

Opinion No. 263.**Public Welfare—Old Age Assistance—
Lien.**

HELD: The state or county has no lien on property of recipient of old age assistance.

The state or county may not require as a condition of granting old age assistance that the applicant transfer his property.

September 30, 1940.

Mr. Clyde Hayden
County Attorney
Hamilton, Montana

My dear Mr. Hayden:

In your letter of August 20 you advise that the county welfare department of your county desires information as to what rights the county and state have in the property, real or personal, of a recipient of old age assistance.

There is no such thing as a lien provided under Chapter 82, Laws of 1937, as amended by Chapter 129, Laws of 1939. Section II of Part III of Chapter 82 provides, as you know, that on the death of such recipient the total amount of assistance paid him shall be allowed as a claim against the estate after funeral expenses not to exceed \$100.00 have been paid and after the expenses of administering the estate have been paid. The section further provides that no claim may be enforced against any real estate of a recipient while it is occupied by the surviving spouse or dependent. This, I take it, merely gives the state or county a right to have allowed a claim against the estate of an old age recipient. Therefore, if such recipient dies, leaving property which is subject to probate, the claim of the state or county must be allowed against

the estate after funeral expenses not exceeding \$100.00 and the cost of administering the estate have been paid. However, if real estate is occupied at the time of his death by his surviving spouse or a dependent, such property while so occupied could not be sold to enforce the claim of the state or county.

Under Section II of Part III of said chapter, as one of the requirements for granting assistance, it is provided that the applicant must not have made an assignment or transfer of property for the purpose of rendering himself eligible for assistance within two years immediately prior to the filing of the application. Under Section XV of Part I of this chapter it is made a misdemeanor for any one knowingly obtaining or attempting to obtain or aiding or abetting any one to obtain by means of wilfully false statements or representations or by impersonation, or other fraudulent devices, public assistance to which he is not entitled, assistance greater than that to which he is justly entitled; or whoever aids or abets in buying or in any way disposing of the property, either personal or real, of a recipient of assistance without the consent of the county department and with the intent to defeat the purposes of the act. These are the only sections having any bearing upon the property of an old age recipient. You will note that Section XV is a penal statute and of course would be of no avail to the state or county in enforcing its claim.

You will note that under the provisions of Chapter 170, Laws of 1935, which of course was repealed by Chapter 82, the legislature provided that the county old age pension commission may in its discretion require as a condition for receiving old age assistance that the applicant transfer his property to the county old age pension commission, and it authorized the commission to manage the property, lease, or sell it and to pay the income to the recipient, and upon his death to deliver any surplus to the heirs after deducting any amount paid from county funds to the recipient during his lifetime. The mere fact that the legislature omitted this provision from the Act of 1937 would indicate that they did not intend the state or county to have any lien or hold on the property of an old age assistance recipient, nor that he should

be required to transfer his property as a condition of receiving the grant.

It is, therefore, my opinion that the state or county has no lien of any kind or nature on the property, real or personal, of an old age recipient or any recipient of relief.