

Revised Codes of Montana,
1935.

October 18, 1943.

Mr. Robert Weir, Chairman
Board of County Commissioners
Cascade County
Great Falls, Montana

Dear Mr. Weir:

You have requested an opinion as to an interpretation of the provisions of Chapter 178, Laws of 1943, and in particular as to the effect of the first sentence, reading as follows:

"Upon the death of any recipient of old age assistance his estate, to the extent of five hundred dollars (\$500.00), shall be exempt from claim for old age assistance paid under this act." (Emphasis mine.)

This chapter is an amendment of Section XI of Part III of Chapter 82, Laws of 1937. That provision as existing prior to the amendment was interpreted by a former Attorney General (Opinion No. 229, Vol. 18, Report and Official Opinions of the Attorney General) to mean that the claim of the state for payments made for old age assistance against the estate of recipient was a preferred claim and was to be paid in cases where there were insufficient funds to pay all claims in its entirety after the payment of the sum of \$100 for funeral expenses.

This interpretation in cases where the estates of old age assistance recipients were insufficient to pay all claims against the estate, that the funeral expenses could only be paid to the extent of \$100 and the payment of all other claims was deferred until the claims of old age assistance were paid.

In considering an amendatory statute it will be presumed that the legislature in adopting an amendment intended to make some changes in existing law, and therefore the courts will endeavor to give some effect to the amendment. (State ex rel Federal Land Bank v. Hays, 86 Mont. 58, 282 Pac. 32.)

By this amendment the legislature did not exempt the first \$500.00 of the estate of a deceased old age recipient from the preferred claims under Sections 8353 and 10307, Revised Codes of Montana, 1935, but only from the preferred claims of the old age assistance paid under the act.

Opinion No. 147.

Old Age Assistance—Welfare Act—
Exemptions—Claim of State.

Held: Under this statute, if all the claims aside from the claim of the state, amount to \$500 and the funds of the estate are in excess of \$500, then the preferred claims will be paid from the first \$500, and the residue of the estate will be applied on the claim of the state, and/or any other claims in the same category or class as provided by Sections 8353 and 10307,

It is also clear that by this mandatory act the legislature with reference to the type of claim under consideration deprived them of their preference right and they are now payable in the order prescribed by Sections 10307 and 8353, Revised Codes of Montana, 1935.

These sections do not contain any exemption of assets belonging to the estate from the payment of claims, and therefore the \$500 mentioned in the act is not exempt from the payment of the preferred claims under these two sections. And under these two sections funeral expenses, expenses of the last illness and certain other classes of claims have a preference, including the expenses of administration.

Under this statute if all the claims aside from the claim of the state amount to \$500.00 and the funds of the estate are in excess of \$500 then the preferred claims will be paid from the first \$500, and the residue of the estate will be applied on the claim of the state, and/or any other claims in the same category or class as provided by Sections 8353 and 10307, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General