



**THE ATTORNEY GENERAL  
OF TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

**AUSTIN, TEXAS**

April 9, 1947

Hon. John H. Winters  
Executive Director  
Department of Public Welfare  
Austin, Texas                      Opinion No. V-132

Re: Consideration of a  
bequest in relation  
to a recipient's el-  
igibility for old age  
assistance.

Dear Sir:

We have your request for an opinion upon the above captioned subject matter, the pertinent parts being as follows:

"Our recipient, whom we shall refer to as Mr. F, made an application for old age assistance in June, 1942, and has received assistance continuously in varying amounts since September, 1942. Mr. F's present household consists of himself, a son about twenty-three years of age, and a minor daughter about sixteen years of age. The daughter is in school. Mr. F was born on January 9, 1877, and due to a chronic disability and his age, he is unable to perform any work from which he might receive remuneration. He has two or three brothers who have assisted him from time to time over a period of years. One brother at the present time is contributing \$7.50 a week toward his and his daughter's support in addition to paying some of the utilities. Mr. F is at the present time receiving \$37 a month old age assistance. He is living in his own home free of all encumbrances except perhaps delinquent taxes.

"In the spring of 1946 one of Mr. F's brothers died. The brother's will was probated in June, 1946. He left one-third of

his estate to his surviving spouse, one-third to his daughter, and the other one-third to several persons, among whom is our recipient of old age assistance, Mr. F. The terms of the will in relation to our recipient are as follows:

"I leave to my brother, S F, a sum not to exceed Fifty (\$50.00) Dollars per month, to be payable to him by my said executor so long as he shall live; it is specifically provided that said sum shall be in such amount as not to jeopardize any pension or other payment he may receive from any governmental source. Once fixed, this amount shall not be increased whether or not such pension or other payment from any governmental source shall continue."

"The executor of the will is a nephew of the decedent and of our recipient, Mr. F. He stated that he prepared the will, and he knew that the decedent intended that the \$50 should not replace the recipient's grant but should supplement it. The executor further explained that if the money paid to the recipient out of the estate affected his old age assistance grant even as much as \$1 that he would receive nothing whatever from the estate. The recipient is still on the old age assistance rolls, and nothing has been paid to him out of the estate as the executor is awaiting a definite answer from the department as to what effect, if any, the payment of the \$50 or any portion thereof will have upon his old age assistance grant."

We shall answer your questions in the order of their presentation.

1. As you point out, the Social Security Act requires, as a condition to cooperation with the

State as to old age assistance, the State plan to "provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming old age assistance; \* \* \*"

Section 21 of the Public Welfare Act of 1941 (H.B. 611, 47th Leg., R.S., as amended) is as follows:

"Sec. 21. The amount of assistance which shall be given under the provisions of this Act to any individual as old age assistance shall be determined by the State Department through its district or county in which the needy aged person resides with due consideration to the income and other resources of such aged person and in accordance with the rules and regulations of the State Department \* \* \* The amount of assistance given shall provide such aged person with a reasonable subsistence compatible with decency and health, within the limitations and provisions of the Constitution of Texas as are now provided, or may hereafter be provided." (Underscoring added for emphasis.)

Section 24 of the Act provides in part as follows:

"All assistance granted under the provisions of this Act to any needy aged person, needy blind person or with respect to any dependent child shall be reconsidered as frequently as may be required by the rules of the State Department. After such reconsideration as the State Department may deem necessary or may require, the amount of assistance may be changed, or the assistance may be entirely withdrawn if the State Department finds that the recipient's circumstances have altered sufficiently to warrant such action. The State Department may at any time cancel and revoke assistance or it may suspend assistance for such period as it may deem proper, upon the grounds of ineligibility of the recipient under the provisions of this Act. \* \* \* If at any time during the continuance of public assistance the recipient thereof becomes possessed of

income or resources in excess of the amount previously reported by him, it shall be his duty to notify the State Department of such additional income or resources."

Again, Section 29 of the Act provides in part as follows:

"Old age assistance, aid to the blind, or aid to dependent children as provided for under the provisions of this Act shall not be transferrable or assignable, at law or in equity, and none of the money paid or payable under the provisions of this Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any insolvency law; the provision of this Act providing for old age assistance, aid to the blind, and aid to dependent children shall not be construed as a vested right in the recipient of such assistance; \* \* \*" (Underlining added for emphasis.)

These Federal and State statutes themselves compel an answer to your question No. 1 to the effect that the bequest of \$50.00 per month cannot be made to your recipient without reducing the amount he may receive through your department, or without making him ineligible for payments.

2. Your very helpful comments appended to your request are as follows:

"Pursuant to the provisions of the Federal and State laws the department has formulated policies and procedures as set out in the departmental manual providing for the consideration to be given resources available to recipients. Since the maximum amount which may be paid to any individual out of the State and Federal money is \$45 a month and since the total amount of State funds available for administering the old age assistance program and paying the assistance grants is Thirty One Million Dollars (\$31,000,000.00) a year, and since there are at the present time approximately

191,824 recipients receiving old age assistance in the State of Texas the necessity for placing maximums on certain allowable items in the recipient's budget is obvious. Because of the limitation of funds, a standard amount is included in the budgets of all persons under similar circumstances for certain needs which are common to all recipients such as food, clothing, household supplies, and incidentals.

"Also, under certain policies of the department a recipient is allowed in his budget the common household expenses for himself and his normal dependents which in this instance would be Mr. F's sixteen year old daughter, who is in school. In other words, the taxes, the utilities, and other expenses which he would have to pay whether the dependent was in the home or not would be included in his assistance grant, and any income available could be used toward meeting her needs before the department would consider the income or resources as being available for meeting his needs. In determining the needs of the dependent, however, we are governed by the same limitations as we are for the individual recipient.

"When the question first arose the department advised the executor that any available income or resource could not be disregarded in determining eligibility and that the department could not make any kind of an agreement or contract or in any way obligate the department to continue assistance in any given amount since the law requires us to consider needs and resources on an individual basis and that the amount will vary from time to time depending upon the circumstances of the individual.

"We are eager to assist this aged recipient if he meets eligibility requirements. Both the State and Federal laws provide that before a resource may be considered that it must be available; therefore, in

determining the amount of the assistance grant, we cannot consider this resource until it has actually been made available to the recipient. The recipient feels that he is in need of considerably more money than is being paid under the assistance payment. With the limited amount of money available the department cannot meet all of the needs which a recipient may feel that he has. In determining eligibility and the amount of grant the department has found that in accordance with the policies Mr. F. is tentatively eligible for a grant of \$37 a month. In view of the fact that the maximum amount that may be paid to any individual is \$45 a month, it is obvious that if Mr. F should receive the bequest of \$50 a month, this would render him ineligible for assistance and that any amount that he should receive from the estate would affect the amount of the assistance grant. Under the policies of the department it would be necessary to deduct whatever amount he receives from the needs as determined by the department. The executor is interpreting this provision of the will as making the bequest conditioned upon the fact that the department would not alter or change the amount of the assistance grant by reason of the payment of the bequest."

Upon the statements made by you, it is obvious that your department, in following the statutes and formula of your promulgated plan, aside from any consideration of the bequest, could not pay the recipient more than a maximum of \$37.00 a month, and that any amount received under the will may reduce his pension.

This leads to a consideration of your added question whether or not the Department of Public Welfare may make any definite commitment to the executor of the will with respect to allowance or consideration of such moneys bequeathed. Clearly, under the law, you cannot make a binding commitment on this matter.

Our conclusion in the whole matter is that your department should proceed in the matter of an allowance to this particular recipient as though no such bequest had ever been made, and if at any time it is called to your attention that payments thereunder have been made to the recipient you will take the same into account as required by law.

SUMMARY

Payments received under a will by a recipient of old age assistance are required to be taken into account by the Board of Public Welfare in determining whether such payments make the recipient ineligible or merely operate to reduce the amount he may receive from the department.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

  
Ocie Spear  
Assistant

OS/lh

APPROVED: April 9, 1947

  
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