

Dear Sir:

You have requested my opinion relative to matter set forth in letter addressed to you by S. A. Simonson, chairman of County Old Age Pension Commission of Phillips County, Montana, under date of March 3, 1937.

It appears from the statement in Mr. Simonson's letter that certain of the Old Age Pension recipients of Phillips County have either listed their property with the Resettlement Administration for sale, or have already sold to this Administration. The question involved is, shall the Old Age Pension Commission recover from such recipients the amount of assistance paid them under their Old Age Pension grant prior to their receipt of money from the sale of their property. Or, whether such amount of such assistance payments shall be deducted from the money paid for such land.

In answering this question, we must assume that the grants were made after full investigation which disclosed at the time that the applicant did not have sufficient income to maintain him or her in decency and health. The fact that the recipients at the time of the grant owned real property, would not make them ineligible for the grant, provided the income from such property was not sufficient for their needs. We must further assume that this question must be determined under the provisions of Chapter 170, Laws of 1935, rather than under Chapter 82, Laws of 1937.

Section 21 of Chapter 170, provides that at the death of a recipient the total amount of assistance paid may be recovered as a preferred claim against the estate of such recipient, or the last survivor of a married couple.

Section 22 provides, within the discretion of the Commission, for an assignment of the property of the applicant as a condition to the grant, and when made, the property is to be managed by the commission, and the income therefrom paid to the recipient, and upon the death of the recipient, or the discontinuance of the grant during his lifetime, the property is to be returned to the owner or beneficiary, subject to a lien for all payments of assistance made to him.

Opinion No. 74.

Old Age Pensions—Lien of.

HELD: There is no provision of Chapter 170, Laws 1935, creating a lien on proceeds received from sale of property held by recipient at time of grant.

Old Age Pension Commission may not recover amount of assistance paid recipient, from the proceeds of sale of property held by recipient at time of grant.

March 31, 1937.

Department of Public Welfare
I. M. Brandjord, Administer
Helena, Montana

Re: Lien on proceeds from sale of recipients real property.

The only provision of Chapter 170 which may in anywise be applicable to the facts under consideration is Section 15, which provides:

"Section 15. Subsequent Increase of Income. If, at any time during the continuance of old age assistance, the recipient thereof or the husband or wife of the recipient, becomes possessed of any property or income, in excess of the amount enjoyed at the time of the granting of the assistance, it shall be the duty of the recipient immediately to notify the County Old Age Pension Commission of the receipt and possession of such property or income, and the County Old Age Pension Commission may, on inquiry, either cancel the assistance or vary the amount thereof, in accordance with circumstances, and any excess assistance theretofore paid shall be returned to the state and the county in proportion to the amount of such assistance paid by each respectively, and be recoverable as a debt due the state and the county."

Applying the provisions of this section to the facts at hand, the duty is placed upon the recipient to notify the County Old Age Pension Commission of the receipt of this income. The County Commission must then make inquiry and may cancel the assistance or vary the amount thereof. If they deem the income so received to be sufficient to maintain the recipient, they must cancel the assistance grant; if they find it insufficient, then they must vary the grant. Undoubtedly, under this provision, should the Commission learn from sources other than notice by the recipient, of such income, they should act upon such information as upon information received by such notice. But this section does not provide for a lien upon the income from the sale of such property. And without a provision of law for such a lien, there can be none. If, however, assistance has been paid since the receipt of such income by the recipient, then in such event the amount of any excess assistance might be recovered from the recipient.

Therefore, applying all provisions of Chapter 170 applicable to the facts as stated in the inquiry, it is my opinion

that there is no authority for the recovery of the amount of assistance paid to an Old Age Pension Recipient, from the proceeds of the sale of property held by such recipient at the time of the grant of such assistance, under the facts of the instant inquiry.