accept employment in another County and that he had no thoughts of requiring medical treatment at the time he left. He was changing his residence to conform with the location of opportunity for employment. His residence is established by law based upon his intent and his actions, and it is my opinion that his residence at the time he became ill and required medical attention was in Musselshell County.

It is my conclusion based upon the provisions of Section XII, Part III, Chapter 82, Laws of 1937, that Musselshell County became responsible for the payment of Old Age Assistance benefits to X on July 1st, 1949. At that time Wheatland County had provided assistance for the six months period specified in the statute and the obligation to provide further assistance rested with Musselshell County.

I am therefore, of the opinion that a recipient of Old Age Assistance who moves away from a County with the intention of changing his residence shall receive assistance from the first County for a period of six months after which the County to which he has moved shall be charged by the State Department of Public Welfare with the County share of such assistance.

If the recipient moves to another County and intends only to remain there temporarily to take advantage of medical faciilties and then plans to return to the original County, the original County will continue to be responsible for benefits paid to such recipient.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.

Opinion No. 56

Labor—Wages, Vacation Pay Considered the Same as—Vacation Pay, Wages Include.

Held: 1. Vacation pay which has been earned and is now owing is considered to be wages and is collectable in the same manner and under the same statutes as any other kind of wages.

September 17, 1949.

Mr. Robert C. Brown, Chief
Labor Division
Department of Agriculture, Labor, Industry
Helena, Montana

Dear Mr. Brown:

You have requested my opinion upon the following question:

"Is vacation pay wages collectable in the same manner and under the same statutes as any other kind of wages?"

The contract of employment upon which your question is based provides that all employees of the company who work a total of 1400,

or more, hours in a 12 month period ending on May 1st of each year, are entitled to 40 hours' vacation with pay if they have been in the employ of the company less than five years, and 80 hours' vacation with pay if they have been in the employ of the company five years or more.

Your precise question has never been litigated in the courts of the State of Montana so far as I can ascertain, and therefore there is no Montana precedent upon which to base an opinion as to whether vacation pay is to be treated in the same manner as wages. However, this question has been passed on in other jurisdictions and the cases seem to be in substantial accord.

One of the leading cases on the question is that of In Re Willow Cafeterias, Inc., 111 Fed. (2nd) 429. The decision is that of the 2nd Circuit Court of Appeals, the case arising upon appeal from the United States District Court for the Southern District of New York. The plaintiff in that case had been employed by the defendant company under a contract which read as follows:

> "All full time employees who will have concluded six months' employment during the months of June, July, August, or September shall be entitled to three days' vacation with pay. All full time workers who will have completed one year's employment during the said months shall be entitled to a week's vacation with pay."

The defendants business failed and the defendants were adjudicated bankrupt. The employees of the defendants, of which the plaintiff was one, were summarily discharged. The plaintiff sued for the one week vacation due him contending that the week's vacation was the equivalent of one week's wages and therefore due him as an expense of administration. The court found for the plaintiff and held as follows:

> "A vacation with pay is in effect additional wages. It involves a reasonable arrangement to secure the well being of employees and the continuance of harmonius relations between employer and employee. The consideration for the contract to pay for a week's vacation had been furnished, that is to say, one year's service had been rendered prior to June, so that one week's vacation with pay was completely earned and only the time of receiving it was postponed. If the employer had discharged the employee wrongfully after the latter had done the work necessary to earn a vacation he could not be deprived of the benefits due him."

The Willow Cafeterias case has been followed, approved and confirmed in the following later cases: In Re Public Ledger, 161 Fed. (2d) 762; Division of Labor Law Enforcement, State of California v. Sampsell, 172 Fed. (2nd) 400; In Re Capital Foundry Corporation, 61 Fed. Supp. 352; In Re Kinney Aluminum Co., 78 Fed. Supp. 565.

The question of whether vacation pay should be considered as wages which are a subject for arbitration under a collective bargaining agreement was considered in the case of Brampton Woolen Co. v. Local Union 112, 61 A. (2nd) (New Hampshire) 796, the court holding as follows:

> "We believe that ordinary men in the postion of these individual defendants would have thought of vacation pay as part of their pay or wages and no reason appears why the same meaning should not have been equally plain to their employer. There can be little doubt that workers generally consider the money which comes to them as a result of their labors, whether it be regular pay, overtime or vacation pay, as a part of their wages and courts have recognized this fact."

I have not found authority contrary to the cases above cited, which hold that vacation pay shall be considered to be wages. In view of the unanimity and weight of the authorities I believe the rule in Montana should follow the decisions and reasoning in the above cited cases.

Therefore it is my opinion that vacation pay which has been earned and is due and owing must be considered in the same category as wages and is collectable in the same manner and under the same statutes as are wages.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.

Opinion No. 57

Schools—School Districts—Transportation of Pupils, Discretionary With Board of Trustees.

Held: 1. Under Chapter 200, Laws of 1949, the Board of Trustees of any School District or County High School has discretionary power in the furnishing of transportation to the students of the District.

2. If the Board of Trustees elects to furnish transportation to any students within the District, they must furnish such transportation to all students within the District.

September 21, 1949.

Mr. James H. Higgins
County Attorney
White Sulphur Springs, Montana

Dear Mr. Higgins:

You have requested my opinion concerning the interpretation to be placed on the word "may" as found in Section 1, Chapter 200, Laws of