OPINION
65-102

October 22, 1965 (OPINION)

Mr. James O. Fine

Chairman

Board of Administration

RE: Grafton State School - Expense of Care - Billing

This is in reply to your request for an opinion of this office in regard to billing of responsible relatives with reference to costs of care and treatment of patients at the Grafton state school.

You first ask how often should a responsible relative be billed the costs accruing against his estate for the care and treatment of a patient at the Grafton state school. For an example, you state that if the Grafton state school does not issue a billing to the responsible relative showing the costs accruing against his estate for several years, does the state still have authority to submit a claim against his estate and, if so, will said claim be valid? The problem is not without difficulty and under the applicable statutory provisions we believe some discretion will have to be exercised by your board.

There is no statutory provision specifically stating that a bill should be sent to the responsible relative. The statute, section 25-09-04 of the 1965 Supplement to the North Dakota Century Code, provides as follows:

> "RESPONSIBLE RELATIVES SHALL PAY FOR CARE AND TREATMENT - DEFINITION. - In the event of the patients' inability to pay for the costs of care and treatment, responsible relatives of such patients at the state hospital or state school shall pay to the supervising department quarterly, such costs as the supervising department may determine reasonable for the care and treatment of patients at each institution. For purposes of this chapter and Title 25 of this code 'responsible relatives' shall mean the patient's spouse, father, mother or children."

Of interest also in this regard is the case of Reith v. County of Mountrail, 104 N.W.2d. 667, cited in the footnotes to the statute, states in the second paragraph of the syllabus, as follows:

> "When a father makes application for the admission to the Grafton state school of his son who is unable to maintain himself by work he impliedly agrees to pay for such care and maintenance as may be furnished by the state school, and the fact that section 25-0822 NDRC 1943 provides for the extent of the father's liability does not destroy the contractual nature of the father's obligation."

Thus, the above quoted statute places upon the responsible relatives involved the duty to make payments on a quarterly basis. The amount

of such payment is not readily determined from the statute, but under the terms of the statute it is for "* * * such costs as the supervising department may determine reasonable for the care and treatment of patients at each institution. * * *." In order for the responsible relative to be able to fulfill the statutory duty to make payments on such quarterly basis, it is obvious that information as to what the determination of the supervising department is must be made available to such responsible relative. While the statute definitely does not prescribe, require or authorize a specific billing procedure, a quarterly statement made available to the responsible relative would obviously make it possible for such responsible relative to make the required payment and would be in accordance with standard commercial practices.

We thus come to the problem presented by the example given in your letter. The actual problem can best be stated as the question of whether these claims might be barred by the equitable doctrine of laches. It would be extremely difficult to fully explain that doctrine as applicable to all possible claims for care of patients at these institutions. The following quotation from 19 AM. JUR. 339, 340, EQUITY, section 490 may help to understand its application:

> "LACHES - DELAY IN ASSERTION OF CLAIM. Suit to enforce an equitable claim or cause of action may be held to be barred by the complainant's laches or procrastination in the assertion of his right or equity, where the institution of suit has been delayed during an 'unreasonable' period of time. It is said that 'reasonable diligence' is essential to call into action the powers of a court of equity.
>
> "'A court of equity,' said Lord Camden, 'has always refused its aid to stale demands, where the party slept upon his rights, and acquiesced for a great length of time . . . Laches and neglect are always discountenanced; and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court.' The defense may not be invoked in a court of law, the action of the latter court being governed by the statute of limitations.
>
> "Both of the parties to an agreement, it has been said, may be chargeable with laches, so that the court will refuse to grant relief to either of them."

Going to the decisions of the supreme court of this state, we find in Frandson v. Casey, 73 N.W.2d. 436, 446, the following:

> "'Laches', generally speaking, is such a delay in enforcing one's rights as to work a disadvantage to another and in a sense is a neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do in law what should have been done."

and we find in Gronna v. Goldammer, 143 N.W. 394, 398, 26 N.D., 122, the following:

> "In order, indeed, 'that a remedy may become barred because of laches, there must appear, in addition to mere lapse of time,

> some circumstances from which the defendant or some other person may be prejudiced, or there must be such lapse of time that it may be reasonably supposed that such prejudice will occur if the remedy is allowed.' Cahill v. Superior Court, 145 Cal. 47, 78 Pac. 469; Cook v. Geas, 147 Cal. 614, 619, 83 Pac. 370. There is no prejudice in this case for which sureties are not in law themselves responsible, and for which they can complain."

Actually, of course, chapter 25-09 of the 1965 Supplement to the North Dakota Century Code does give clear and simple legal remedies for collections. Specific provision is made in section 25-09-09 thereof as follows:

> "STATUTES OF LIMITATIONS NOT BAR TO RECOVERY. No statute of limitations or similar statute shall bar the right of recovery for the expense incurred by the state for care and treatment at the state hospital or state school from the patient or his estate, but this section shall not apply to claims that may be otherwise barred by law prior to July 1, 1961."

We are further informed at 19 AM. JUR. 342, EQUITY, section 495, as follows:

> "SUIT BY GOVERNMENT AS SUBJECT TO DEFENSE. - Laches on the part of the government in bringing suit is said not to be a defense in the case of a claim which is founded on sovereign right. It is also observed that the laches of the officers of the government cannot be set up as a defense to a claim which is made by the government. The defense of laches is available, however, it seems, in case of a suit which is brought by the government in its private or proprietary capacity. Where a suit is prosecuted in the name of the government only on behalf of an individual, the cause may be barred by laches or the running of the statute of limitations. The exemption of the sovereign from the defense of laches is personal; it does not pass to another litigant."

We do note that in Reith v. County of Mountrail, supra, the court did note the suggestion that the claim arose from the acts of the sovereign in its governmental capacity and its agency and subdivision, the county. The court apparently did not find it necessary to pass on these points because of the statutorily expressed policy in regard to statutes of limitations, in that case.

To conclude on these points, each case coming before a court has to be considered on its own facts and merits. The duty involved is basically a statutory duty imposed on the responsible relatives and the only discretion involved on the part of the supervising department is with regard to amount, or in specified circumstances, termination of the obligation. We would hesitate to state in any case where the Grafton state school has not issued a billing to the responsible relative showing the costs accruing against his estate for several years that the state would not have authority to submit a claim against the estate or that any claim submitted would be invalid because of this basic statutory responsibility. However, it is conceivable that circumstances might arise, particularly where

information as to the amount determined reasonable by the supervising department was not available to the responsible relative, where some form of laches, estoppel or other doctrine of equity might be asserted to make collection more difficult to effect the amount collected or to prevent collection. On such basis, we would suggest and recommend making the determinations made under the above quoted section, 25-09-04, known to the responsible relatives as often as made, to-wit, on a quarterly basis in the form of a standard commercial statement. In the usual instance, this would have the effect of placing these equitable doctrines in support of the eventual collection.

HELGI JOHANNESON

Attorney General