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INCOME — CASH BEQUEST TO RECIPIENT OF AID FOR THE AGED — MUST BE REPORTED TO DIVISION OF AID FOR THE AGED — SECTIONS 1359-4, 1359-19 G.C.

SYLLABUS:

*Under the provisions of Section 1359-19, General Code, a cash bequest when received by a recipient of aid for the aged, must be reported to the Division of Aid for the Aged, since said cash bequest is "income" within the meaning of Section 1359-4, General Code.*

Columbus, Ohio, March 14, 1941.

Hon. Meryl B. Gray, Prosecuting Attorney,  
Lebanon, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

"General Code Section 1359-4 as partially amended and as effective January 1, 1941, provides that where husband and wife reside together and both receive pensions, they are not allowed in excess of \$960.00 per year.

General Code Section 1359-19 provides that if a recipient becomes possessed of property or income in excess of what is allowed, then it shall be his or her duty to immediately notify the Division of Aid, in writing, of such fact.

I am interested in a situation where husband and wife living together and both receiving pensions are the beneficiaries in a will to the extent of a \$100.00 specific cash bequest. My question is whether or not these people are required to report this bequest to the Division of Aid. Another question is whether or not a gift is considered property or income in view of the General Code sections provided for aid for the aged."

Section 1359-4, General Code, referred to in your communication reads as follows:

"If the applicant for, or recipient of aid is married, the total amount of and payable to the husband and wife shall not exceed \$80.00 per month, diminished by such an amount that the combined income of both from any and all sources, including the aid payable to either or both, shall not exceed \$960.00 per year."

While the technical meaning of the word "income" as expressed in Words and Phrases, Vol. 20, page 488 is, "profit derived from capital or labor," however, in construing the above section the word "income" should be given its ordinary meaning rather than its technical meaning since the lawmakers in adopting the Old Age Assistance Act and the 93rd General Assembly in amending said section (118 O.L., 740), undoubtedly used the words in their known and ordinary signification. See Crawford on Statutory Construction, page 754. At page 320, the following text appears:

"\* \* the common, or non-technical meaning should be applied \* \* so as to effectuate the obvious purpose of the legislature."

In Webster's New International Dictionary the word "income" is defined as follows:

"Something that comes in as addition or increment. An accidental or incidental addition. A coming in."

It is stated in Bouvier's Law Dictionary, Vol. 2, page 1527:

"'Income'. It may mean 'money' or the expectation of receiving money."

In the case of State ex rel. Eckroth vs. Borge, et al., 283 N. W., 521, the Supreme Court of North Dakota held as disclosed by the seventh branch of the syllabus:

"7. The term 'income' as used in the Old Age Assistance Act granting assistance to those not having sufficient 'income' or other resources includes all sources of livelihood."

At page 526 it is stated:

"Clearly it would be absurd to hold that under the Old Age Assistance Act, sums received from annuities paid from capital, alimony and gifts or bequests received through wills or trusts would not be considered as income of an applicant, although those items are usually not considered as income of the recipient under the tax statutes."

In the case of Passiac National Bank vs. Eilman, et al., 183 Atl., 677, it was held that a public pension came within the meaning of a generic statutory class of income.

It is to be noted that Section 1359-4, General Code, supra, provides that the amount of aid shall not exceed \$80.00 per month for husband

and wife, diminished by "income of both from any and all sources." This language in and of itself, is sufficient to support the conclusion that a bequest is "income" within the meaning of the above statute.

The filing and probating of a will which contains a cash bequest to a recipient of aid does not necessarily create an estate, and while the bequest acts as a formal transfer of the testator's declaration, however, the bequest is not ordinarily paid until after the time limit for filing claims by creditors. Therefore, until the bequest is actually received, the recipient's status has not changed.

Section 1359-19, General Code, also referred to in your communication reads as follows:

"If at any time a recipient of aid under this act, or his or her wife or husband, becomes possessed of property or income in excess of what is allowed by this act in respect to the amount of aid granted to such recipient, it shall be the duty of such recipient to immediately notify the division in writing of such fact, the division of the respective subdivision shall cancel or reduce the amount of aid accordingly; provided that if such excess of property or income ceases, then the aid shall be restored or increased to the proper amount."

The courts in construing the words "shall be the duty" have uniformly held that such words should be given a mandatory meaning. See:

Clark vs. City of Elizabeth,  
61 N.J.L., 565, 40 Atl., 616;

Appollo Borough vs. Clapper,  
44 Pa. Super., 396;

Doner vs. Hazen,  
10 Vermont, 418.

In view of the foregoing, I am of the opinion that under the provisions of Section 1359-19, General Code, a cash bequest when received by a recipient of aid for the aged, must be reported to the Division of Aid for the Aged, since said cash bequest is "income", within the meaning of Section 1359-4, General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.