

interpretation of the terms ought to be adhered to." Giving effect to this rule, I am constrained to the opinion that the term "public utility," as used in the provisions of section 5546-1, General Code, defining the term "retail sale," includes motor transportation companies as public utilities, and that sales made to such motor transportation companies where their purpose in purchasing the property is to use or consume the same in the rendition of their regular normal service as public utilities, are excepted from the sales tax provided for in this act.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3990.

OLD AGE PENSION—PENSION WARRANT VOID IF PAYEE DIES BEFORE
 INDORSEMENT—VALID IF DEATH OCCURS AFTER INDORSEMENT
 BUT PRIOR TO CASHING SAME.

SYLLABUS:

Where a recipient of aid, under the Old Age Pension Law, dies prior to his indorsement of a warrant drawn by the Auditor of State, in which such pensioner is the payee, said warrant is void. The death of a pensioner subsequent to his indorsement of said warrant, as payee, but prior to the payment thereof by the Treasurer of State, has no effect upon the validity of the warrant.

COLUMBUS, OHIO, March 2, 1935.

HON. HENRY BERRODIN, *Chief, Division of Aid for the Aged, Columbus, Ohio.*

DEAR SIR:—Your immediate predecessor in office requested my opinion on the following matter:

"Will you please furnish this Division with a written legal opinion on the following subjects:

The warrants issued by the Auditor of State in payment of aid by this Division have printed on the face thereof the following statements:

'Void if any alterations or erasures appear hereon, and must be returned if payee is deceased.'

also,

'This warrant may be collected through bank within sixty days from date unless payee is deceased.'

We should like your opinion on the following questions with reference to the statements underscored:

1. Are these warrants absolutely void if the applicant dies before the warrant is cashed?
2. Are these warrants void if the applicant has, prior to his death, endorsed the same, but the warrant is not cashed by the endorsee until after the applicant's death?
3. Are these warrants void if, prior to his death, the applicant delivers the warrant to his wife or someone else without endorsement but with the understanding that the warrant is to be used for the purpose of providing for medical or other needs?

The question has arisen recently as to whether these warrants can be cashed in any event after the death of the payee. In some instances the wife has contracted grocery bills or other claims on the credit of these checks; that is, with the assurance that the checks would be received about the same time each month, but some rather long delays have occurred in making the checks out to the applicants at regular stated periods, and the need has been very urgent. In such cases the warrant has been received after the death of the payee, although if the warrant had been received at the regular time expected, it would have arrived prior to the death of the applicant."

It is unnecessary to review the provisions contained in sections 1359-1 to 1359-30, General Code, relating to the requirements which must be met by one seeking aid under the so-called Old Age Pension Law. It is sufficient here to observe that the Division of Aid for the Aged is given considerable discretionary power in the making of rules and regulations governing applications for aid and all other proceedings under this act. As each application for aid is forwarded by the respective county boards of aid for the aged, final approval, rejection or modification is made by the Division of Aid for the Aged. The said Division must then certify its action upon each claim to the respective county boards and to the Auditor of State.

Section 1359-17, General Code, states that "aid payable under this act shall be paid monthly by the Treasurer of State upon warrants by the Auditor of State."

Several fundamental principles are involved in answering the questions contained in your predecessor's letter. It is well established that a pension granted by public authority is not a contractual obligation, but a gratuitous allowance, in the continuance of which the pensioner has no vested right. See 21 Ruling Case Law, 242. That principle was expressly carried into the Old Age Pension Law by the provisions of section 1359-27, which reads as follows:

"Aid granted under this act and certificates of aid shall be deemed to be granted and held subject to the provisions of any amending or repealing acts that may hereafter be passed; *there shall be no vested right or interest in such aid*; and no beneficiary hereunder shall have any claim by reason of his aid being reduced or terminated by any amending or repealing act." (Italics the writer's)

A second fundamental principle is that unless otherwise designated by statute, a pension is deemed to be for the exclusive benefit of the one to whom it is granted.

In the case of *United States vs. Hall*, 98 U. S. 343, Mr. Justice Clifford reviewed the history of pensions by the Federal Government dating back to the Continental Congress during the War of the Revolution. After citing the numerous amendments to the federal pension statutes, Mr. Justice Clifford, on page 353, states:

"Without more, these selections from the innumerable list of acts granting pensions are sufficient to prove that throughout the whole period since the constitution was adopted it has been the policy of congress to enact such regulations as will secure to the beneficiaries of the pensions granted the exclusive use and benefit of the money appropriated and paid for that purpose."

And again on page 354 he said:

"Enough appears in these references to the legislation of the congress under

the constitution to show that throughout the entire period since its adoption it has been the practice of the legislative department of the government, with the sanction of every president, including the Father of the Country, to pass laws to prevent the diversion of pension money from inuring solely to the use and benefit of those to whom the pensions are granted. With that view, sales, pledges, mortgages, assignments, and every other kind of conveyance have been prohibited. Agents employed to collect the money have been required to make oath that they had no interest in such money by any such pledge, mortgage, transfer, agreement or arrangement, and that they know of none, and provision has several times been made for their punishment if they swear falsely."

Those who were responsible for the drafting of the Old Age Pension Law for Ohio used strong language to express the desire that the one whom the State designated, should receive the exclusive benefit of the pension. Those words found in section 1359-26 are:

"All rights to aid under this act shall be inalienable whether by way of assignment, charge or otherwise, and exempt from execution, attachment, garnishment and other process."

That same motive, no doubt, is responsible for the words contained on the warrant used by the Auditor of State in drawing upon the State Treasury for the payment of the respective pensions. In other words, to prevent the payment of the pension to any one other than the one for whom the State intended it, as indicated by the name of the payee as written upon the warrant by the Auditor of State.

At least two decisions of the Ohio Supreme Court relating to the interpretation of the Workmen's Compensation Law have discussed this proposition. In the case of *Bozzelli vs. Industrial Commission*, 122 O. S. 225, the Supreme Court had before it the question as to whether an administratrix could revive an action of an injured employe who had died while his appeal to the Common Pleas Court for disability compensation was pending. The court held that under the Workmen's Compensation Law the administratrix of the deceased employe could not maintain the action to recover disability benefits from the State Insurance Fund because the law provided that compensation be paid only to the living employe or to his dependents after death.

The same question was before the Supreme Court in *State ex rel. Rowland, Admr. vs. Industrial Commission of Ohio*, 126 O. S. 23. The *Bozzelli* case, supra, was cited and the same conclusion was reached. These authorities adequately support the conclusion that unless the statute designates another to receive the benefits of a pension, only the person to whom it is made payable may receive the funds. The provisions of the Old Age Pension Law support this conclusion, for in section 1359-9, it is provided that if the recipient of aid is deemed incompetent, the pension may be ordered paid to some suitable person for his benefit. Again, in section 1359-10, General Code, it is provided that upon the death of the pensioner any monthly installment then accruing, and not to exceed three additional monthly installments under his certificate of aid, may be ordered paid to a proper person entitled thereto to defray the burial expenses of such deceased person.

The first question asked is whether the warrants of the Auditor of State, used in payment of the Old Age Pensions, are absolutely void if the applicant dies before the warrant is cashed. Obviously, such warrant may not be cashed unless it is first endorsed by payee designated thereon. If the payee dies before he has endorsed the war-

rant, it may not be paid. Even if he had authorized another person to execute his endorsement, this authority expires upon the death of the payee.

If the payee dies subsequent to endorsement, the warrant is not void. To hold otherwise would be without basis in law or reason. No doubt in most cases the payee receives the value in money upon endorsement of the warrant. There may be several subsequent endorsees, none of whom had knowledge of the death of the payee. The State has satisfied its obligation to the recipient of aid when the Treasurer of State honors the warrant drawn by the Auditor of State with the endorsement of the payee contained thereon.

The conclusions expressed herein answer the second and third questions. I am therefore of the opinion, for the reasons stated herein, that where a recipient of aid, under the Old Age Pension Law dies prior to his endorsement of a warrant drawn by the Auditor of State, in which such pensioner is the payee, said warrant is void. The death of a pensioner subsequent to his endorsement of said warrant, as payee, but prior to the payment thereof by the Treasurer of State, has no effect upon the validity of the warrant.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3991.

INDIGENT—SUPERINTENDENT OF COUNTY HOME MAY REMOVE COUNTY CHARGE TO STATE OF LEGAL SETTLEMENT WHEN.

SYLLABUS:

By virtue of Section 2540, General Code, the Superintendent of the County Home, may at the expense of the county, remove any person becoming a charge upon the county who has no legal settlement in the state to the county and state where such person has a legal settlement if such person consents to the removal, but not without the consent of such person.

COLUMBUS, OHIO, March 4, 1935.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“Living near the border of Ohio and Kentucky, we have a situation relative to indigents not having a legal settlement in Ohio, which I presume is like all other counties in Ohio which are similarly situated. Various families having legal settlements in Kentucky and other states are situated in this county and are dependent upon charity for a livelihood. I appreciate under the laws of Ohio the county superintendent is authorized to extend to these persons aid.

The question has arisen as to whether or not the superintendent of the county home or any other county authority has the right, with or without the consent of such persons, to remove them and their necessary personal belongings from the State of Ohio and to the state wherein they have a legal settlement. An answer to this question involves section 2540 of the General Code and sec-