

Opinion No. 41-3722

February 19, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Jennie M. Kirby Director Department of Public Welfare Santa Fe, New Mexico

{*37} This letter is written in response to your inquiry dated February 17, 1941.

If it is your desire to make an applicant for Department of Public Welfare assistance feel that he is entering into a contract with the Department, then I would suggest that the provisions in the application as to the filing of claims against the estate of a recipient be included in that portion of the application above the lines for signature. Inasmuch as recipients are bound to know the law under which they make application for assistance, and since no contract is actually created, the provisions as to recoverability and provability of claims might be left out altogether.

However, it is desirable that applicants know and understand their responsibilities as well as the obligations imposed by law upon their property and therefore it is my advice that you have the application proper, i. e., that portion above signature line, contain a statement that applicant understands that receipts from the Department are recoverable under certain circumstances and that a claim may be filed against his estate for the total amount received by him during his life time from the Department of Public Welfare.

Further, in regard to application blank, I believe that a paragraph just prior to the signature line should be included, in substance, as follows:

"I (we) swear (or affirm) that I (we) have read and understand the foregoing statements and that the same are true."

With regard to the proposed section "Recoveries" for the Department of Public Welfare State Manual, I have the following suggestions to offer:

1. See Section 1 (c). Modification of payment. This paragraph might well include a statement that the assistance need not necessarily be decreased. Section 11, Chapter 18, Laws of 1937, provides that the local office **may** cancel or alter the amount of assistance. This provision is directory and not mandatory.

2 Your attention is called to the sentence beginning on the fourteenth line of page 5 in Section 2 (b). I suggest that this sentence be amended as follows:

"When the applicant or client concurs, no further action is necessary and in all such cases the county office will at the time of the closure of the case, prepare * * * form {*38} PA-170 **which shall be filed within six (6) months from the date of the death of the**

client in the Probate Court of the county where the deceased's property is located."

Trusting that the foregoing is sufficient to answer your inquiry, I am,

By GEO. H. HUNKER, Jr.

Asst. Atty. Gen.