

Opinion No. 37-1628

May 1, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. Lea Rowland WPA Administrator Santa Fe, New Mexico. Attention: Mr. J. I. Hinkle, Office Manager.

{*88} This will acknowledge receipt of your letter dated April 29th, making inquiry relating to statutory prior liens against estates of deceased persons for funeral or other expenses.

As far as I am able to ascertain, I know of no specific statute creating statutory prior liens against estates of deceased persons for funeral or other expenses. We do have statutes specifying what claims have preference and designating the order of payment of claims against the estate, and this may be what you have in mind.

For your convenience, we herein set out the pertinent sections of the law. Section 47-510, New Mexico Statutes Annotated, 1929 Compilation, provides as follows:

"As soon as the executors are possessed of sufficient means over and above the expenses of administration, they shall pay {*89} off the charges of the last sickness and funeral of the deceased, and they shall next pay any allowance which may be made by the court as provided by law for the maintenance of the widow and children."

Section 47-511 provides as follows:

"Other demands against the estate shall be payable in the following order:

First. Claims entitled to preference by express provision of law of the United States or of this state.

Second. Taxes.

Third. All other debts.

Fourth. Legacies."

Section 47-512 provides as follows:

"All claims, debts and legacies shall be paid off pro rata within their respective classes, in order of priority above provided."

As far as other liens against the estate are concerned, it is very probable that an approved and unpaid claim against an estate might become a lien against the real

estate owned by the deceased, at the time of his death, in the absence of personal property in the estate to pay the same, but whatever lien might arise would be against the real estate and not against wages earned or other funds due the estate which would, because of their nature, be personal property.

The only other lien I can think of is that which might arise under our succession tax law, and particularly under Section 141-1104, New Mexico Statutes Annotated, 1929 Compilation, where the succession tax imposed is declared to be a lien on all estates and interests therein until paid.

However, I am unable to find what you referred to in your letter as a prior statutory lien for funeral or other expenses against an estate. The sections of law heretofore cited appear to be the only statutory expressions I have found on the subject, and they apparently are intended to guide and bind only the executor or administrator of an estate and perhaps claimants against the estate, but I fail to see where those provisions should in any way interest any party who might be indebted to the estate such as for wages earned by the deceased prior to his death; and it would appear that under our statutes the Comptroller General of the U. S. Treasury Department, having in his possession wages earned by a now deceased employee of the Works Progress Administration, could discharge his obligation without risk by paying said sum of money to the duly appointed and qualified executor or administrator of the estate of said deceased employee.

Trusting the foregoing sufficiently answers your inquiry, I am

By: FRED J. FEDERICI,

Asst. Atty. Gen.