

OPINION
66-237

January 12, 1966 (OPINION)

Mr. Calvin A. Calton

Divide County State's Attorney

RE: Public Welfare - Estates - Preferred Claim

This is in reply to your letter of January 6, 1966, in regard to the interpretation of sections 50-24-33 and 30-18-18 of the 1965 Supplement to the North Dakota Century Code. You state that you question:

Where an individual has received assistance to the aged and a funeral bill of more than \$250.00 and expense of last illness of recipient were not authorized or paid by the county agency, may the estate properly pay such funeral expenses and such expenses of last illness prior to honoring the claim of the Public Welfare Board?"

You mention that:

The Welfare Claim would render the estate insolvent in this case."

Section 30-18-18 of the 1965 Supplement to the North Dakota Century Code provides:

DEBTS, ORDER OF PAYMENT. The acknowledged debts of an estate and charges must be paid in the following order:

1. The necessary expenses of the administration;
2. The expenses of the last sickness and funeral;
3. Allowances made to the family in excess of the exempt property;
4. Claims in favor the county for poor relief;
5. Claims, whether secured or unsecured, in favor of the state under the Old Age Assistance Act or Aid to the Permanently and Totally Disabled Act, after payments of the expenses authorized to be paid as provided in sections 50-07-34* and 50-10A-31*;
6. Debts having preference by the laws of the United States;
7. Personal property taxes which are not liens on property belonging to the estate;
8. All other demands against the estate.

Note. Chapters 50-07 and 50-10A were repealed by Section 2 of Chapter 328 of the 1963 Session Laws. The provisions of Chapters 50-07 and 50-10A are embodied in Chapter 50-24.

We note that the above quoted statutory provision was enacted in 1961.

Section 50-24-33 of the 1965 Supplement to the North Dakota Century Code provides:

RECOVERY FROM ESTATE OF RECIPIENT OF ASSISTANCE TO THE AGED, BLIND OR DISABLED. On the death of any recipient of assistance to the aged, blind, or disabled under the provisions of this chapter the total amount of assistance paid under this chapter shall be allowed as a preferred claim against the estate of such person in favor of the state, after funeral expenses for recipient and his or her spouse, not to exceed in each individual case two hundred and fifty dollars, and such expenses of the last illness of recipient and spouse as are authorized or paid by the county agency, have been paid, and after the expenses of administering the estate, including the attorney's fees approved by the court, have been paid. No claim shall be enforced against the following:

1. Real estate of a recipient for the support, maintenance or comfort of the surviving spouse or a dependent;
2. Personal property necessary for the support, maintenance or comfort of the surviving spouse or a dependent;
3. Personal effects, ornaments, or keepsakes of the deceased, not exceeding in value two hundred dollars;
4. Any real or personal property of a recipient which is held in trust for for him by the federal government."

We note that said Section 50-24-33 was last reenacted by the Legislative Assembly in 1965. On such basis where its provisions might be in conflict with Section 30-18-18, it, as the later statute would necessarily prevail. (See enclosed thermofax copy of opinion of this office dated October 17, 1956). Considering the statutory history of this legislation it would appear that Section 50-24-33 was intended to modify the provisions of Section 30-18-18.

In specific answer to your question it is our opinion that to the extent the funeral bill exceeds \$250.00 and to the extent that the recipient of "assistance to the aged" were not authorized or paid by the county agency, the estate may not properly pay such funeral expenses and such expenses of last illness prior to honoring the claim of the Public Welfare Board.

HELGI JOHANNESON

Attorney General