

April 23, 1940.

Mr. Wm. A. Lane, Director
Auditing & Finance Division
Department of Public Welfare
Helena, Montana

Dear Mr. Lane:

You have requested my opinion as to whether or not the claims of the state and counties against estates of deceased recipients of Old Age Assistance take precedence in order of payment after funeral expenses and expenses of administration.

Section 10307, R. C. M., 1935, provides the order in which the debts of an estate shall be paid.

Section 10309, R. C. M., 1935, provides that in the event the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class are fully paid.

Section XI, Part III, Chapter 82, Laws of 1937, provides in part as follows:

“On the death of any recipient of old age assistance the total amount of assistance paid under this act shall be allowed as a claim against the estate of such person after funeral expenses not to exceed one hundred (\$100.00) dollars have been paid and after the expense of administering the estate has been paid * * *.”

Section 10307, supra, was enacted prior to Chapter 82 and is a general statute dealing with the same subject as Section XI, Part III, Chapter 82, which is a special statute.

The general rule of construction of statutes where a general and special statute seem to conflict has many times been expressed by our Supreme Court. The language of the Court in the case of Reagan v. Boyd, 59 Mont. 453, seems to be pertinent to the question here at issue. The Court there said,

“Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together, and harmonized, if possible, but to the extent of any necessary repug-

Opinion No. 229.

Public Welfare—Old Age Assistance— Estates, Claims, Order of Payment.

HELD: 1. Claims of the state and county against estate of deceased old age recipient must be paid after funeral expenses not to exceed one hundred (\$100.00) dollars, and expenses of administering the estate have been paid.

2. If funds are insufficient such claims must be paid in the order mentioned pro rata before claims of lower classes as provided by Section 10307, R. C. M., 1935.

nancy between them, the special will prevail over the general statute, and where the special statute is later, it will be regarded as an exception to or qualification of the prior general one."

And in the case of *Carland v. Board of Custer County Commissioners*, 5 Mont. 579, where one section of our statute provided that a county treasurer shall execute a bond before entering upon the discharge of his duties, and another statute provided that every county officer shall execute his bond within 20 days after the commencement of his term of office, the Court held that the special provision controls the more general one.

A later special statute is regarded as an exception to or qualification of a prior general act. (*State v. Millis*, 81 Mont. 86.)

Section 10307 provides generally for the order of payment of the debts of an estate. Subsequently the legislature provided for payment of the claims of the county and state for old age assistance grants out of the estates of deceased recipients, after funeral expenses not to exceed one hundred dollars and expenses of administering the estate were paid. There would seem to be a conflict. However, when read together, the two can be harmonized. Applying the rule expressed in the *Reagan* case, *supra*, the provision of Section XI of Part III, Chapter 82, being a later statute, would prevail and be regarded as an exception to or qualification of the prior general statute, Section 10307. Hence, in estates of deceased old age recipients, the claims of the county and state for assistance granted during the lifetime of deceased must be paid after funeral expenses not to exceed one hundred dollars have been paid and expenses of administering the estate have been paid.

In view of the provisions of Section 10309, *supra*, should there be insufficient funds to pay all claims, then the claims of the county and state in the order herein mentioned should be paid either in full or in part to the extent of the funds available before any other claim is paid.