

1500

AID FOR AGED, DIVISION—MAY LAWFULLY ADOPT RULE GOVERNING MINIMUM AND MAXIMUM OWNERSHIP OF PROPERTY—PERSON ELIGIBLE FOR AID WHO OWNS PROPERTY IN EXCESS OF STATED MINIMUM, BUT NOT IN EXCESS OF STATED MAXIMUM DESIGNATED IN SECTION 1359-2, SUBPARAGRAPH g, G. C.—CONDITION, CONVEYANCE TO THIRD PARTY IN TRUST TO MEET EXCEPTIONAL NEEDS, REIMBURSEMENT TO STATE FOR AID, PAYMENTS MADE AFTER RECIPIENTS' DEATH—SUCH MINIMUM AND MAXIMUM MUST BE WITHIN RANGE REASONABLY FIXED AS AMOUNT OF PROPERTY APPLICANT MAY OWN OUTRIGHT AND BE ELIGIBLE FOR AID.

SYLLABUS:

The division of aid for the aged may lawfully adopt a rule making eligible for aid under the provisions of subparagraph (g) of Section 1359-2, General Code, a person owning property in excess of a stated minimum but not in excess of a stated maximum on the condition that such excess is conveyed to a third party in trust for the purpose of (1) meeting exceptional needs of such person and (2) reimbursement of the state for aid payments after such person's death; but such stated minimum and maximum must be within the range in which the division might reasonably fix the amount of property which an applicant may own outright and still be eligible for aid.

Columbus, Ohio, June 11, 1952

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 1359-6 of the General Code, prior to its repeal effective June 11, 1951, provided that a person could convey, transfer, or assign personal property to the Division of Aid for Aged in trust and become eligible by reason of such conveyance, transfer, or assignment for old age assistance.

“Under the former provision, it was the rule of the Division to require all personal property in excess of \$250 to be so conveyed, transferred, or assigned. With the repeal of Section 1359-6, it is no longer possible to convey, transfer, or assign personal property to the Division. The Division has adopted a rule relative to personal property, under the provisions of Section 1359-2g of the General Code, as amended on June 11, 1951, which reads as follows:

“‘At the time of application, a person having liquid assets in excess of \$500, if single, and \$1,000, if married, will not be considered in need and may be rejected on that basis.

“‘At time of application, a person having not more than \$500 liquid assets, if single, and \$1,000, if married, will be considered eligible for assistance after such assets have been reduced to \$300 if single, and \$600 if married. If the Subdivision office determines that a single applicant has liquid assets in excess of \$300 but not exceeding \$500; or, if the Subdivision office determines that a married applicant has assets in excess of \$500 but not exceeding \$1,000, the application may be processed, but aid will not be paid until such time as the assets have been reduced to \$300 if single, and \$600 if married.’

“Under the provisions of Section 1359-7 of the General Code, it is provided that upon the death of a person the total amount of aid paid to said person or to his spouse or either or both of them shall be a preferred claim against the estate of such deceased person having a priority and preference over all unsecured claims except a maximum of \$300 for funeral expenses.

“As pointed out above, there is now no specific authorization for the trusteeing of personal property to the Division. Under the present rules of the Division, all persons who have more than

\$500 in liquid assets are ineligible for assistance. Under existing statutes, would it be lawful for the Division to adopt a rule making a person who has liquid assets in excess of \$500, with a fixed maximum, eligible for aid if he trustees such excess to a third person for the purpose of defraying expenses for needs of such person in excess of the maximum grant for old age assistance provided by law; and for the purpose of reimbursing the State for aid payments to such person after such person's death, as provided by Section 1359-7 of the General Code."

Prior to the amendment of the old age pension law in 1951, this act contained, in Section 1359-6, General Code, a provision whereby applicants might become eligible for aid payments by conveying in trust to the division of aid for the aged certain real and personal property owned by them. This provision was repealed effective June 11, 1951, by the enactment of House Bill 427, 99th General Assembly. In the same act by which this repeal was effected there was enacted Section 1359-4, General Code, providing for a lien on real property of recipients of aid in the aggregate amount of such aid received by them. The final paragraph of this section reads as follows:

"Except as provided in sections 1359-7b and 1359-22a of the General Code, the division shall not accept any property in trust after the effective date of this act. However, such trusts as are in existence at the time this act goes into effect may be continued and administered, at the discretion of the division, in accordance with the law existing prior to the effective date of this act."

The foregoing language constitutes the only reference in the present statute to trust agreements relating to property of applicants for aid. Accordingly, if statutory authority for the arrangement here under consideration exists, it will necessarily be found by implication in the general powers conferred on the division. Among these powers one of special significance is found in Section 1359-2, General Code, which reads in part:

"No person shall be eligible for aid under this act unless he fulfills the following conditions: * * *

"(g) The net value, less all encumbrances and liens, of all real property of such person used as a homestead by such person does not exceed \$6,000.00; or, if married, the net value of such combined property of husband and wife does not exceed \$6,000.00; provided, however, that in unusual circumstances the division, in its discretion, may waive this condition in order that justice may be done; the division of aid for the aged shall determine the maximum amount of personal property and the maximum amount of

real property other than that used as a homestead which a person may own and remain eligible for aid; and, * * *

Of special importance to the question at hand is the provision in this section giving the division authority to determine the maximum amount of property which a recipient may own and remain eligible for aid. Any such determination must be a reasonable one, of course, but it is clear that there will be a range within the limits of which such a determination could not be said to be an abuse of discretion. In other words, there is no specific maximum which alone could be said to be a reasonable figure, but rather it is within the discretion of the division to fix such maximum at any figure within reasonable limits. Such being the case, we may observe the effect of this power with respect to the trust arrangement which you have suggested.

By way of illustration we may assume, for example, that the division might, without abuse of discretion, fix such maximum at any figure between \$700 and \$1400. As to persons owning \$1000 in cash or property, the division, depending on whether the upper or lower maximum is chosen, has the power either to make them eligible, or to make them ineligible. Accordingly, if the division may do this, it would appear that it might properly take any intermediate action between these two extremes. One such intermediate action is that which would make such persons conditionally eligible for aid. In setting up such conditional eligibility rule the division would actually be exercising a discretionary power which is lesser than and included within the power to choose between the two extremes of absolute eligibility or absolute ineligibility. In this view of the matter, I conclude that the adoption of a rule establishing eligibility on the conditions you have described is within the discretion of the division.

In your inquiry you indicate your intention to provide in such rule "a fixed maximum" above which it would not be possible for an applicant to convey property in trust for the purpose of becoming eligible for aid. This, of course, is essential to the validity of such a rule for the reason, as already indicated above, that such maximum must be within the range in which the division could, without abuse of discretion, fix the amount of property an applicant may own outright and still be eligible for aid.

Respectfully,

C. WILLIAM O'NEILL
Attorney General