

Opinion No. 11.

Old Age Assistance—Assistance, Old Age—Public Welfare Act—Recipients, Old Age Assistance—Legislature.

Held: In view of the positive language of the Public Welfare Act, it was necessarily implied that the act should apply to all estates regardless of the date of death where the claim of the state department had not been allowed prior to the effective date of Chapter 178, Laws of 1943.

January 22, 1945.

Mr. Fred C. Gabriel
County Attorney
Phillips County
Malta, Montana

Dear Mr. Gabriel:

You request an opinion whether a claim on behalf of the State Department of Public Welfare against the estate of a deceased recipient of old age assistance for such grants may be allowed, who died prior to the effective date of Chapter 178, Laws of 1943, but which claim had not been allowed prior to that date.

Prior to the enactment of this chapter, Section XI of Part III of Chapter 82, Laws of 1937, provided for the filing of claims of this character against such estates and made no provision for an exemption from claims of this kind. It related only to their filing and priority of payment.

The pertinent provisions of Chapter 178, Laws of 1943, read 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. If, upon the death of any recipient of old age assistance, he shall leave an estate of five hundred dollars (\$500.00) or less, according to the inventory and appraisal filed in the matter of the estate of such person, no claim shall be allowed against the estate of such person for assistance paid under this act.”

Upon the death of the deceased, the state department had a right and duty to file a claim which was entitled to

allowance and payment without any exemption. In the circumstances of the case, three questions arise:

1. May the legislature divest the state of a right which had accrued under the existing law at the time of the accrual of the right?

2. May the legislature enact a statute retroactive in its operation?

3. If the foregoing questions are answered in the affirmative, was Chapter 178, Laws of 1943, retroactive in its operation?

Subsequent legislatures may not change the law to deprive one of a private right which is vested.

As a general rule, a retroactive law passed by a state legislature operating on property belonging to the state, is not unconstitutional so long as private rights are not infringed. The rule that a general statute may not be construed as including the state, to its hurt or damage, does not apply to impair vested rights. (16 C. J., Section 243, page 670.) The legislature, by statutory enactment, created the right, and a subsequent legislature may waive, diminish, or destroy the right existing in the state. Hence Chapter 178, *supra*, does not violate a prohibition against depriving one of vested rights, and the first question is therefore answered in the affirmative.

We have no special constitutional limitation prohibiting retrospective legislation except Section 13 of Article XI, which relates to subjects not here under consideration. (State ex rel. Rankin v. District Court, 70 Mont. 322, 255 Pac. 804; State ex rel. Mills v. State Board of Equalization, 97 Mont. 13, 33 Pac. 563.) Therefore, the second question is answered in the affirmative.

Section 3, Revised Codes of Montana, 1935, declares:

"No law contained in any of the codes or other statutes of Montana, is retroactive unless expressly so declared."

This section is but a rule of construction. (Butte & Superior Mining Company v. McIntyre, 71 Mont. 254, 229 Pac. 730; State ex rel. Mills v. State Board of Equalization, *supra*.)

The intention of the legislature that the law is retrospective must be gathered from the act itself, and from no

other source. (State ex rel. Mills v. State Board of Equalization, *supra*.)

It is a general rule that statutes are intended to operate prospectively only unless otherwise expressly stated and clearly and necessarily implied and the presumption is against retrospective operation. (State ex rel. Blankenbaker v. District Court, 109 Mont. 331, 96 Pac. (2d) 936.)

Bearing the foregoing rules in mind, it is necessary to construe the above quoted statutory provisions. Reading the first sentence above quoted alone would indicate that the exemption arises at the time of death, but when recourse is had to the second sentence above quoted, it declares that if the estate is \$500.00 or less, according to the inventory and appraisal filed in the estate, "no claim shall be allowed against the estate of such person for assistance paid under this act."

Here we have positive mandatory language, commanding that the claim shall not be allowed. No attempt is made to limit the effect of this language prospectively only. To allow the claim after the effective date of the act in the circumstances of the case, is violative of the provisions of the act. This, in effect, deprived the state of its remedy, since without the allowance of the claim the state department cannot secure payment of the claim, under general statutory provisions, with reference to the probate of estates. It becomes unimportant whether the exemption had arisen or not.

It therefore appears, in view of the positive language of the act, it was necessarily implied that the act should apply to all estates regardless of the date of death where the claim of the state department had not been allowed prior to the effective date of Chapter 178, Laws of 1943.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General