

Opinion No. 182.

**Public Welfare—Old Age Assistance.
Conditional Grants.**

HELD: A county board of public welfare may not require as a condition of grant of Old Age Assistance, that the recipient transfer to the board any property in trust or otherwise.

October 21, 1937.

Mr. Frederic R. Veeder
Director of Public Assistance
Department of Public Welfare
Helena, Montana

Dear Mr. Veeder:

Beg to acknowledge your request for an opinion on a question concerning the granting of Old Age Assistance. You inform me that "in several instances persons have applied for Old Age Assistance and have had from \$50.00 to \$300.00 in cash in the bank or in postal saving, and who have informed the County Boards of Public Welfare that this money was to be used for burial purposes."

You ask if under such circumstances the county board is within its powers in approving such cases, and what amount should be allowed for burial expenses. You further ask if the county board would have authority to fix a definite amount to be set aside for burial expenses, and require as a condition of the grant that such sum be placed in trust with the county board for such purpose.

If such authority exists, it must, of course, be provided for by Chapter 82, Laws, 1937. There is, of course, no specific provision giving such authority to either the state or county departments. Under the provision of the first State Old Age Pension Act, it was provided that the Old Age Pension Commission could demand the assignment or transfer of property held and owned by an applicant, as a condition of the grant. It was given authority to manage such property, and sell the same, if deemed advisable, and for the return of the balance to the recipient if the grant were withdrawn, or the recipient ceased to require it. See Section 6 (c), Chapter 72, Laws, 1923.

Chapter 170, Laws of 1935, which was the second State Old Age Pension Act, provided that "if the County Old Age Pension Commission shall deem it necessary, it may, with the consent of the State Old Age Pension Commission, require as a condition to the grant or continuance of assistance in any case, that all or any part of the property of a person applying for aid be transferred to the County Old Age Pension Commission." It further contained similar provisions as to management and sale of the property, as the 1923 Act. However, the present Welfare Act does not contain any such provision. It is significant that such provision was entirely omitted from Chapter 82. It would therefore appear that it was the intention of the legislature that no such authority should be granted.

Assistance under the Welfare Act is based entirely upon need. It is the duty of the County Board to determine the need of the applicant and be governed by this fact only. Under the Act, an applicant may be possessed of property, regardless of value, and even though he has an income from such property, if such income is insufficient for his support, yet he may be eligible for Old Age Assistance. In determining need and the amount of grant, the board must take into consideration the kind and character of property held by the applicant, and if the same provides him with an income sufficient to maintain him in decency and health, to deny aid; otherwise to grant an amount which, when added to all other income, is sufficient to maintain the applicant in decency and health.

It is, therefore, my opinion that a County Board of Public Welfare has no authority to require as a condition of a grant of Old Age Assistance that the applicant transfer any property held by him to the county, in trust, or otherwise, but must determine the eligibility to receive assistance entirely upon the basis of need.