall be liable for the hospitalization of and care rendered by a physician and surgeon to a person entitled to relief under this chapter, without previously authorizing the same, when, in the reasonable opinion of a physician called to attend such person, immediate care and hospitalization is required, for indispensable emergency operation or treatment, and prior authorization therefor cannot be obtained without delay likely to be injurious to the patient. There shall be no liability for such care and hospitalization beyond what is reasonably required by the circumstances of the case, and liability shall not attach unless, within 24 hours after admission of the patient, written notices by the attending physician and by the hospital be mailed or delivered to the official designated in subsection (1), reciting the name and address of the patient, so far as known, and the nature of the illness or injury, and the probable duration of necessary treatment and hospitalization. Any municipality giving any such person aid or hospitalization as provided in this section, and such person is a legal resident in some other town, village, city or county, such municipality may recover from such other municipality as provided in section 49.03. [1933 c. 165; 1935 c. 453; 1943 c. 215]

Note: Under 49.03 and 49.18 persons furnishing aid have the burden of showing that the injured 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.

Patient may be treated in hospital as long as it is reasonably necessary or until he has recovered sufficiently to leave hospital. 23 Atty. Gen. 847.

County is not liable for ambulance service rendered to injured transient pauper where there has been no prior authorization by proper authorities. 24 Atty. Gen. 332.

Term "medical relief" as used in (1) in-

cludes relief given by chiropractor. 25 Atty. Gen. 452.

Person injured while employed on WPA project in city is entitled to necessary medical attention and hospitalization therein, even though he has no legal settlement therein and place of his legal settlement is liable therefore under this section, even though prior to such employment order was entered pursuant to 49.03 (9). 26 Atty. Gen. 610.

Sheriff is not officer charged with care of poor persons within meaning of 49.08. Failure to give written notice required by 49.18 defeats hospital's right to recover from municipality. 28 Atty. Gen. 16.

49.20 County old-age assistance. For the more humane care of aged, dependent persons a state system of old-age assistance is hereby established. Such system of old-age assistance shall be administered in each county by the county judge, under the supervision of the state department of public welfare. The cost of old-age assistance shall in the first instance be borne by the county, but the county shall be entitled to state and federal aid as provided in section 49.37. [1931 c. 239 s. 1; 1933 c. 375; 1935 c. 554; 1943 c. 93]

49.21 Pensioners, who may be. Any person who shall comply with the provisions of sections 49.20 to 49.39, shall be entitled to financial assistance in old age. The amount of such old-age assistance shall be fixed with due regard to the conditions in each case, but in no case shall it be an amount which, when added to the income of the applicant, including income from property, as computed under the terms of this act, shall exceed a total of forty dollars a month. [1935 c. 554; 1939 c. 533]

Note: Word "income" as used here means "means of support". It means gross as distinguished from net income. Sections 49.21 and 49.24 are parts of same act and are to be so construed. 24 Atty. Gen. 461; 25 Atty. Gen. 250.

This section provides that old-age assistance shall be fixed with due regard to conditions in each case within maximum allowance of one dollar a day, and it contemplates that such maximum allowance shall be made when condition of applicant warrants it.

Pensioner may receive, in addition to maximum old-age assistance allowance, medical and surgical care through regular relief channels. 26 Atty. Gen. 306.

Old-age pension check becomes property of estate of pensioner where it is mailed to

him and he dies without indorsing it. 26 Atty. Gen. 531.

Term "income" is used in this section in sense of "means of support". It includes veterans' pensions, income from rental of part of one's home, and money furnished by relatives for support. 31 Atty. Gen. 339.

49.215 Income from agricultural labor not income under section 49.21 in certain cases. Any income or resources of any individual arising from agricultural labor performed by him as an employe, or from labor otherwise performed by him in connection with the raising or harvesting of agricultural commodities, shall not be taken into account in determining need in the manner and to the extent such income and resources are permitted to be exempted by the Federal Social Security Act as amended. [1943 c. 556]

49.22 Conditions specified. Old-age assistance may be granted only to an applicant who:

(1) Has attained the age of sixty-five years or upwards; provided, that this specified minimum age shall be reduced to sixty years whenever the federal government shall make aid available to the states for old-age assistance to persons between sixty and sixty-five years of age.

(2) Was born in the United States or is a citizen of the United States.

(3) Has resided in the state for at least five years during the nine years immediately preceding the date of application, during the last year of which period the applicant must have resided continuously in this state; provided that an applicant who has resided one year in the state of Wisconsin may be granted old-age assistance if the state from which he has removed to Wisconsin has undertaken to grant assistance to any resident of Wisconsin who has moved to such state and has lived there continuously for one year. Absence in the service of the state of Wisconsin or of the United States shall not be deemed to interrupt residence in the state if a domicile be not acquired outside of the state.

(4) Is not at the date of making application an inmate of any prison, jail, workhouse, infirmary, insane asylum, or any other public correctional institution.

(8) Has no child or other person responsible under the law of this state for his support and able to support him. [1931 c. 109; 1935 c. 391, 554; 1939 c. 533]

Note: Indians living on reservations can qualify for old-age pensions. 24 Atty. Gen. 591.

Words "resides," "residence" and "residents" as used in old-age assistance law are defined. Payments may be made only to persons having actual residence in this state. 24 Atty. Gen. 711.

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

One convicted of felony but placed on probation and not imprisoned is not barred from receiving old-age assistance under (5). 25 Atty. Gen. 204.

Woman citizen who married alien prior to March 2, 1907, is citizen within meaning of (2). 25 Atty. Gen. 736.

Sentence of two weeks in county jail for

nonsupport of wife constitutes imprisonment for felony within meaning of 353.31, so as to render husband ineligible for old-age assistance under 49.22 (5). 26 Atty. Gen. 379.

Unconditional pardon of person imprisoned for felony removes disability to receive old-age assistance. 26 Atty. Gen. 381.

Under (8) old-age assistance may not be granted to person having children who have been ordered by county judge to support such person and have failed to do so although no steps were taken to enforce such support. 26 Atty. Gen. 332.

Under (6) pension department should deny old-age assistance to husband where it has been judicially determined in divorce action that he failed to support his wife, and it makes no difference that divorce was uncontested. 26 Atty. Gen. 383.

49.23 Persons excluded. Old-age assistance shall not be granted or paid to a person:

(1) While or during the time he is an inmate of and receives the necessities of life from any charitable institution maintained by the state or any of the political subdivisions of the state, or is an inmate of a private charitable, benevolent or fraternal institution or home for the aged to which no admission charge as a life tenant has been made; provided that application for old-age assistance may be made while the applicant is an inmate of a county home, but if assistance is granted it shall not begin until he ceases to be an inmate of such home.

(2) If the value of his property or the value of the combined property of husband and wife living, together exceeds five thousand dollars.

(3) Who has deprived himself, directly or indirectly, of any property for the purpose of qualifying for old-age relief. [1931 c. 239 s. 1; 1935 c. 554]

Note: The old-age pension law subjects a decedent's homestead to liability for advances thereunder to decedent by a county, notwithstanding the act 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.

Allowing pension to person whose property is valued at five thousand five hundred dollars, on which there is mortgage of three

thousand, is discretionary with court. (Sec. 49.23, Stats. 1929). 19 Atty. Gen. 290.

Value of applicant's real property is value of his equity. 24 Atty. Gen. 624.

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

Intent of old-age assistance laws is to assist not only those absolutely destitute but also those having property not readily convertible into cash without undue hardship and loss. Discretion of administrative agency is limited by provisions of law and must be

reasonably used so as to carry out intent of law. Such agency may not grant assistance without securing public if there is danger that applicant's property will be placed without reach of public's claim for reimbursement. 25 Atty. Gen. 205.

For consideration of problems arising under (3), see 28 Atty. Gen. 234.

Combined property of husband and wife must be considered in determining eligibility for relief under this section, even though they may be living separately. 32 Atty. Gen. 25.

49.24 [Repealed by 1939 c. 533]

49.25 Pensions recovered. On the death of a person who has been assisted under sections 49.20 to 49.51, the total amount of assistance paid, including medical and funeral expense paid as old-age assistance, but without any interest, shall be allowed as a claim against the estate of such person by the court having jurisdiction to settle the estate; provided, however, that such claim shall not take precedence over the allowances under section 313.15 or over any claim for institutional care under section 46.10; and provided, also, that such court may disallow such claim or any part thereof if it is satisfied that the amount of such disallowance is necessary to provide for the maintenance or support of a surviving spouse or surviving minor children, and thereupon the claim shall be deemed waived to the extent of the amount thus disallowed and assigned to such spouse or minor children for maintenance or support. Of the net amount recovered pursuant to the provisions of this section or section 49.26, one-half shall be paid over to the United States government, and the remainder shall be paid into the treasuries of the state and its political subdivisions, in the proportion in which they respectively contributed to the old-age assistance recovered. It shall be the duty of the county judge of the county from which the deceased beneficiary has received old-age assistance to file the claim herein provided. [1935 c. 554; Spl. S. 1937 c. 7; 1943 c. 548]

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

Three per cent interest deducted under this section shall be computed from date of payment of assistance to date of repayment from beneficiary's estate. 25 Atty. Gen. 381.

Under 49.25, Stats. 1937, money recovered from estate of one who received old-age pension shall be divided as follows: (a) Retain sufficient funds to reimburse state and county in full for payments made before approval of Wisconsin law; (b) pay fifty per cent of balance, if any, to United States; (c) add remainder to first amount and divide total between state and counties in proportion in which they respectively contributed over whole period. 26 Atty. Gen. 322.

Where county has taken title to personalty under 49.26 (1), or taken lien on real estate under 49.26 (4), either or both of which are sufficient to satisfy claim for old-age assistance, 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. Court has full power to waive any such claim or part thereof or release real estate lien as provided by 49.25 and 49.26 (4). Where claim for old-age assistance cannot be satisfied out of personalty or realty to which county has title or 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 lien is treated as unsecured claim, except claims for funeral expenses paid pursuant to 49.30 and expenses of last sickness. As to funeral and last sickness county has priority by reason of 313.16 (1) under doctrine of equitable subrogation. 27 Atty. Gen. 751.

County board may not compromise claim

for old-age assistance existing under 49.25 and 49.26. District attorney may not compromise such claim except under direction of county judge, pension director or other officer designated to administer old-age assistance in accordance with 49.51. Such claim may be released by county officer charged with administration of old-age assistance only upon full payment thereof unless there is honest dispute and reasonable doubt as to its validity, amount due thereon, or other questions affecting its enforceability. In such cases county judge or other officer designated under 49.51 may release claim upon partial payment under compromise settlement, provided settlement is made in good faith. 30 Atty. Gen. 480.

Amounts collected by county from property transferred to county by recipient of old-age assistance, or from proceeds of sale of real estate subject to lien for old-age assistance, must be first applied by county officials as specified in 49.25, to full extent of old-age assistance claim before being used to reimburse county for other forms of public assistance. This is true regardless of whether amounts are recovered through proceedings in county court or otherwise. Obligation is not affected by fact that old-age assistance beneficiary may have signed agreement purporting to subordinate old-age assistance claim to claims of county for other forms of assistance. 31 Atty. Gen. 40.

This section does not permit assistance furnished wife to be recovered from separate estate of her husband, though both were pensioners. 31 Atty. Gen. 151.

Property acquired by wife upon death of her husband, through assignment of her dower and homestead rights, is subject upon her death to claim under this section for old-age assistance given her, except for her homestead rights when such rights are limited to life estate. 32 Atty. Gen. 10.

49.26 Transfer of property; liens on real property. (1) If the county judge deems it necessary, he may require as a condition to the grant of a certificate that all or any part of the property, except real property situated in the state of Wisconsin and except the property mentioned in subsection (6) of section 272.18 of the statutes, and except cash or loan value not in excess of one thousand dollars in a policy of insurance, of an applicant for old-age assistance be transferred to the county court, except that in counties having a population of five hundred thousand and having a manager of county institutions such property shall be transferred to such manager of county institutions. Such property shall be managed by the county court or said manager of county institutions, who shall pay the net income to the person or persons entitled thereto. The county judge or said manager of county institutions shall have power to sell, lease or transfer such property, or defend and prosecute all suits concerning it, and to pay all just claims against it, and

to do all other things necessary for the protection, preservation and management of the property. No person shall be denied old-age assistance on the ground that he has cash or loan value not in excess of one thousand dollars in a policy of insurance.

(2) If in the event that the old-age assistance is discontinued during the lifetime of the beneficiary the property thus transferred to the county court or said manager of county institutions exceeds the total amount of assistance paid, including medical expense paid as old-age assistance, but without any interest, the remainder of such property shall be returned to the beneficiary; and in the event of his death such remainder, less funeral expenses paid as old-age assistance, shall be considered as the property of the beneficiary for proper administration proceedings. The county judge or said manager of county institutions shall execute and deliver all necessary instruments to give effect to this subsection.

(3) The district attorney at the request of the county judge or said manager of county institutions shall take the necessary proceedings and represent the county court or said manager of county institutions in respect to any matters arising under this section.

(4) All old-age assistance paid to any beneficiary under sections 49.20 to 49.51, including medical and funeral expense paid as old-age assistance, shall become and constitute a lien as hereafter provided and shall remain a lien until it is satisfied. When old-age assistance is granted to any person under sections 49.20 to 49.51, the name and residence of the beneficiary, the amount of assistance so granted, the date when such assistance is granted, the name of the county granting the assistance, and such other information as the state department of public welfare shall require, shall be entered upon a certificate, the form of which shall be prescribed by the state department of public welfare. The county judge of the county granting old-age assistance shall cause such certificate, or a copy thereof, to be filed in the office of the register of deeds of every county in the state in which real property of the beneficiary may be situated. From and after the time of such filing in the office of the register of deeds the lien herein imposed shall attach to any and all real property of the beneficiary presently owned or subsequently acquired, including joint tenancy interests, in any county in which such certificate is filed for any amounts paid or which thereafter may be paid under sections 49.20 to 49.51, and shall remain such lien until it is satisfied. Such lien shall take priority over any other lien subsequently acquired or recorded except tax liens and except that the amounts allowed by the court in the estate of any deceased beneficiary and remaining unpaid after all funds and personal property in the estate have been applied according to law, for administration and funeral expense for hospitalization, nursing and professional medical care furnished such decedent during his last sickness, not to exceed \$300 in the aggregate, shall be charges against all real property of such deceased upon which an old-age assistance lien shall have attached, and shall in such order be paid and satisfied prior to such lien out of the proceeds derived from such real property upon liquidation of such old-age assistance lien. The certificate herein provided need not be recorded at length by the register of deeds, but upon the filing thereof all persons shall thereby be charged with due notice of the lien and of the rights of the county thereunder. The register of deeds shall keep a separate book, properly indexed, in which shall be entered an abstract of every certificate so filed which shall show the time of filing, the name and residence of the beneficiary, the date of the certificate, the name of the county granting old-age assistance to such beneficiary, and a record of any releases and satisfactions. No fee shall be charged for the filing of such certificate or the entry of the abstract thereof except in counties wherein the register of deeds is compensated otherwise than by salary, and in such counties a fee of 25 cents shall be paid to the register of deeds by the county filing the certificate. Such liens shall be enforceable by the county filing the certificate after transfer of title of the real property by sale, succession, inheritance or will, in the manner provided by law for the enforcement of mechanics' liens upon real property. Provided, however, that no such lien and no claim under section 49.25 shall be enforced against the homestead of the beneficiary while it is occupied by a surviving spouse or by any surviving minor children, or any physically or mentally incapacitated adult children, of the beneficiary; and provided, also that whenever the county judge of the county in whose favor such lien exists is satisfied that the collection of the amount paid as old-age assistance will not thereby be jeopardized or that the release of the lien in whole or in part is necessary to provide for the maintenance or support of the beneficiary, his spouse, or minor children, or physically or mentally incapacitated adult child or children, he may release the lien hereby imposed with respect to all or any part of the real property of the beneficiary, which release shall be filed in the office of the register of deeds of the county in which the certificate is filed. The beneficiary, his heirs, personal representatives or assigns may discharge such lien at any time by paying the amount thereof to the treasurer of the proper county who, with the approval of the county judge, shall execute a proper satisfaction which shall be duly filed with the register of deeds. The county board may by resolution authorize and empower any county agency or official

to bid in property at foreclosure under this subsection at a figure not to exceed the amount of claim for assistance, and said claim or any part thereof may be applied as a credit on such a bid, or such agency or individual may accept a conveyance in lieu of foreclosure; title to any property acquired under this subsection shall vest in such agency for the purpose of liquidation, and said property may be sold and title transferred by it without regard to section 59.67. In the event the county shall so acquire such property, payment as provided by section 49.25 shall not be made until such property is sold and payment thereon shall be based on the sale price therefor. The county board may designate and authorize the district attorney to act for the county generally to collect such old-age assistance liens and claims, and claims for hospitalization, institutional care and general poor relief. The county board may authorize the district attorney to compromise the payment of any such claim, except old-age assistance claims as provided for in section 49.26 (4), with the approval of such judge, officer or agency of the county or of such committee of the county board as the county board may designate, but such compromise shall be made only when the collection of the full amount would produce undue hardship upon the debtor or the debt is otherwise uncollectible. Any compromise made before July 15, 1943 which would be valid if made pursuant to the provisions for compromise of claims under this amendment, is hereby validated.

(5) All real property in the state of Wisconsin previously transferred to the county court or the manager of county institutions under section 49.26 of the statutes of 1935 and held by said county court or said manager of county institutions on October 19, 1937 shall be returned or released forthwith to the beneficiary or person from whom it was received, and a lien shall thereupon be acquired by the county in the manner provided in subsection (4) for any amounts previously paid or which thereafter may be paid and shall be enforceable in the manner provided in said subsection.

(6) Any cash or loan value not in excess of \$1,000 in a policy or policies of insurance heretofore taken from any applicant for old-age assistance shall be forthwith returned to said applicant by the county authorities having taken such policy or policies.

(7) The county court in which the estate is probated may authorize the payment of an attorney's fee of 10 per cent but not in excess of \$50 for the collection of an old-age pension lien or other payment, or legal work in connection with the administration of any estate for the recovery of an old-age assistance lien. The court in which such an old-age assistance lien is foreclosed as provided in subsection (4) may authorize likewise the payment of such an attorney's fee but not in excess of \$50. The county pension department shall be authorized to make and pay for necessary and essential repairs or purchase outstanding tax certificates on such property as the county may have on old-age assistance lien. [1931 c. 239 s. 1; Spl. S. 1937 c. 7; 1939 c. 533; 1943 c. 93, 169, 212, 374, 476, 522; 1943 c. 553 s. 6]

Note: Under the provisions in (4) that all old-age assistance paid to any beneficiary shall constitute a lien, and that from the time of filing claim the lien shall attach to all real property of the beneficiary, "including joint-tenancy interests," and shall remain such lien until satisfied, and shall be enforceable after transfer of the real property by sale, "succession," inheritance or will in the manner provided for the enforcement of mechanics' liens, a lien against the joint tenancy interest of a recipient of old-age assistance continues effective so as to be enforceable by the foreclosure thereof on his death. *Goff v. Yauman*, 237 W 643, 293 NW 179.

Cost of recording conveyance is to be paid by grantee. Wife should join in conveyance under (1), and in case of homestead conveyance is void without her consent. Property so conveyed does not become tax exempt. Judge may require conveyance of homestead as well as other property. 24 Atty. Gen. 461.

Claim for lien is not effective as against property owned by surviving joint tenant for old-age assistance furnished to deceased joint tenant. 26 Atty. Gen. 419.

Ch. 7, Spl. S. 1937, relating to old-age assistance, requires return to beneficiaries of all real property previously conveyed to county, regardless of form of conveyance. Certificate of lien filed with register of deeds under ch. 7, Spl. S. 1937, should cover all assistance previously rendered. 26 Atty. Gen. 564.

Personal notice need not be given old-age assistance beneficiary when lien required by (4) is filed against real estate owned by him. 27 Atty. Gen. 69.

Register of deeds is not entitled to fee for

filing release or satisfaction of lien acquired by filing certificate of old-age assistance. 27 Atty. Gen. 353.

Rule of state pension board requiring counties to return to prior applicants all life insurance policies transferred, assigned or pledged to county prior to passage of ch. 7, Spl. S. 1937, not within rule-making power of board. 27 Atty. Gen. 830.

County does not have authority to purchase mortgage or real estate for purpose of protecting old-age assistance lien filed subsequently to recording of mortgage against same real estate. 27 Atty. Gen. 664.

Judgment rendered and docketed in court of record in county in which real property of A is located prior to filing of old-age pension certificate has priority over old-age pension lien as to all property of A except homestead. As to homestead, old-age pension lien by virtue of certificate filed prior to improvements made and with respect to which mechanic's lien is subsequently filed, old-age pension lien has priority. While old-age pension lien may not be at present enforceable it nevertheless exists as lien, and foreclosure of mechanic's lien must be subject to old-age pension lien. 23 Atty. Gen. 230.

Old-age assistance administrator has power to release pension lien where facts are such or where he imposes such conditions upon administrator that collection of lien will not be jeopardized. Such lien is not and may not be subordinated to administration expenses. 29 Atty. Gen. 221.

Where heirs refuse to probate estate of old-age pensioner and county pension director is appointed administrator and is represented by district attorney as attorney and there is surplus in excess of county's claim

under 49.26, these officers may be allowed fees for performance of their probate services, but such fees in case of full-time pension director or full-time district attorney must be turned over to county. 30 Atty. Gen. 275, 31 Atty. Gen. 57.

Attorney general does not express opinion as to priority of purchase money mortgage executed by pensioner subsequent to filing of old-age pension liens where question is academic and of no present practical importance to department of public welfare in administration of law. Where daughter and son-in-law agree to support and maintain old-age pensioner for balance of his life if pension department will release property owned by pensioner from existing old-age pension lien, county pension administrative officers may release from such lien but are not obliged to do so even though municipality having financial burden by virtue of county charge back under 49.37 (2) desires and requests release of existing lien and handling of future support and maintenance of pensioner in such manner. 31 Atty. Gen. 97.

Lien held by county under (4) does not of

itself give county lien upon proceeds of fire insurance policy issued to owner of property. County's lien may be protected by means of loss payable clause in insurance policy. 31 Atty. Gen. 308.

Lien given by (4) attaches to consummate dower right of widow but not to inchoate dower right of wife during her husband's life. The lien is not enforceable against husband's curtesy right in realty unless he attempts to transfer such right during his lifetime. 32 Atty. Gen. 10.

Liens to secure repayment of old-age assistance grants provided by amendments to 49.26, by ch. 7, Spl. S. 1937, are not applicable to Wisconsin real estate of old-age assistance beneficiaries for aid theretofore granted where there had been no transfer of such real estate, prior to amendments, to secure repayment of such assistance. Lien was intended to cover prior assistance only in cases where there had been transfer of Wisconsin real estate. It was intended as substitute for security theretofore required and was not intended to require security where none had been required, as related to assistance rendered prior to amendments. 32 Atty. Gen. 76.

49.27 Application for pension. An applicant for old-age assistance shall file his application in writing with the county judge of the county in which he resides, in such manner and form as shall be prescribed by the state department of public welfare; provided, that after May 21, 1943 a person receiving old-age assistance and moving to another county to reside in a private, charitable, benevolent or fraternal institution or home for the aged and who continues to be eligible for and to receive old-age assistance while residing in such institution or home under 49.23 (1) shall receive such assistance from the county paying the same at the time such person moved, unless he has legal settlement as defined in section 49.02, in the county in which the institution or home is located. All statements in the application shall be sworn to or affirmed by the applicant, setting forth that all facts are true in every material point. [1943 c. 169, 171]

Note: Applicants for old-age assistance shall file their applications in counties where they actually reside. They need not have legal settlement there. Term "residence" does not always mean actual physical presence. Those receiving assistance from one county lose right to same by removal to another county. Application must be made in county to which such persons move. 24 Atty. Gen. 711.

State pension department may prescribe rules for making application for old-age assistance on behalf of 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 right to same by removal to another county. Application for assistance must be made in county to which such person moves. 25 Atty. Gen. 165.

49.28 County judge to decide on application; reapplication. The county judge shall promptly make or cause to be made such investigation as he may deem necessary. The county judge shall decide upon the application, and fix the amount of the old-age assistance, if any, and such decision shall be final; provided that the county board may at any time reduce or discontinue entirely such assistance granted to any beneficiary. An applicant whose application for old-age assistance has been rejected or whose allowance has been stopped, may not again apply until the expiration of six months from the date of his previous application. [1939 c. 533]

Note: If case demands, county judge may refuse application for old-age pension and commit applicant to county home. 24 Atty. Gen. 280.

Proviso clause in this section which gives

county board power to reduce and discontinue old-age assistance grants, was impliedly repealed by chapter 554, Laws 1935. 25 Atty. Gen. 386.

49.29 Pension certificate, conditions, revocation, recovery of excess. (1) The county judge shall issue to each applicant to whom old-age assistance is allowed, a certificate stating the date upon which payments shall commence and the amount of each installment, which may be monthly or quarterly, as the judge may decide.

(2) Each beneficiary under the provisions of sections 49.20 to 49.39 shall file such reports with the county judge as the state department of public welfare may from time to time require. If it appears at any time that the applicant's circumstances have changed, the county judge may revoke or modify any certificate issued. Any sum paid in excess of the amount due under the provisions of said sections shall be returned to the county and shall be recoverable as a debt due the county. [1943 c. 93]

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

49.30 Funeral expenses. On the death of a beneficiary such reasonable funeral expenses for burial shall be paid to such persons as the county judge may direct; provided, that these expenses do not exceed one hundred dollars and provided further that the estate of the deceased is insufficient to defray these expenses.

Note: It is function of old-age administrative agency in proper cases to direct payment of funeral expenses. Counties are entitled to eighty per cent reimbursement from state for moneys so expended. 25 Atty. Gen. 270.

It is doubtful whether county board can control discretion of administrative officer when he acts within limitations of this section. 29 Atty. Gen. 344.

156.14 does not control discretion vested in public officers nor in director of county pension system under 49.30 in those cases where burial of 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 proper county official has directed undertaker to bury body of recipient of old-age assistance for specified sum, in accordance with this section undertaker may recover from county under his contract. In absence of fraud or other special circumstances it is no defense upon contract that family of decedent has paid undertaker for additional services agreed upon between them. 30 Atty Gen. 51.

49.31 Pension exclusive relief; exception, guardian. (1) During the continuance of old-age assistance no beneficiary shall receive any other relief from the state or from any political subdivision thereof except for medical and surgical assistance.

(2) If the beneficiary is, on the testimony of at least three reputable witnesses, found incapable of taking care of himself or his money, the county judge may direct the payment of the instalments of the old-age assistance to any responsible person or corporation for his benefit, or may suspend payment, for such period as the judge shall deem advisable.

Note: Subsection (2) does not require appointment of guardian. If assistance laws are administered by county pension department it is duty of department to designate responsible person or corporation to receive payments for benefit of incompetent. 25 Atty. Gen. 115.

Guardians for recipients of old-age assistance must be appointed by court pursuant to chapter 319, Stats. 26 Atty. Gen. 526.

Recipient of old-age assistance may re-

ceive medical or surgical assistance through regular channels if it is needed even though he is receiving less than maximum old-age assistance permitted by 49.21. Term "medical and surgical assistance" as used in sec. 49.31 (1) includes hospitalization. Persons receiving old-age assistance may not receive additional aid through regular relief channels for any purpose other than medical or surgical assistance. 31 Atty. Gen. 400.

49.32 Pensions exempt from levy. All amounts paid as old-age assistance shall be exempt from any tax levied by the state or by any subdivision thereof, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever and shall be inalienable in any form.

49.33 Special inquiry. If at any time the county judge has reason to believe that a certificate has been improperly obtained, the county judge shall cause special inquiry to be made, and may suspend payment of any instalment pending the inquiry. If on inquiry it appears that the certificate was improperly obtained, it shall be canceled, but if it appears that the certificate was properly obtained, the suspended instalments shall be payable in due course.

49.34 Pension frauds punished. Any person who by means of a wilfully false statement or representation, or by impersonation, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain:

- (a) A certificate to which he is not entitled;
- (b) A larger allowance than that to which he is justly entitled;
- (c) Payment of any forfeited instalment grant;
- (d) Or aids or abets in buying or in any way disposing of the property of a beneficiary

without the consent of the county judge, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars, or be imprisoned in the county jail for not more than one year, or be punished by both such fine and imprisonment, in the discretion of the court.

49.35 General penalty. (1) Any person who violates any provision of sections 49.21 to 49.39, for which no penalty is specifically provided, shall be subject to a fine not exceeding five hundred dollars or to imprisonment not exceeding one year, or both.

(2) Where a beneficiary is convicted of an offense under this section the county judge may cancel the certificate.

49.36 Effect of conviction of offense. If a beneficiary is convicted of any misdemeanor, felony or other offense, punishable by imprisonment for one month or longer, payments shall not be made during the period of imprisonment.

49.37 County appropriation, disbursement of pension funds, reimbursement of county. (1) The county board of each county shall annually appropriate a sum of money sufficient to carry out the provisions of sections 49.20 to 49.40, taking into account the money expected to be received during the ensuing year as state and federal aid. Upon the orders of the judge of the county court, the county treasurer shall pay out the amounts ordered to be paid as old-age assistance, under the provisions of said sections.

(2) The county board of each county may cause each city, town and village to reimburse the county for all amounts of money paid in old-age assistance to persons having a legal settlement therein, less the amounts received by the county from the state and federal governments pursuant to section 49.38. Legal settlement as used in this section shall be as provided in sections 49.02 and 49.04. In any county in which the county board has

taken action the county clerk shall make a report to the county board at its annual November meeting showing in detail the amounts which are chargeable to each city, town and village, and the county board at such meeting shall then determine the amount to be raised and paid by each such city, town and village to reimburse the county.

(4) The county clerk shall charge the amount so determined to such city, town or village and shall certify the same to the city, town or village clerk. Each city, town or village shall annually levy a tax sufficient to meet such charges, and shall pay over to the county the amount so certified as hereinafter provided. Such tax shall be deemed a county special tax for tax settlement purposes but the town, city or village shall pay over to the county on or before the twenty-second day of March in each year the percentage of such tax actually collected, which percentage shall be determined by applying the ratio of collection of the entire tax roll of such town, city or village excepting special assessments and taxes levied pursuant to section 59.96 of the statutes to the amount of such county special tax so certified and levied. If any town, city or village shall fail to raise and pay over such money to the county, in the manner above specified, the county board shall have authority to compel such payment. [1931 c. 239; 1933 c. 160 s. 3; 1933 c. 458; 1935 c. 554; 1939 c. 83, 491, 533]

Note: Payments under old-age pension law are to be out of general fund in county treasury, regardless of sum appropriated by county board. (Sec. 49.37, Stats. 1933) 22 Atty. Gen. 269, 24 Atty. Gen. 453.

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 county board, old-age pensions are to be paid out of county's general fund. 24 Atty. Gen. 280.

It is duty of county board to estimate reasonably the amount required for old-age pensions and make appropriation therefor. Under 49.28 board may at any time reduce or discontinue pension of any beneficiary. 24 Atty. Gen. 453.

Cost of old-age assistance is borne by county where applicant resides. Such cost may be charged back to town, city or village where applicant resides, even if he has no legal settlement therein. 24 Atty. Gen. 711.

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

Old-age assistance laws are based upon residence and not upon legal settlement. 25 Atty. Gen. 485.

Disbursements of pensions from county treasury to individual beneficiaries without separate orders of county clerk, signed by chairman of county board, are not in compliance with statute. 26 Atty. Gen. 454, 28 Atty. Gen. 360.

49.38 State aid; reimbursement to county. (1) Monthly the county treasurer and county pension administrator shall certify under oath, to the state department of public welfare, at such time and in such manner as the department may prescribe, the claim of the county for state and federal reimbursement of aid paid under sections 49.20 to 49.38. If the state department of public welfare shall be satisfied that the amount claimed has actually been expended in accordance with the provisions of sections 49.20 to 49.38, it shall certify to the secretary of state 80 per cent of the approved amount paid by each county. To facilitate prompt reimbursement the certification of the state department of public welfare may be based upon the certified statements of the county officers, provided that any necessary audit adjustments for any month or months of current or prior fiscal years may be made and included in subsequent certifications.

(2) The secretary of state shall forthwith draw his warrant for reimbursement to the respective counties in accordance with the certification of the state department of public welfare; provided that if the total amount payable to all counties under this section shall exceed the amount available under the appropriation made in subsection (5) of section 20.18, the state department of public welfare shall prorate the amount available among the various counties according to the amount paid out by them respectively. Whenever the state department of public welfare shall prorate the amount available to the various counties, the counties in the next following month may prorate to the recipients of old-age assistance such proportion of the amount allowed as the amount paid by the state bears to the full amount due from the state. [1935 c. 554; 1939 c. 110; 1939 c. 515 s. 4; 1943 c. 93]

Note: Counties need not prorate old-age assistance if full aid is not received from state. Word "shall" in last sentence of (2) construed to mean "may". 25 Atty. Gen. 68.

See note to 49.51, citing 25 Atty. Gen. 441. State pension department may offset aid improperly extended in past against future

allotments when making reimbursements pursuant to 49.38 (2), Stats. 1937. 26 Atty. Gen. 218 is overruled to extent that it is inconsistent herewith upon basis of departmental rule not previously submitted to attorney-general. 26 Atty. Gen. 576.

See note to 49.50, citing 30 Atty. Gen. 71.

49.39 [Repealed by 1935 c. 554]

49.50 Old-age assistance, aid to dependent children, blind pensions; administration.

(1) The state department of public welfare shall supervise the administration of old-age assistance, aid to dependent children, and blind pensions. The department shall prepare and submit to the proper federal authorities state plans for the administration of these forms of public assistance in conformity with the statutes of this state. It shall make such reports in such form and containing such information as the proper federal authorities may from time to time require as a condition of the granting of such federal aid and shall comply with all requirements which may be prescribed to insure the correctness and veri-

fication of such reports. All records of the department relating to these forms of public assistance shall be open to inspection and audit, at all reasonable hours, by duly authorized representatives of the federal government.

(2) The state department of public welfare shall adopt rules and regulations, not in conflict with the express provisions of any law of this state, for the efficient administration of these forms of public assistance, in agreement with all requirements governing the allowance of federal aid to the states for these purposes, including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis; provided that the provisions of this section relating to the establishment and maintenance of personnel standards on a merit basis shall supersede any inconsistent provisions of any laws of this state relating to county personnel. Statewide examinations to ascertain qualifications of applicants in any county department administering old-age assistance, aid to dependent children or blind aid shall be given by the state bureau of personnel. The state bureau of personnel shall be reimbursed for actual expenditures on account of such examinations from the appropriations available to the state department of public welfare for administrative expenditures. At the first examination given after the effective date of this amendment (1939) those persons who are employes in such county departments on the effective date of this amendment and who shall have a minimum of 6 months continuous employment with such county department at the date set for receiving applications for such examination shall be admitted to the examination without regard to minimum qualifications established by the rules and regulations of the state department of public welfare. Such persons shall be certified as being qualified if they pass a satisfactory examination. All persons who are certified as qualified as a result of such examinations shall be certified to the counties in which they have residence at the time the examination is taken; provided, however, that if there are no resident qualified persons for any class of positions on the list certified to the county, appointments shall be made from available lists without regard to residence within the county. In counties having a population of 500,000 or more where a civil service law has been in effect prior to the effective date of this amendment (1939), the state department of public welfare may delegate to the civil service agency in any such county responsibility for determining qualifications of applicants by merit examinations, provided the standards of qualifications and examinations have been approved by the state agency and the state bureau of personnel. The personnel in such counties shall be exempt from reexamination under this section provided such personnel has qualified for present positions by examinations conducted pursuant to standards acceptable to the state department of public welfare. The department shall advise all county officers charged with the administration of such laws of these requirements and shall render all possible assistance in securing compliance therewith, including the preparation of all necessary blanks and reports. The department shall also publish such information as it may deem advisable to acquaint persons entitled to any of these forms of public assistance and the public generally with the provisions of the laws governing the same.

(3) To the end that this state and its counties may be enabled to receive federal aid for old-age assistance, aid to dependent children, and blind pensions, all county officers and employes performing any duties in connection with the administration of these forms of public assistance shall observe all rules and regulations made and promulgated by the state department of public welfare pursuant to subsection (2) of this section and shall keep such records and furnish all reports which the state department of public welfare may require in relation to their performance of such duties. All records relating to the administration of these forms of public assistance shall be open to inspection and audit at all reasonable hours, by the state department of public welfare and any duly authorized employe thereof or by any duly authorized representative of the federal government.

(4) To enable this state to receive federal aid for old-age assistance, aid to dependent children, and blind pensions, any persons whose application for any of these forms of assistance has been denied by the county officer charged with the administration of such form of assistance may apply to the state department of public welfare for a review of such denial. For the purposes of this subsection failure to act upon an application for assistance within 90 days after the filing of such application shall be deemed a denial thereof. Application for a review of the denial of assistance shall be made in writing, in a form to be prescribed by the state department of public welfare, within 30 days after such denial. Such application for review shall be made in duplicate; one copy shall be sent to the state department of public welfare and the other filed with the county officer charged with the administration of such form of assistance. Such officer within 10 days after the filing of such application for review, shall transmit to the state department of public welfare all records in such case, together with any comments he may wish to make relative to such matter. Upon receipt of such application the department shall accord the applicant a fair hearing within 30 days, and shall cause such further investigation to

be made as it may deem necessary. Notice of such hearing shall be given to the applicant and to the county clerk, and the county shall be entitled to be represented at such hearing. The state department of public welfare shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant, the county clerk and the county officer charged with the administration of such form of assistance. On such decision the state department of public welfare shall fix the amount of aid or pension to be granted, if any, and such determination shall have the same effect as an order of the county officer charged with the administration of such form of assistance. Such decision shall be final, but the proper county officer may revoke or modify the aid or pension granted as altered circumstances may require, in the same manner as in other cases.

(5) The state department of public welfare shall have authority at any time to terminate payment of any state or federal aid on account of any grant of old-age assistance, aid to dependent children, or blind pension which may have been improperly allowed or which is no longer warranted due to altered conditions. Such action shall be taken only after thorough investigation and after fair notice and hearing. Such notice shall be given to the recipient of the assistance, aid, or pension, the county clerk, and the county officer charged with the administration of such form of assistance, and their statements may be presented either orally or in writing, or by counsel. Any decision of the state department of public welfare terminating the payment of state and federal aid shall be transmitted to the county treasurer, and after receipt of such notice the treasurer shall not include any payments made in such case in the certified statement of the expenditures of the county for which state or federal aid is claimed. [1935 c. 554; 1939 c. 533, 535; 1943 c. 93]

Note: Word "denial" in (4) is not confined to absolute denial of assistance. 25 Atty. Gen. 202.

26 Atty. Gen. 791, holding that recovery may not be had from estate of person receiving blind pension, is reviewed and followed. 27 Atty. Gen. 141.

It is mandatory upon secretary of treasury and federal social security board to cause to be paid to state operating under approved plan of public assistance such percentage of state's payments for old-age assistance, aid to dependent children, and blind pensions as is fixed by federal act, provided such payments are lawfully made under state law. Moneys delivered into hands of beneficiaries are lawful payments under Wisconsin law even though evidence in nature of canceled checks or receipts is required as to use of such moneys by beneficiaries before future payments are made and even though payments are made by

means of two or more checks. State may not recoup state's share of lawful expenditures made by counties for old-age assistance, aid to dependent children, and blind pensions, even though no federal aid is received, but may recoup payments made to counties on account of expenditures not authorized by state law. Amount allowed to counties for old-age assistance and blind pensions is not affected by failure of federal government to make allowance to state, but counties are not entitled to federal share of aid to dependent children unless aid is actually paid by federal government to state. 30 Atty. Gen. 71.

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

49.505 State aid to counties. Any county which is financially unable to fully perform its duties under sections 47.08, 48.33, 48.331 and 49.20 to 49.38 may make application to the state department of public welfare for financial assistance to enable it to perform such duties. Before making a determination upon the application, the department shall hold hearings, investigate and obtain or receive proof as to total indebtedness, debt and tax levy limitations, cash on hand, anticipated revenues from all sources, borrowing ability under chapter 67, reasonableness of amounts of its expenditures and necessity therefor, tax delinquencies, reasonableness of valuation for taxation purposes and such other factors not enumerated which are probative of the applicant's financial condition. If the department is satisfied that the applicant's financial condition is such that it cannot provide money for such forms of public assistance, the department shall certify to the secretary of state for payment to the applicant out of the appropriation provided by section 20.18 (9) an amount which will, together with money that the applicant can provide, be sufficient to enable the applicant to properly perform its duties. No such payment shall be made unless the department's certification is approved by the emergency board. The department shall fix the time and place of hearing, issue subpoenas, take testimony and make such reasonable rules and regulations which are necessary to enable it to effectively perform its duties under this section. [1943 c. 132]

49.51 County administration. (1) The administration in counties of all laws of this state relating to old-age assistance, aid to dependent children and blind pensions shall be vested in the officers and agencies designated in the statutes to administer these forms of public assistance. The county board shall have the authority to provide assistants for such officers and agencies and to prescribe their qualifications and fix their compensation in conformity with the rules and regulations of the state department of public welfare as provided in subsection (2) of section 49.50.

(2) (a) In counties having a population of 500,000 or more the county board may by ordinance provide for the establishment of a county department of public welfare to consist of 5 members to be appointed by the county board, at least 3 of which members

shall be members of the county board, which department shall administer any one or more of the following forms of public assistance: Old-age assistance, aid to dependent children and blind pensions, as the county board may determine. The investigational departments for these respective forms of public assistance, existing in such county at the effective date of this section, may continue under the county department of public welfare, as the county board may determine. The county department of public welfare in conformity with the rules and regulations of the state department of public welfare as provided in subsection (2) of section 49.50 shall appoint an administrator and such assistants as may be necessary pursuant to the county civil service law, such appointees to receive such salaries as the county department may fix. The county board of such county may at any time by ordinance discontinue the county department of public welfare and provide that the administration of all laws relating to such forms of public assistance shall be returned to the county court and such other agencies as administered such laws prior to the effective date of this section.

(b) In counties containing a population of less than 500,000, the county board may by ordinance provide for a county pension department with such personnel, qualifications, duties and compensation as the county board may determine in conformity with the rules and regulations of the state department of public welfare as provided in subsection (2) of section 49.50. Such state department of public welfare shall administer within such county all laws of this state relating to old-age assistance, aid to dependent children and blind pensions, or any or all of such forms of public assistance. The creation of such county pension department by said ordinance shall not prevent the discontinuance thereof by subsequent adoption of an ordinance reinstating the method of administering such forms of public assistance existing just prior to the effective date of this subsection.

(3) The state shall reimburse the counties for expenditures incurred for personnel employed in the administration of the old-age assistance and blind pensions, to an amount not exceeding 4 per cent of the total paid by each such county to beneficiaries of these respective forms of assistance; provided, that if the appropriation in subsection (6) of section 20.18 is insufficient for the payment in full of the amounts due the counties under this subsection such appropriation shall be equitably prorated. Payment of the state aid for the administration of old-age assistance and blind pensions shall be made quarterly on certification of the state department of public welfare, at the same time and in the same manner as state and federal aid for old-age assistance and blind pensions.

(4) Whenever the state shall prorate the appropriations for state aid for old-age assistance, aid to dependent children, and blind pensions among the counties entitled thereto, the counties may reduce the amounts allowed to the beneficiaries in the following month, by the amount of the state and federal aid unpaid. Such reduction shall be made on a pro rata basis and shall apply until the state and federal aid is paid in full. The amount unpaid by the state as determined with respect to amounts actually expended by the counties for any of these forms of public assistance shall remain as a charge against the state.

(5) The use of the words "county court", "county judge", or "juvenile judge" in any statute relating to old-age assistance, aid to dependent children, and blind pensions, unless the context indicates otherwise, means the county court, county judge, juvenile judge or county pension department, whichever has been designated by the county board under this section to administer old-age assistance, aid to dependent children, and blind pensions in the county. [1935 c. 554; Spl. S. 1937 c. 7; 1939 c. 533; 1943 c. 93]

Note: Member of county board cannot be appointed as assistant under (1) nor as member of county pension department under (2) (b). 24 Atty. Gen. 698, 762.

Under chapter 554, Laws 1935, county judge or county pension department is substituted for county board as authority responsible for administration of blind relief. 24 Atty. Gen. 710.

County judge is ineligible to serve as member of county pension department. 24 Atty. Gen. 765.

See note to 59.06, citing 24 Atty. Gen. 768.

Justice of peace may serve as member of county pension department. 25 Atty. Gen. 55.

Offices of district attorney and member of county pension department are incompatible. 25 Atty. Gen. 178.

County board may create county pension department at special meeting of board. 25 Atty. Gen. 190.

It is function of county board to determine whether assistance grants shall be reduced in accordance with (4). Formula for reduction specified in (4) prevails over formula specified by 49.38 (2). County may reduce assistance in less amount than speci-

fied in (4). Basis of calculations for reduction discussed. 25 Atty. Gen. 441.

State pension department may legally reimburse county for old-age assistance, aid to dependent children and blind pensions paid out by illegally appointed pension director. 26 Atty. Gen. 52.

Member of county board may not be appointed pension director during term for which he is elected even though he has resigned from county board. 26 Atty. Gen. 52.

Upon creation of county pension department pursuant to (2), such department succeeds to all records pertaining to assistance laws in possession of county judge. 26 Atty. Gen. 82.

Town clerk is eligible to serve as member of county pension department. 26 Atty. Gen. 136.

County board may not delegate to a committee all of its authority pertaining to the selection, retention, qualifications and compensation of the personnel of a county pension department. 28 Atty. Gen. 353.

Grants made and not amounts actually paid to beneficiaries are to be used as the basis for figuring reimbursement of counties and prorating among counties under

47.08, 48.33, 49.38 and 49.51. 28 Atty. Gen. 499. and sailors relief commissioner and may receive remuneration for both positions. 29 Full-time administrator of county pension department may hold office of soldiers Atty. Gen. 71.

49.53 Limitation on giving information; department rules. The use or disclosure of information concerning applicants and recipients for any purpose not connected with the administration of aid to dependent children, blind pensions and old-age assistance is prohibited, and the state department of public welfare shall in conformity with the federal social security act and any rules or regulations made pursuant thereto by the federal social security board adopt rules and regulations restricting the use and disclosure of information concerning such applicants and recipients. When adopted by the state department of public welfare, such rules and regulations shall become effective upon publication in the official state newspaper, and copies of such rules and regulations shall be filed in the office of the secretary of state and the offices of the county clerks. Any person violating the provisions of this section or of any rule or regulation promulgated hereunder shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$500 or by imprisonment in the county jail for not less than 10 days nor more than one year, or by both such fine and imprisonment. [1939 c. 533; 1943 c. 93]

Note: Furnishing to unit of government, such as school district, information or records to enable it to determine liability arising out of legal settlement question or liability predicated upon 40.21 (2) does not contravene terms or policy of 49.53. 29 Atty. Gen. 467.

[**49.60 Emergency appropriations to match aid under federal security act for blind pensions, dependent children and old-age assistance.** (Ch. 6, Laws 1937, as amended by Ch. 325, Laws 1937) Omitted because obsolete.]