

Opinion No. 269.**Public Welfare—Old Age Assistance—
Estates, Claims, Need Not Be
Presented.**

HELD: A claim for old age assistance paid during life of deceased recipient need not be presented to administrator or executor within the time prescribed in the notice to creditors.

December 4, 1940.

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

Dear Sir:

You have advised that a claim presented to the estate of a deceased recipient of old age assistance has been rejected by the administrator on the ground that it was presented after the time for presenting claims had expired. You ask for my opinion as to whether or not the statutes relative to presenting claims against an estate apply to the State of Montana.

Section 10173, Revised Codes of Montana, 1935, provides in part as follows:

"All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented within the time limited in the notice, and any claim not so presented is barred forever; * * *"

Section 10178, R. C. M., 1935, as amended by Chapter 192, Laws 1939, provides that when a claim is rejected it must be filed with the clerk within ten days after rejection, and the clerk must, within three days thereafter, notify the claimant. It further provides that the claimant must bring suit thereon within three months after the date of the filing of the rejected claim, and if suit is not brought within the three months it is forever barred.

Section 10179, R. C. M., 1935, provides:

"No claim must be allowed by the executor or administrator, or by the judge, which is barred by the statute of limitations. * * *"

Section XI of Part III, Chapter 82, Laws of 1937, provides 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. No claims shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse, or dependent.

"If the federal law shall so require, the federal government shall be entitled to a share of any amounts collected from recipients or from their estates equal to not more than one-half of the amount collected and the amount due the United States shall be paid promptly by the state to the United States government. The remaining one-half of the amount collected shall be distributed to the state and county in proportion to the total amount of such assistance paid by each."

The question then arises as to whether or not the state is required to file a claim against an estate of a deceased recipient of old age assistance within the time provided by statute for the filing of claims.

The right of the state for repayment from the estate arises by virtue of the provisions of Section XI, Part III, Chapter 82, where it is provided that the amount paid decedent during his lifetime as assistance under the Act shall be allowed as a claim against the estate, after funeral expenses not to exceed \$100.00 have been paid. It is a preferred claim.

Our Supreme Court in the case of *Nathan v. Freeman, et al.*, 70 Mont. 259, at page 267, says, in speaking of the statutes quoted above:

"These statutes are plain and unambiguous, but have reference only to an indebtedness of a deceased person, contracted by him in his lifetime, and then existing, whether due, not due or contingent, excepting mortgage debts (Id. Sec. 10173), and funeral expenses specified as a preferred claim against the estate of a decedent (Id. Sec. 10307). They can have no application to obligations arising subsequent to the death of a person because of existing executory contracts. * * * Claims existing before death are in one category, and those arising subsequently in another. The former must be presented or they are barred forever, while the latter class are incident to the administration of the estate. The claims required to be presented by the statute as a condition precedent to the maintenance of an action thereon are existing demands against a decedent at the time of his death."

The claim in question was not in existence at the time of death. It did not arise until after the death of the recipient. No obligation to repay assistance granted under Chapter 82 exists generally. The only provision requiring such repayment is found in Section XI of Part III, supra, and then only after the death of the recipient and in the event recipient leaves an estate. It is made a preferred claim payable as "an incident of the administration." The statute (Section XI, supra) provides that it shall be allowed, after funeral expenses and expenses of administration have been paid.

It therefore follows that the claim is not one within the provisions of Section 10173, and therefore need not be presented within the time prescribed by the notice.