

SOCIAL WELFARE

CHAPTER 256

DIVISION OF SOCIAL WELFARE

256.01 DIRECTOR of SOCIAL WELFARE; POWERS AND DUTIES.

Year's educational leave of absence with payment of stipend is unauthorized. 1944 OAG 265, Jan. 25, 1944 (644-D).

256.02 INVESTIGATIONS; EXAMINATIONS; SUPERVISION.

Director of public institutions has supervision of jails and lockups. OAG Feb. 16, 1943 (88-A).

256.06 GUARDIANSHIP OF INMATES.

The director of social welfare is guardian of all state wards, except that the director of public institutions is guardian of children committed to the state training school for boys or to the state home for girls. OAG Jan. 2, 1942 (88-A-4).

256.07 STERILIZATION OF FEEBLE-MINDED PERSONS; CONSENT TO OPERATION.

Validity of statutes relating to sterilization of inmates of state institutions. 2 MLR 540; 10 MLR 343.

256.08 INSANE PERSONS IN STATE HOSPITALS; CONSENT TO OPERATION.

Insane persons while on parole may be sterilized, but all statutory requirements must be strictly complied with. OAG July 14, 1944 (248-B-9).

256.11 STATE OLD AGE ASSISTANCE; POLICY DECLARED.

Persons not named in section 261.01 as liable for support of poor person who make contributions to support though not legally liable therefor do not by such contributions diminish the amount of old age assistance allowable. 1944 OAG 297, Oct. 7, 1944 (521-R).

When recipient sells homestead, not subject to lien under present law, state and county have no claim on proceeds. When recipient dies leaving no heirs, the estate pays charges and debts, and the balance escheats to the state. County agency should file claim against the estate for entire amount of old age assistance furnished under old and present law. There is no priority on state's unsecured claim. The United States has priority. Where the estate consists of a homestead only, no claim should be filed. 1944 OAG 304, Jan. 5, 1944 (521-G).

Proceedings for sale of lands acquired under old age foreclosure are under provisions of sections 94.09 et seq., but proceeds are disposed of as provided in section 256.27. 1944 OAG 317, Aug. 21, 1943 (521-P-4).

Unless the disposal of property has thereby removed the need of old age assistance, the right to such assistance remains. OAG Nov. 7, 1945 (521-P-4).

256.12 DEFINITIONS.

Subd. 15, amended by L. 1947 c. 628 s. 1.

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"Parental care" as used in subdivision 14 includes care other than financial support. OAG March 1, 1946 (840-A-6).

The reference in section 256.12, subd. 15, to a warrant for abandonment refers to a warrant for arrest because of violation of section 617.55 or 617.56. The granting of aid to a child when the identified putative father refuses to admit paternity depends upon whether reasonable efforts, contemplated by section 256.12, subd. 15, have been made. In most cases this might require proceedings under section 257.18 to adjudicate the question of paternity. OAG April 2, 1947 (540-B).

The state agency is obliged to administer aid to dependent children on the basis of the state act, the terms of which must be construed in accordance with the definition and context of the state act and not in accordance with the federal social security act, 42 USCA, Sec. 406. OAG April 1, 1947 (540-E).

The director of social welfare in the matter of aid to dependent children who are living with relatives must cooperate with the federal government, and in the exercise of his discretion may give weight to the federal construction of the federal statute and apply such construction in implementing the state act. OAG Aug. 19, 1947 (540-J).

A dependent child may be qualified for aid even if not the victim of the crime of abandonment. If at the time of the application there has been the required absence from home of the parent, plus failure of reasonable effort by parents to support the child, aid to dependent child may be granted. OAG Aug. 22, 1947 (540-B).

256.14 COUNTY AGENCIES; DUTIES.

Persons selected by the county welfare board to appraise property of applicants for old age assistance, receive no compensation. OAG Dec. 6, 1945 (125-A-64).

County agencies administer the old age assistance system under supervision of the state agency. The records are available, at least to the sheriff. OAG June 27, 1946 (521-p-4).

256.15 PENSIONERS; PENSION; OTHER ASSISTANCE.

Subd. 2, amended by L. 1947 c. 530 s. 1.

Decision whether applicants are entitled to old age assistance rests with the county agency; but where the state agency hears the case de novo and reverses, its decision is binding on the county agency unless the district court upon further appeal finds the decision fraudulent, arbitrary, or unreasonable. State Department v County of Big Stone, 211 M 427, 1 NW(2d) 396.

Under section 256.15 a recipient of old age assistance may choose and pay his own physician, and by inference if the recipient chooses the coroner or his deputy as his physician, they may be paid from recipient's assistance funds without violating the provisions of section 382.18. OAG Sept. 11, 1945 (521-V).

Where an old age recipient obtained temporary employment and moved to another county, he was rightfully removed from the old age assistance roll, but upon the cessation of his employment and return to his original county, he is again entitled to assistance. OAG Oct. 19, 1945 (521-1-X).

When a physician presents a bill for service to an old age assistance recipient, it need not be verified. OAG Oct. 22, 1945 (521-V).

256.151 WAIVER UNTIL MARCH 31, 1951.

HISTORY. 1947 c. 530 s. 2.

256.16 APPLICANT; AGE; CITIZENSHIP; RESIDENCE; INSTITUTIONAL CARE.

The word "resided" as used in section 256.19 means physical presence coupled with an intent to make his home at the place in question. County Welfare Board v State Board of Control, 204 M 357, 283 NW 742.

An amendment of an indictment which alleges that old age assistance was obtained "by means of a false representation" in the language of the statute so as to amplify and state in detail the nature of the false representations and reliance thereon does not allege a new offense but merely restates with particularity the original one. *State v Jansen*, 207 M 250, 290 NW 557.

Section 256.16 should be read with section 256.19, as the first section establishes the requirements or residence, and section 256.19 the formula of legal settlement. OAG Sept. 18, 1946 (521-T-2).

256.18 DISQUALIFICATION OF PENSIONERS.

Action of state agency in disallowing application for old age assistance was not arbitrary or unreasonable within the meaning of section 256.21, subd. 2, the statutory provision fixing scope of review on appeals from decisions of the state agency, in light of record (a) disclosing that no attempt had been made to repudiate or avoid an agreement entered into by applicant and a private charitable institution whereby for a consideration the society promised lifetime care for petitioner; and (b) not indicating any refusal by the charitable institution to support applicant in the future. *Rasmussen v County of Hennepin*, 207 M 28, 289 NW 773.

Despite the fact that recipients of old age pension moved to another county, the responsibility for them remained with county originally granting assistance, and latter's expedient of revoking grant, where unauthorized, was not effective to start period toward new settlement running against county where they were residents at time of revocation. *State Department v County of Big Stone*, 211 M 427, 1 NW(2d) 396.

The fact that applicant has a life insurance policy with a cash value of \$400 is a circumstance to be considered but does not operate as a bar to his receiving old age assistance. 1944 OAG 298, Oct. 5, 1944 (521-P-4); 1944 OAG 299, Nov. 13, 1944 (521-P-4).

Obligations of the applicant may be considered in a case where he has property reasonably convertible in an amount exceeding \$300. OAG Oct. 13, 1944 (521-D).

Unless disposal of property has thereby removed the need of old age assistance, the right to such assistance remains. The old age assistance act is in the nature of a reward bestowed by the community on its aged members for past services and good citizenship. Extreme poverty is not a prerequisite to assistance. OAG Nov. 7, 1945 (521-P-4).

Where divorced wife owned property worth in excess of \$7,000, former husband could not be granted assistance. OAG Nov. 28, 1945 (521-P-4).

256.19 LEGAL SETTLEMENT.

See, *County Welfare Board v State Board of Control*, 204 M 357, 283 NW 742, under section 256.16; *Department of Social Security v County of Big Stone*, 211 M 427, 1 NW(2d) 396, under section 256.18.

"Residence" may simply require bodily presence in a place. "Domicile" requires bodily presence coupled with intention to make such place one's home. The terms are not identical. To acquire a settlement under the provisions of section 256.19 there must be both residence and domicile continued for one year. *County Welfare Board v Quale*, 213 M 421, 7 NW(2d) 153.

Time spent in private rest home operated for profit should not be excluded in determining time. 1944 OAG 300, Oct. 28, 1943 (521-T-3).

Legal settlement for old age assistance as it applies to counties fully defined and classified. (Opinion of July 17, 1946, reversed.) OAG Sept. 18, 1946 (521-t-2).

Where there is no legal settlement under subdivision 1, in implementing subd. 2, the words "county in which he has longest resided during the year immediately preceding the filing of such application" should be followed strictly without deducting from the period of residence in the county the time during which the applicant resided in a private charitable institution. OAG Sept. 18, 1946 (521-T-2).

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In computation of time to establish a settlement in a given county for either old age assistance or general relief, the time during which a person was an inmate of the Minnesota general hospital will be excluded. OAG March 5, 1947 (521-t-3).

256.21 APPEALS; REVIEWS.

See, State Department v County of Big Stone, 211 M 429, 1 NW(2d) 396.

On appeal to the state agency from a decision of a county agency, the hearing is de novo. Rasmussen v County of Hennepin, 207 M 28, 289 NW 773.

To acquire a settlement for old age assistance purposes under section 256.19, there must be both residence and domicile continued one year. Whether periodic absences during the year effect a change of domicile or prevent a person from acquiring a settlement depends largely upon intention, which is to be determined from a consideration of all the facts. County Welfare Board v Quale, 213 M 421, 7 NW(2d) 153.

256.24 DEATH OF RECIPIENT; FUNERAL EXPENSES; CLAIM AGAINST ESTATE.

The county should not pay the funeral expense, the daughter being able to do so. In an insolvent estate the law requires the representative of the estate to pay expenses, debts and taxes in the order provided in sections 525.44 and 256.26. 1944 OAG 303, July 5, 1944 (521-G).

Funeral expenses, compromises, statute construed. 1944 OAG 305, March 28, 1944 (521-J-2); 1944 OAG 306, Jan. 15, 1944 (521-J-2).

Payment of funeral expenses, and determination of the amount, is in the first instance a matter for the county agency, and within the limitations of the statute a contract between a funeral director and the county board is valid. OAG Aug. 13, 1945 (521-J-2); OAG April 12, 1946 (521-V).

Procedure differs between the foreclosure of a lien, and the collection of a claim in probate court. The homestead is not liable to payment of claims filed in probate court, but is subject to a lien. If there is an inconsistency between the county attorney's duties to the state and as attorney for an estate, he should act for the county and not permit a retainer for the estate of an old age recipient. OAG Jan. 30, 1947 (521-p-4).

256.25 OLD AGE ASSISTANCE TO BE ALLOWED AS CLAIM IN PROBATE COURT.

When the property left by the decedent is sufficient to pay the old age assistance lien in full, and a remainder over, the fees of the county attorney and of the executive secretary of the county welfare fund, serving as administrator may be paid out of the overage. If there is no overage, the above parties receive nothing from the estate. OAG Oct. 5, 1945 (121-A-7).

Where assistance is furnished to a joint tenant, upon his death the lien is not enforceable against the surviving joint tenant. OAG Oct. 11, 1945 (521-P-4).

Inheritances received by deceased recipient are not exempt from payment of his debts. OAG Dec. 3, 1945 (521-G).

Where old age assistance is obtained through fraud, misrepresentation or concealment, and any proceeds preserved are a trust, the state may bring action to enforce said trust. This action may result in the state being preferred to the federal claim for seed loans. OAG Aug. 21, 1946 (521-G).

Where the homestead is abandoned by the recipient and is not occupied by surviving spouse or minor children foreclosure of lien is authorized. OAG Aug. 28, 1946 (521-P-4).

Where a mortgage is foreclosed on property upon which there is a junior old age pension lien, the county cannot purchase at the sale or redeem in order to protect its interest. A member of the welfare board is not prohibited from being a purchaser at the sale. OAG Nov. 25, 1946 (521-P-4).

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Claim allowed by probate court against estate of deceased old age assistance recipient is preferred and must be so administered. OAG Jan. 30, 1947 (521-G).

256.26 OLD AGE ASSISTANCE; LIENS.

See, 1944 OAG 303, July 5, 1944 (521-G); 1944 OAG 304, Jan. 5, 1944 (521-G); 1944 OAG 305, March 28, 1944 (521-J-2).

The exemption provision of Minnesota Constitution, Article 1, Section 12, and the due process clause of Article 1, Section 7, do not prohibit or limit the provisions of the statute imposing a lien in favor of the state on all real property belonging to a recipient of an old age pension. *Dimke v Finke*, 209 M 29, 295 NW 75.

Filing claim in probate court does not waive lien rights. 1944 OAG 320, Feb. 15, 1943 (521-P-4).

Lien may be enforced after holder of life interest to which lien applies conveys such interest and vacates the property. 1944 OAG 312, June 11, 1943 (521-P-4).

The old age assistance lien is prior to a claim of a state institution for hospitalization. 1944 OAG 321, Dec. 21, 1943 (521-P-4).

Deed may be made by owner of real estate subject to old age assistance lien, reserving rents and profits during specified period in lieu of foreclosure with right of redemption. 1944 OAG 311, Sept. 7, 1944 (125-A-64).

County agency may release old age assistance lien or compromise the indebtedness when satisfied such action is necessary or advisable due to the condition of recipient's spouse. OAG March 19, 1945 (521-P-4).

The provision that old age assistance liens are to be enforced as are mechanic's liens relates to the method only, and time of foreclosure is not mandatory. Upon death of recipient there should be no foreclosure on the homestead while occupied by surviving spouse and minor children. OAG March 21, 1945 (521-P-4).

State has no lien upon insurance money as such and is not entitled to prior claim upon insurance money proceeds of destruction of buildings on a homestead covered by the lien. OAG April 3, 1945 (521-P-4).

There is no lien on a homestead which the recipient deeded to his daughter four years before he became a recipient, even if the deed was not recorded until after he began to receive assistance. OAG April 4, 1945 (521-T-4).

Precedence as between a mortgage and an old age recipient lien is determined by the date of filing. OAG July 12, 1945 (521-T-4).

If upon administrator's sale of the property covered by a lien there is a surplus after satisfying the lien claim, compensation to the county attorney and administrator of the state take precedence over rights of heirs and devisees. OAG Oct. 5, 1945 (121-A-7).

Money paid for medical attendance to an old age assistance recipient is lienable. OAG Oct. 6, 1945 (521-P-4).

Unless the conveyance of his property by an old age recipient removes the need for assistance, he may continue to receive assistance. OAG Nov. 7, 1945 (521-P-4).

Old age lien on decedents property must be recognized by those in charge of the probation of decedents estate. OAG Feb. 8, 1946 (521-P-4).

Under this section, county agency must proceed against children who are reasonably able to contribute to the support of the recipient. OAG April 12, 1946 (521-V).

Conveyances are fraudulent and state may claim the full amount of its lien, where the recipient conveyed property, of which he had constructive notice only, to a third party, who in turn conveyed it to recipients children as joint tenants. OAG April 23, 1946 (521-P-4).

Old age assistance lien comes into existence immediately upon assistance being furnished. Subsequent transferees take subject to the lien. OAG July 23, 1946 (521-P-4).

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Where the homestead is abandoned by the widow, the state may foreclose the old age assistance lien though the widow survives. OAG Aug. 28, 1946 (521-P-4).

Old age assistance lien attaches to an equitable interest in real estate. OAG Dec. 23, 1946 (521-P-4).

Procedure differs between the foreclosure of a lien, and the collection of a claim in probate court. The homestead is not liable to payment of claims filed in probate court, but is subject to a lien. If there is an inconsistency between the county attorney's duties to the state and as attorney for an estate, he should act for the county and not permit a retainer for the estate of an old age recipient. OAG Jan. 30, 1947 (521-P-4).

A cause of action against a child or spouse of an old age assistance recipient is not subject to the limitation contained in section 261.01. OAG May 2, 1947 (521-R).

The tax lien upon forfeiture is superior to the old age assistance lien. There is no statutory authority permitting the county to redeem from the tax sale in order to protect the lien. OAG May 9, 1947 (409-c-2).

Where an old age recipient transfers property with apparent intent to avoid the application of the old age lien law, the state agency is warranted in refusing further aid. OAG June 30, 1947 (521-P-4).

Validity of Minnesota's homestead lien law. 25 MLR 520.

256.30 REPORTS BY RECIPIENT.

A certificate directing payments under the old age assistance act issued because of a mistaken interpretation of the law was improperly obtained within the meaning of section 256.30, which permits the county agency to revoke an old age assistance certificate where improperly obtained. *Rasmussen v County of Hennepin*, 207 M 28, 289 NW 773.

The fact that during employment of the recipient he is temporarily suspended from benefits does not remove him from the roll. OAG Oct. 19, 1945 (521-X).

By proceedings in the district court a trust may be established over moneys received by decedent from the federal government or from the state or county and the trust moneys may be distributed by order of the court, avoiding any expense of probate proceedings. The county attorney may institute the action. OAG Aug. 21, 1946 (521-G).

256.31 UNLAWFULLY OBTAINING ASSISTANCE; GROSS MISDEMEANOR.

Old age assistance moneys received through a certificate obtained by criminal fraud remains the property of the state and may be seized by the state even if in the possession of the decedent at the time of his death. OAG Aug. 21, 1946 (521-G).

256.36 CHANGE OF RESIDENCE OF RECIPIENT.

Amended by L. 1947 c. 543 s. 1.

"Resident" as used in section 256.19, subdivisions 1 and 2, means physical presence in a county coupled with an intent to make a home there. *County Welfare Board v State Board of Control*, 204 M 357, 283 NW 742.

Despite the fact that recipients of old age pension moved from Big Stone to Traverse county, the responsibility for them remained with county originally granted assistance, and the expedient of revoking grant, where unauthorized, was not effective to start period toward new settlement running against the county where recipients were residing at the time of the revocation. *Department of Social Security v County of Big Stone*, 211 M 427, 1 NW(2d) 396.

Where recipient of old age assistance moves into another county and becomes an inmate of a rest home or hospital, other than a public charitable institution whose inmates are disqualified from recovering old age assistance, or takes up his residence in the new county, after a period of one year certain duties under this

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chapter are imposed upon the county to which the recipient moved. OAG Aug. 20, 1945 (521-T-1); OAG July 8, 1946 (521-T-1).

Under L. 1945, c. 476, amending section 256.36, before a transfer of liability for increase can result there must be a legal settlement and physical presence in the same county. This does not apply where the allowance is for medical care or hospitalization. OAG Feb. 3, 1947 (521-t-1).

256.44 to 256.48 [Repealed by L. 1947 c. 535 s. 16].

256.51 PUBLIC ASSISTANCE.

Amended by L. 1947 c. 343 s. 1.

256.53 AMOUNT OF ASSISTANCE.

Amended by L. 1947 c. 343 s. 2.

256.65 ASSISTANCE TO BE CLAIM AGAINST ESTATE OF DECEDENT.

Amended by L. 1947 c. 343 s. 3.

256.73 WHO ENTITLED TO ASSISTANCE.

The general statutory system establishing a policy and providing a method for providing for the poor neither curtails the power of the legislature to enact other similar legislation such as L. 1913, c. 130, nor prevents its enforcement. State ex rel v Klasen, 123 M 382, 143 NW 984.

A mother with dependent children to support, although divorced from her husband, is eligible to recover the benefits granted by L. 1917, c. 223. Application of Ktopman, 146 M 36, 177 NW 777.

Section 261.07, providing that the time during which a poor person "has received relief from the poor fund of any county or municipality" shall be excluded in determining settlement, cannot be construed to include also payments of a mother's pension. Village of Moose Lake v County of St. Louis, 186 M 349, 243 NW 384.

Mother's pension being the newer, it prevails over the poor laws to the extent of the conflict; and the resulting injustice, if any, must be removed by amendment rather than construction. State ex rel v Juvenile Court, 188 M 125, 246 NW 544.

"Residence" for one year, as distinguished from settlement, is a statutory condition precedent to mother's pension. It was error to deny her petition because she had not met the requirement of "settlement." State ex rel v Juvenile Court, 188.M 125, 246 NW 544.

256.74 ASSISTANCE.

Subdivision 1, amended by L. 1947 c. 192 s. 1.

256.86 UNITED STATES FUNDS TO BE APPROPRIATED TO STATE AGENCY.

Authority of director of division of social welfare to disburse funds received from the government of the United States to students in the graduate school of social work at the University of Minnesota does not apply to other educational institutions unless the federal law so authorizes. OAG May 13, 1947 (454-E).

256.87 LIMITATIONS; RIGHTS; CITATION.

Section 256.87 applies to aid furnished during the lifetime of parent, and the estate of decedent father would be liable under provisions of section 261.01. If the county furnishes aid to children after the death of their parents, there is no statute making their estate liable. OAG Oct. 16, 1945 (540-E) (1001-C).

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256.88 SOCIAL WELFARE FUND ESTABLISHED.

Social welfare fund; tax provisions. 22 MLR 299.

256.89 FUND DEPOSITED IN STATE TREASURY.

Funds in the commodity stamp fund created by L. 1941, c. 98, should be deposited by the stamp-issuing officer with the depository designated by the county welfare board pursuant to section 256.89. 1942 OAG 105, Aug. 8, 1941 (140-a-7).

256.91 PURPOSES.

When moneys are found on the person of a feeble-minded institutionalized person, the superintendent of public institutions should apply to the committing court for an order authorizing him to take possession of the ward's property, and the moneys derived through such order should be deposited in the state treasury as a part of the social welfare fund, and such part as the director deems advisable for the legal support of the feeble-minded person may be so applied. OAG May 24, 1945 (679-1).

256.93 DIRECTOR OF SOCIAL WELFARE TO TAKE POSSESSION OF ESTATES IN CERTAIN CASES.

Where an institutionalized feeble-minded person has war savings the committing officer may make two separate orders, one authorizing the director of public institutions as ward of the feeble-minded person to take possession of the bonds, and a subsequent order authorizing sale of the bonds. OAG March 8, 1945 (679-B).