

**OPINION  
76-151**

January 30, 1976 (OPINION)

F. John Marshall  
Office of the State's Attorney  
P.O. Box 607  
Grand Forks, ND 58201

Dear Mr. Marshall:

This is in response to your letter of November 20, 1975, wherein you request an official opinion regarding a problem which a local county social service board has encountered. You submit the following facts and question in your letter:

FACTS

Husband and wife owned property as joint tenants with right of survivorship as a homestead. Husband applies for and receives assistance from the County Social Service Board and a homestead statement is recorded in the Office of the Register of Deeds, pursuant to North Dakota Century Code 50-24-15. Husband dies and property passes by operation of law to wife. Wife never received assistance from the County Social Service Board.

QUESTION:

Must the County Social Service Board release the homestead statement which is recorded in the Office of the Register of Deeds without repayment of the assistance given to the husband so that the wife may sell the property?

Our opinion is yes, the County Social Service Board must release the homestead statement which is recorded in the Office of the Register of Deeds without repayment of the assistance given to the husband so that the wife may sell the property if the wife did not receive assistance from the County Social Service Board.

Our opinion is primarily based upon the holding of the Supreme Court of North Dakota in the case of Schlichenmayer v. Luithle, 221 N.W.2d. 77, wherein the court held that although creditors of a decedent might have levied upon decedent's interest in the real estate during his lifetime, upon his death title passes to the survivor subject only to the payment of estate taxes. This holding would appear to be governing in the factual situation related by your letter of inquiry and the principle expressed in that court opinion would appear to be in point as applying to the rule of law involved in your question.

Insofar as your inquiry also directs our attention to Section 50-24-15 of the North Dakota Century Code, relating to homestead statements, we would note that in the case of In Re Hillesland's Estate, 86 N.W.2d 522, the court held that the filing of a homestead statement did not create any lien in favor of public welfare department upon the property of old-age assistance recipient. We would note from the text of the court opinion that prior to 1937,

such statements did create a lien, however, the Legislature by enacting Chapter 211 of the 1937 Session Laws, abolished the practice of requiring liens or mortgages upon homesteads as security for the repayment of moneys advanced for old age assistance. Your letter and the facts therein do not indicate the date of the subject homestead statement, however, we assume that the same was subsequent to the 1937 change.

Based upon the foregoing decisions, we are of the opinion that the homestead statement does not create a lien upon the property of the old age assistance recipient and further, that upon death of such recipient, also being a joint tenant owner of certain real estate, the title to such joint tenancy properties inures to the benefit of the surviving joint tenant, free and clear of claims or liability, save only possible liability for estate tax and/or unpaid real estate taxes.

We trust that the foregoing will adequately set forth the opinion of this office upon the matter submitted.

Sincerely yours,

ALLEN I. OLSON

Attorney General