

raising revenues for state and local government, and the amendment when adopted shall take precedence over any others in conflict therewith."

I am of the opinion that the foregoing is a fair and truthful statement of the proposed constitutional amendment and accordingly submit for uses provided by law the following certification:

"Without passing upon the advisability of the adoption of the proposed constitutional amendment, but pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, I hereby certify that the foregoing summary is a fair and truthful statement of the proposed constitutional amendment. HERBERT S. DUFFY, Attorney General."

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2865.

AID FOR THE AGED—RECIPIENT—NO VESTED INTEREST IN AMOUNT STATED IN ANY PARTICULAR WARRANT WHERE HE IS PAYEE UNTIL WARRANT ENDORSED BY RECIPIENT.

SYLLABUS:

As a general rule the recipient of aid for the aged has no vested interest in the amount stated in any particular warrant in which he is named as the payee until the warrant has been endorsed by the recipient-payee designated in the instrument. Opinions of the Attorney General, 1935, Vol. I, page 215, approved and followed.

COLUMBUS, OHIO, August 25, 1938.

HON. H. J. BERRODIN, *Chief, Division of Aid for the Aged, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: This will acknowledge the receipt of your recent communication which reads as follows:

"Would you please give us a formal written opinion upon the following fact situations and questions? In this opinion,

please consider and reconcile all former opinions, particularly Opinion No. 1971 handed down by you on February 23, 1938, and Opinion No. 3990 handed down by your predecessor in office and bearing no date.

R is a recipient of Aid for the Aged from the State of Ohio. He lives on credit each month, paying his bills for groceries, rent, care and the like with each warrant as it arrives and starting the next month free of debts as well as money, but with refreshed credit. R dies

- (a) before his last warrant is written by the Auditor of State. The Auditor learns of his death before the warrant is written.
- (b) before his last warrant is written by the Auditor of State. The Auditor does not immediately learn of his death and writes the warrant. The Auditor learns of his death before the warrant is mailed.
- (c) before his last warrant is mailed but after it is written by the Auditor of State. The Auditor learns of his death before he mails the warrant.
- (d) before his last warrant is mailed by the Auditor of State. The Auditor does not immediately learn of his death and mails the warrant.
- (e) after his last warrant is mailed by the Auditor of State but before the warrant is placed in his hands.
- (f) after his last warrant is mailed by the Auditor of State and after it is placed in his hands, but before he has placed his endorsement on it.
- (g) after his last warrant is mailed by the Auditor of State and after it has been placed in his hands and he has endorsed it, but before he has delivered it to any one.

R leaves debts for necessities contracted in the period between the cashing of the next to last warrant and his death.

In *each* of the seven situations outlined above, what disposition of the warrant itself or the funds it represents is to be made under the law?"

Before proceeding to a solution of these particular questions, it will be helpful to consider the two opinions referred to in your communication, the first of which is designated by you as No. 3990 and which is found in Opinions of the Attorney General, 1935, Vol. I, page 215. The syllabus of this opinion reads as follows:

"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."

This syllabus reveals the factual situation to which the opinion was responsive. An analysis of the opinion discloses the conclusion that as a general rule a recipient of aid for the aged has no vested interest in the amount of benefits designated on the face of any particular warrant in which he is named as the payee until that warrant has been endorsed by the recipient.

In connection with the conclusion of this opinion, two facts should be kept in mind. First, the opinion states a general rule. Secondly, it applies to cases in which a particular warrant is issued to a specified payee who dies before exercising his power of endorsement.

The next opinion rendered in connection with this subject was No. 1971 which was issued February 23, 1938. The gist of this second opinion is that an exception to the general rule applies when the recipient is deprived of the opportunity of exercising the power to vest his interest in the amount stated in the particular warrant by means of endorsement, because of the intervention of a wrong-doing third party who acquires the instrument and forges an endorsement thereon. In such cases, the beneficiary's interest in the amount stated vests in the recipient at the time the warrant is mailed by the Auditor of State. Thus, to distinguish the effect of the two rules stated in these opinions with respect to the time when the recipient's interest becomes vested, it is clear that as a general rule the vesting of the interest in benefits for the aged occurs at the time when the warrant is endorsed; but an exception to this general rule is applicable when such an endorsement is prevented by a third party's acquiring the warrant and forging an endorsement thereon. In such cases, the recipient's interest vests as soon as the forgery may be effectuated. Since from an administrative viewpoint such a wrongful act may be committed any time after the warrant has been mailed to the recipient, I concluded that it was reasonable to treat the interest of the wronged beneficiary as vesting at the time when the Auditor of State places the warrant in the mail.

With these considerations in mind, it is evident that the reconciliation of the two opinions referred to is accomplished; the first opinion sets forth the general rule applicable to the time of vesting of interest, while the second opinion enunciates an exception to the general rule applicable to special circumstances.

The facts which you present in your communication do not involve

the deprivation of the recipient's power of endorsement by reason of a third party forging an endorsement. Accordingly, the rule applicable in such cases is not to be considered in the solution of your questions. Therefore, your questions will be resolved by applying the general rule, namely, that a recipient of old age benefits has no vested rights to the amount stated on the face of a particular warrant until such warrant has been endorsed by the payee designated therein. Applying this rule, the answers to your questions are as follows: The first six questions, namely, a, b, c, d, e and f, are predicated on the belief that under the circumstances stated, the mailing of the warrant by the Auditor of State is the significant act in determining the time when the vesting of interest in the amount stated therein occurs. As we have seen, the general rule applicable makes endorsement by the payee the significant act which determines the time of the vesting of interest in the amount stated in the warrant.

The second sentence of the syllabus of the opinion found in Opinions of the Attorney General, 1935, *supra*, is dispositive of your last question, g; the death of a recipient subsequent to his endorsement of a particular warrant has no effect on the vesting of his interest which occurred at the time of his endorsing the instrument. Since the creditors of the recipient have no greater interest than their debtor-beneficiary, the existence of indebtedness has no significance.

The disposition of the funds in the situations outlined by your questions would be governed by the disposition of the particular warrants in question. Thus, if no funds were available through the warrant, the funds represented by such warrant would be treated accordingly.

Respectfully,

HERBERT S. DUFFY,

Attorney General.