

**Opinion No. 196.****Public Welfare—Department of Public Welfare—Old Age Assistance.**

Held: The petitioner for the appointment of a guardian of an incompetent person must in every instance tender to the clerk of the court the statutory filing fee.

April 1, 1944.

Mr. Raymond Shelden  
County Attorney  
Carter County  
Ekalaka, Montana

Dear Mr. Shelden:

Your inquiry has been received, submitting to this office certain questions on which you desire an opinion, and since you have variously stated your questions, I am taking the liberty of restating your questions for purposes of convenience in rendering an opinion. As I view it, they may be stated as follows:

1. What is the duty and obligation of the county attorney, as such, under existing law with reference to applications for guardianship of recipients of old age assistance?
2. May the clerk of the district court accept such applications or petitions without collecting the statutory fee for filing such applications?

It is the underlying principle of our public welfare statutes that only those persons are to receive old age assistance who are in need and the need of the individual applicant is the basis for arriving at the amount of old age assistance grants. Hence, the recipients are without sufficient funds to adequately take care of themselves.

Section 8 of Part III, Chapter 82, Laws of 1937, states:

“If the person receiving old age assistance is, in the opinion of the County Public Welfare Department, found incapable of taking proper care of himself or his money, the County Welfare Board may make the necessary legal arrangements for the appointment of a guardian . . .”

This statute relates to the appointment of guardians of persons already receiving old age assistance who, in the judgment of the county welfare depart-

ment, are incompetent to take care of themselves and their financial affairs. It authorizes in such cases the taking of necessary legal action for the appointment of a guardian. The necessary legal arrangements are those which are found in our statutes, the filing of a petition with the clerk of the district court by a relative or friend seeking the appointment of a guardian, containing the necessary allegations of fact. (Section 10412, Revised Codes of Montana, 1935.) Under this statute it is necessary to give five days' notice in the manner provided by law; a hearing is had before the judge of the court, after which a guardian may be appointed. (Section 10413, Revised Codes of Montana, 1935.)

If in a given case it is determined by the county welfare board that a guardian is necessary, the making of the necessary legal arrangements would be the filing of a petition, the giving of notice, and a conduct of the hearing.

It is a fundamental rule of statutory construction that a statute must be construed so that no word, clause or phrase therein is rendered meaningless, if such a construction can be reasonably found. (State ex rel. Nagle v. Sullivan, 98 Mont. 425, 40 Pac. (2d) 995, 99 A. L. R. 321; In re Wilson Estate, 102 Mont. 178, 56 Pac. (2d) 733, 105 A. L. R. 367.)

Applying the above rule of statutory construction, if we give effect to the clear meaning of the words of the statute above quoted, it is the duty of the department of public welfare to make legal arrangements for the appointment of a guardian. This would include the securing and filing of a petition, the giving of notice, and the conduct of the hearing.

The county department of public welfare is not a political subdivision of the state. The county is a political subdivision of the state, and therefore the department of public welfare is not a legal entity. This was the concept of the legislature with reference to the State Department of Public Welfare, as we find that although it can buy property, the title to such property must be held in the name of the state as trustee for the department. (Section 13, Part I, Chapter 82, Laws of 1937.) Hence, the department itself could not become a petitioner for the appointment of a guardian of a recipient of old age assistance.

The first step in the performance of this duty imposed by the law upon the county department would be the securing of a petitioner, which might either be some member of the staff of the department or some relative or friend. The petitioner would then prepare and file a petition, give the statutory notice and sustain the allegations of his petition, either by his own testimony or the testimony of witnesses at the hearing before the district court.

By the provisions of subdivision C of Section 19, Part I, Chapter 82, Laws of 1937, the county attorney is declared to be ex officio the legal advisor to the county welfare board and "shall render such legal services as the county department may require." The county department is duty bound in certain instances to make the legal arrangements for the appointment of a guardian. The county attorney is duty bound to perform such legal services as they require. It would therefore be the duty of the county attorney, if the county welfare department has determined that a guardian is necessary for an incompetent recipient of old age assistance and desires to make the legal arrangements for the appointment of a guardian and further requests the county attorney to conduct such arrangements, if requested, to prepare the petition, attend to the issuance of proper notice and attend and conduct the hearing on the petition, without any additional compensation except his salary provided by law. After the appointment of the guardian he would not be obligated to represent the guardian appointed by the court. Our statute with reference to the appointment of guardians does not contemplate that in every instance the petitioner would be appointed the guardian, and after such appointment by the court the guardian if he desired the services of an attorney would have to make his own arrangements, select his own counsel, if any. When the county attorney has concluded the hearing for the appointment of a guardian he has completed his duty and obligation as counsel for the welfare department in these proceedings.

Section 4919, Revised Codes of Montana, 1935, provides that the clerk of the district court must collect the sum of \$5.00 as a fee for the filing of a petition for letters of guardianship.

Section 9810, Revised Codes of Montana, 1935, exempts a county, or any of its officers, from the payment of fees when prosecuting or defending an action on behalf of the state or county.

Section 9809, Revised Codes of Montana, 1935, provides that any person by filing an affidavit stating that he has good cause of action and unable to pay the costs, it is made the duty of officers of the courts to issue writs and serve the same and perform all services in the action without demanding or receiving their fees in advance.

It will be noted in both of the last mentioned statutes that the exemption from the obligation to pay fees is limited to actions. The term "action" is defined as "an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement of protection of a right, the redress or prevention of a wrong, or the punishment of a public offense." (Section 8997, Revised Codes of Montana, 1935.) Under this definition the proceeding for the appointment of a guardian of an incompetent person is clearly not an action as defined by the legislature, and since the statutes which relieve parties from the payment of fees relate only to actions, they are without application here. Accordingly, it is my opinion that the petitioner for the appointment of a guardian of an incompetent person must in every instance tender to the clerk of the court the statutory filing fee.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General