

No. 194

**WELFARE DEPARTMENT—PUBLIC ADMINIS-
TRATOR—CLAIMS—ESTATES**

Held: Department of Public Welfare must petition the Public Administrator to take charge of the estates when the Public Welfare Department has a claim against the estate of a decedent who dies intestate leaving an estate.

July 31, 1941.

Mr. I. M. Brandjord, Administrator
State Department of Public Welfare
Helena, Montana

Dear Mr. Brandjord:

You have inquired:

“Does this department have the right to petition the District Court to appoint an administrator; or do we have the right to ask the Public Administrator of a county, wherein there is one, to take charge of the estate?”

Section 10068 of the Revised Codes of Montana, 1935, states the order in which persons are entitled to administer estates. In that section it provides the Public Administrator shall precede a creditor in the applications for letters of administration of the estate of a deceased person who has died intestate leaving no surviving husband or wife, children, father or mother, brothers or sisters, grandchildren, or next of kin who might share in the distribution of the said estate. Said section provides as follows:

"Section 10068. Order of persons entitled to administer—partner not to administer. Administration of estate of all persons dying intestate must be granted to some one or more of the persons hereinafter mentioned, the relatives of the deceased being entitled to administer only when they are entitled to succeed to his personal estate, or some portion thereof, and they are, respectively, entitled therein in the following order:

1. The surviving husband or wife, or some competent person whom he or she may request to have appointed.
2. The children.
3. The father or mother.
4. The brothers.
5. The sisters.
6. The grandchildren.
7. The next of kin entitled to share in the distribution of the estate.
8. The public administrator.
9. A creditor.
10. Any person legally competent.

"If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of the estate."

It will be noted in the above section the Public Administrator comes before a claimant, in which status your Department of Public Welfare would be classified. Consequently, it is my opinion your request for the administration of the estate of a deceased person—dying intestate—should not be made until such time as the Public Administrator refuses to act or is incapable of acting; and, in the event the estate is likely to be wasted, lost or dissipated, it is incumbent upon the Public Administrator immediately to take possession of said estate of persons dying within his county leaving no heirs or provisions for the proper administration of his estate. (See Section 9990, Revised Codes of Montana, 1935.)

Therefore, it is my opinion your request for the administration of the estate of a decedent dying intestate, leaving an estate on which you desire to establish a claim for reimbursement, should be directed to the Public Administrator of the respective county to take charge of said estate and to proceed with the administration thereof.

Sincerely yours,

JOHN W. BONNER
Attorney General