

of the Laws of 1941, although a claim for old age assistance may have been allowed as a claim against the estate of such person.

October 18, 1946.

Honorable R. C. Harken  
Representative in the Legislature  
Rosebud County  
Forsyth, Montana

Dear Mr. Harken:

You inquired as to whether the provisions of Section 10149, Revised Codes of Montana, 1935, as amended by Chapter 57 of the Laws of 1941, permitting a summary administration of the estate of a deceased whose estate is less than \$1500.00 is in conflict with the provisions of Chapter 178 of the Laws of 1943, relating to the claim of the State of Montana for grants made to recipients of old age assistance against the estate of such deceased recipient. Otherwise stated, may the entire estate of a deceased recipient coming within the provisions of Chapter 57 of the Laws of 1941 be set over by summary order of the court to those entitled to it where a claim has been allowed against the estate in favor of the State Department of Public Welfare and the estate is inventoried in excess of \$500.00.

Section 10149, as it originally existed, provided for summary assignment of the estate where it was inventoried at less than \$1500.00 by order of the court. The amendment by Chapter 57 of the Laws of 1941 did nothing more than clarify the section, insofar as these estates are concerned. It did contain some additional provisions as to other estates. The principal provisions of the law were left intact on the subject at hand, and although Chapter 57 contained a repealing clause, it did not repeal the portions of the statute which were not altered, and they are to be considered as having been the law from the time when they were first enacted. (Section 93, Revised Codes of Montana, 1935; *Snidow v. Montana Home for the Aged*, 88 Mont. 337, 292 Pac. 722; *Continental Supply Co. v. Abell*, 95 Mont. 148, 24 Pac. (2d) 133; *Northern Pacific Railway Co. v. Dunham*, 108 Mont. 338, 90 Pac. (2d) 506.)

Section 11, Part III of Chapter 82 of the Laws of 1937 provided the State

**Opinion No. 211.**

**Old Age Assistance—Public Welfare  
Department—Welfare, Public.**

**Held: A summary distribution may be had of the estate coming within the provisions of Chapter 57**

Department of Public Welfare should file claims against the estate of recipients of old age assistance and gave such claims a preference over many other claims allowed against the estate. This Act was amended by Chapter 178 of the Laws of 1943. This new amendment exempted \$500.00 of the estate from the claim and destroyed the preference theretofore given the State Department. (Official Report and Opinions of the Attorney General, Volume 20, No. 147; In Re Bierman's Estate, 167 Pac. (2) 350.)

The provisions of the Public Welfare Act do not repeal the provisions relating to the summary distribution of assets expressly; and if there is any repeal, it is only by implication.

The provisions of Chapter 57 of the Laws of 1941 relate to the distribution of certain assets. The provisions of Chapter 178 of the Laws of 1943 relate to claims against certain estates. It will be noted the subjects of these two statutes are different.

It has long been recognized by our Supreme Court repeals by implication are not favored; the two statutes must be plainly irreconcilable to or in conflict with each other and both relate to the same subject and have the same object in view. (Montana-Dakota Utilities Co. v. City of Havre, 109 Mont. 164, 94 Pac. (2d) 660; State ex rel. Browning v. Brandjord, 106 Mont. 395, 81 Pac. (2d) 677; State ex rel. Helena Allied Printing Counsel v. Mitchell, 105 Mont. 328, 74 Pac. (2d) 417.)

These two statutes relate to different subjects and also have different objects.

The object of the summary distribution statutes is to deliver small estates over to those who are dependent upon the deceased for support. It is in the nature of an exemption statute and the Constitution commands the enactment of liberal homestead and exemption statutes. (Section 4, Article XIX, Montana Constitution.)

The primary purpose of Chapter 178 of the Laws of 1943 is to recover claims from certain estates, although it does have certain exemption features, notably the \$500.00 in amount, and also the home for a surviving spouse or other dependent. But these exemption features are incidental to the main purpose of the act.

Since the objects of the two laws are different and their subjects are different and both can remain upon the statutes of the State without conflicting one with the other, each to apply to its own class of cases, it cannot be held Chapter 178 of the Laws of 1943 impliedly repeals the provisions of Chapter 57 of the Laws of 1941.

It appears it was the intention of the legislature that effect was to be given to each of these sections.

It is therefore my opinion a summary distribution may be had of the estate coming within the provisions of Chapter 57 of the Laws of 1941, although a claim for old age assistance may have been allowed as a claim against the estate of such person.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General