

2111.

AID FOR THE AGED—RECIPIENT—DEBTS—CLAIM OF DIVISION OF AID FOR THE AGED—PREFERRED—DEPARTMENT OF PUBLIC WELFARE—SEE SECTIONS 1359-7, 10509-121 G. C.

*SYLLABUS:*

*Pursuant to Section 1359-7, G. C., a claim of the Division of Aid for the Aged in the Department of Public Welfare of the State of Ohio for old age assistance given the deceased recipient thereof is a preferred claim against the estate of such deceased recipient. Such preferred claim is prior to all claims specifically set forth in Section 10509-121, G. C.*

COLUMBUS, OHIO, March 18, 1938.

HON. HENRY J. KNAPNE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR: Your communication of recent date requesting my opinion, reads as follows:

“Will you please give me your opinion as to the order of payment of debts in the administration of an estate of a recipient of aid for the aged. The Ohio G. C. 1359-7 provides for the claim against the estate of a recipient of aid for the aged, while G. C. 10509-121 provides for the order in which debts of an estate are to be paid.

Now into which of the classes listed in Section 10509-121 does the claim of the State of Ohio for aid, mentioned in the first paragraph of 1359-7, fall? For example: Does the bill of the State of Ohio for aid stand on a parity with the bills of the funeral, last sickness and administration of Class 1 of Section 10509-121; or does the bill of the State of Ohio stand on a parity with the bills of the general creditors of Class 6 of Section 10509-121; or does the bill of the State of Ohio come in just ahead of the general creditors of Class 6 of Section 10509-121?”

Section 1359-7, General Code, was amended effective May 10, 1937, to read in part as follows:

“Upon the death of a person, the total amount of aid paid

to said person and/or to his or her spouse under this act, shall be a preferred claim against the estate of such deceased person.

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It was the obvious intention of the Legislature in amending Section 1359-7, supra, to create for the Division of Aid for the Aged, in the Department of Public Welfare, a preferred claim against the estate of a deceased recipient of old age assistance. Prior to July 16, 1936 and under the then provisions of Section 1359-6, G. C. the Division of Aid for the Aged was given authority to require as a condition precedent to the payment of aid or of further aid, that he convey and transfer such real property to the Division of Aid for the Aged in trust, subject to permission to the recipient of aid and his or her spouse, to use or reside upon such property for life. However, Section 1359-6, G. C., was amended effective July 16, 1936, making such conveyance in trust of real property to the Division by the applicant permissive rather than mandatory.

On May 10, 1937, that portion of Section 1359-7, G. C., hereinbefore quoted, became effective. It is reasonable to presume that the Legislature found that the aged and many times uninformed applicants in need of old age assistance who own a small home, were in fear of losing that home by executing a conveyance in trust and possibly in many instances understood such conveyance in trust to be an instrument by which they divested themselves of all right, title and interest in and to the real property described therein. However, such conveyance in trust, as to the rights of third persons, is a mortgage and is required to be recorded as such.

Reference is made to an opinion of my predecessor in office, it being numbered 3607, and found in Vol. III, O. A. C. (1934) at p. 1725.

It seems clear that the Legislature amended Section 1359-6, G. C. as effective July 16, 1936, in an attempt to remove this inhibition on the part of applicants for old age assistance. Moreover, the right to use such real property by the recipient during his lifetime and in event of the death of the recipient leaving a wife or husband who is entitled to aid, the right of the survivor to use or reside upon the said property during his or her lifetime is specifically reserved to the recipient.

Due to the fact that the Federal government contributes to the fund for old age assistance, it is required that reimbursement be made after death to the extent that there is sufficient property of the recipient to accomplish this purpose. Before the effective date of Section 1359-7, G. C. supra, the Division of Aid for the Aged in circumstances where no conveyance in trust had voluntarily been made, had a claim for reim-

bursement against the estate of the deceased recipient and that was the extent of the rights of the Division.

It is thought that in order to protect the fund from which old age assistance is granted and in view of the further fact that the number of applicants had markedly increased, that the Legislature desired to give a preferred claim of the highest type to the Division of Aid for the Aged and therefore enacted Section 1359-7, G. C.

Section 10509-121, G. C. reads as follows:

"Every executor or administrator shall proceed with diligence to pay the debts of the deceased, applying the assets in the following order:

1. Bill of funeral director not exceeding three hundred fifty dollars, such other funeral expenses as are approved by the court, the expenses of the last sickness and those of administration.

2. The allowance made to the widow and children for their support for twelve months.

3. Debts entitled to a preference under the laws of the United States.

4. Public rates and personal property taxes. Any devisee taking any real estate under a devise in any will or an heir taking under the statutes of descent, shall take the same subject to all taxes, penalties and assessments, which are a lien against such real estate.

5. To every person who performed manual labor in the service of the deceased, before payment of the general creditors, the full amount of wages due to such person for such labor performed within twelve months preceding the decedent's death, not exceeding one hundred and fifty dollars.

6. Other debts as to which claims have been presented within four months after the appointment of the executor or administrator.

7. Debts due to all other persons. Such part of the bill of the funeral director as exceeds three hundred fifty dollars shall be included as a debt under item 6 or 7 depending upon the time when the claim for such additional amount is presented."

The section of the General Code last referred to became effective September 2, 1935. The Legislature at the time of enacting Section 1359-7, G. C., as amended, and which became effective May 10, 1937, had full knowledge of the existence and effect of Section 10509-121, G. C. Apparently, it saw no necessity for specifically amending Section

10509-121, G. C. but did through mandatory language accord a preferred claim to the Division of Aid for the Aged. To classify such a claim under paragraph 6 of Section 10509-121, G. C., would not carry out the clear intention of the Legislature to make such a claim preferred. On the other hand the requirement would be that of presentation of the claim within four months after the appointment and qualification of an executor or administrator and the failure so to do would place the State in the category of a common creditor, thereby nullifying the provisions of Section 1359-7, G. C.

In specific answer to your question, I am, therefore, of the opinion that a claim of the Division of Aid for the Aged in the Department of Public Welfare of the State of Ohio for old age assistance given the deceased recipient thereof is a preferred claim against the estate of such deceased recipient. Such preferred claim is prior to all claims specifically set forth in Section 10509-121, G. C.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

2112.

APPROVAL—BONDS, VILLAGE OF BALTIMORE, FAIRFIELD COUNTY, OHIO, \$40,000.00, PART OF ISSUE DATED SEPTEMBER 1, 1934.

COLUMBUS, OHIO, March 18, 1938.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*  
GENTLEMEN :

RE: Bonds of Village of Baltimore, Fairfield County,  
Ohio, \$40,000.00. (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of water-works bonds in the aggregate amount of \$44,000, dated September 1, 1934, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*