

August 13, 1954.

Mr. W. J. Fouse, Administrator  
Department of Public Welfare  
Helena, Montana

Dear Mr. Fouse:

You have requested my opinion concerning the distribution of the State's portion of the funds collected by the State Department of Public Welfare from the estates of deceased public assistance recipients. Specifically, you have inquired as to whether or not the funds so collected should be distributed to the General Fund of the State of Montana or to the Old Age Assistance Fund. Prior to 1953, recovery was made only from estates of old age assistance recipients pursuant to Section 71-412, R.C.M., 1947, which specifically provided, with reference to distribution, as follows:

\* \* \*

"If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each."

However, in 1953, the Legislature enacted both Chapters 228 and 234, Laws of 1953. In Chapter 234, the Legislature amended Section 71-412, *supra*, but made no change in that portion of said section above-quoted with reference to distribution of the funds collected.

In Chapter 228, the 1953 Legislature enacted the so-called "Lien Law" and provided for recovery from the estates of all public assistance recipients, including old age assistance recipients and excepting those receiving general relief and aid to dependent children. Section 10, Chapter 228, *supra*, provides:

"All sums recovered hereunder from any source shall be distributed to the county and to the general fund

**Opinion No. 89.**

**Distribution of Funds—General Fund  
—Old Age Assistance Fund—State  
Department of Public Welfare.**

HELD: That the State's portion of the funds collected from the estates of deceased public assistance recipients must be distributed to the General Fund of the State of Montana rather than to the Old Age Assistance Fund.

of the State of Montana as their interests may appear; and if the federal law so requires, the federal government shall be entitled to a share of any amounts collected hereunder in proportion to the amounts which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state board to the United States government."

Prior to the 1953 amendments, the State Welfare Department construed Section 71-412, *supra*, providing for distribution to the "State," to mean distribution to the old age assistance fund of the State. If the same construction were placed on Section 71-412, *supra*, as amended by Chapter 234, *supra*, this section would conflict with Chapter 228, *supra*, which provides for distribution to the "general fund of the State."

In construing statutes, the object is to ascertain the intent of the Legislature and to achieve this end, several rules of statutory construction have been formulated. One of these rules is that the construction placed on the statute by the executive branch of the government, which is followed for a number of years, will not be disturbed except for cogent reasons. *Murray Hospital v. Angrove*, 92 Mont. 101, 10 Pac. (2d) 577; *Miller Insurance Agency v. Porter*, 93 Mont. 567, 20 Pac (2d) 643; *State ex rel. City of Butte v. Healy*, 105 Mont. 227, 70 Pac. (2d) 437; *Butte Miners Union No. 1 v. A.C.M. Co.*, 112 Mont. 418, 118 Pac. (2d) 148.

Since many sessions of the Legislature have met since Section 71-412 was originally enacted in 1937, the courts would no doubt approve the interpretation placed on the word "state" by the Department to mean the "state old age assistance fund."

However, it is also a rule of statutory construction that when two statutes are enacted at the same session of the Legislature, both should be given effect if possible. *State v. Fransham*, 19 Mont. 273; *McElwee v. McNaughton*, 19 Mont. 474, 48 Pac. 1118

Also, where one act deals with a subject generally and another with part of the same subject, the two must

be read together and harmonized, if possible; but to the extent of any necessary repugnancy between them, the special statute prevails. *Stadler v. City of Helena*, 46 Mont. 128, 127 Pac. 454; *Reagan v. Boyd*, 59 Mont. 453, 197 Pac. 832.

Further, if two statutes are so much in conflict as to render it impossible for both to stand, the latter enactment controls, although the courts will make every effort to harmonize the two statutes. *Wheir v. Dye*, 105 Mont. 347, 73 Pac. (2d) 209; *State ex rel. Wilson v. Weir*, 106 Mont. 526, 79 Pac. (2d) 305.

While the construction placed on the statutes by the executive department is entitled to great weight, still it is possible to construe these two apparently conflicting statutes together and harmonize them, in that Chapter 234, *supra*, provides for distribution of the State's portion to the "State," and Chapter 228, *supra*, to the "State's general fund." Chapter 228 deals with the same subject in a more minute and special way and, therefore, controls over the general wording of Chapter 234. Also, Chapter 228 was enacted and became effective on April 1, 1953, while Chapter 234 became effective on March 6, 1953, and, therefore, Chapter 228 being the latter enactment, would control over any apparent conflict between the two sections.

It is therefore my opinion that the State's portion of the funds collected from the estates of deceased public assistance recipients should be distributed to the general fund of the State of Montana rather than to the old age assistance fund.