

Claims—Preference—State of Montana—State Hospital—Insane Persons.

The claim of the state hospital for the care and maintenance of an insane person is a preferred claim upon the assets of the estate of such person, save and except the claim for funeral expenses.

L. A. Leskey, Esq.,
Accountant, Montana State Hospital,
Warm Springs, Montana.

My dear Mr. Leskey:

You have submitted the following question to this office:

Anna Nordhop was committed to your institution August 23, 1919, from Stillwater county. Her expenses were paid up to February 28, 1922. You have filed a bill with the guardian of the estate for \$365.00 for care of the patient while committed to your institution. It appears that there are some \$400.00 on hand to be distributed and that there are other creditors who have presented claims. The question is whether the state is a preferred creditor to the extent of its claim.

Section 10307, Revised Codes of 1921, provides:

"The debts of the estate, subject to the provisions of Section 8353, must be paid in the following order:

- "1. Funeral expenses.
- "2. The expenses of the last sickness.
- "3. Debts having preference by the laws of the United States, or of the state."

24 C. J. 424 lays down the following rule with reference to preferences given the state:

"The common law of England giving preference to debts due the crown has in some states been declared to be in force so as to give priority to debts due the state, it being held that such debts have priority over the claims of citizens except as against antecedent liens, which priority cannot be taken away except by express statutory provisions. In many states the statutes expressly give a preference to debts due the state or 'the public,' but such statutes apply only where the debt of the state and that of the individual are otherwise of equal degree and equally entitled to payment."

The Supreme Court of this state has recently held in the case of *State v. Madison State Bank*, 218 Pac. 652, that the state, by virtue of its sovereignty, is entitled to preference over unsecured general creditors of an insolvent bank in which its funds are deposited so long as the debtor bank retains title to the property out of which

payment is made. This case affirmed the case of Aetna Acc. & Liability Co. v. Miller, 54 Mont. 377, although in a recent case (Bignell v. Cummings, not yet reported) the Court held that a county is not entitled to a preference over other unsecured creditors.

Under Section 1430, Revised Codes of 1921, none but indigent persons are permitted to be received into the insane asylum, unless their care and maintenance are paid, while under Section 1444 the property of the insane person must be subjected to the payment of his maintenance at the state institution.

Maintenance of an insane person at the state hospital should be classed as "expenses of the last sickness" and is entitled to payment after "funeral expenses" under the provisions of Section 10307 without regard to the fact that it has preference by reason of being a debt due the state. Under Subdivision 3 of Section 10307 it has preference as a debt due the state.

It is, therefore, my opinion that this claim is entitled to be paid after the funeral expenses are paid.

Very truly yours,

L. A. FOOT,
Attorney General.