

Opinion No. 41-3822

June 23, 1941

BY: EDWARD P. CHASE, Attorney General

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

{*70} You have requested by your letter dated June 16, 1941, an opinion by the Attorney General's office as to the validity of the following proposed rule and regulation of the New Mexico Department of Public Welfare:

"Method of payment of checks issued to approved recipients who die in the month in which the check was issued, and before the check was endorsed.

A. Checks as specified in New Mexico Public Welfare Act, Section 11 (c) are to be paid unless the estate of the recipient is sufficient to meet outstanding obligations.

{*71} B. The method to be used in paying such checks is as follows: 1. The County Welfare Office will request that a Justice of the Peace endorse the check in behalf of the deceased recipient. 2. The check will then be forwarded to a person who was living with or caring for the recipient at the time of the latter's death.

C. A person 'living with or caring for the recipient' is interpreted to mean: (1) Any adult who is in the judgment of the County Director reasonably competent and willing to assume responsibility for receiving the check and for arranging payment of the obligations of the deceased recipient. **AND** (2) Who was living with the recipient or was providing any care, assistance, personal or other services which indicated interest in or concern for the welfare of the deceased recipient."

Section 11 (c) of Chapter 18, Laws of 1937, as amended by Section 5, Chapter 116, Laws of 1941, provides in part as follows:

"In case any person who is an approved recipient of old age assistance, aid to dependent children, or aid to needy blind, living on the first day of any month and entitled to assistance for that month, dies before any check issued for such assistance has been endorsed or cashed by recipient, the amount of said check may be paid to any person living with or caring for recipient at the time of recipient's death. The State Department shall adopt reasonable rules and regulations prescribing the method of payment in such cases, and the manner of ascertaining the person ascertaining the person entitled to receive the same."

In view of the foregoing, I am of the opinion that the above quoted rule and regulation is clearly within the law as set out above.

Upon study of the foregoing section of the law, it might seem that in order for a recipient's family to receive the benefits of a Welfare Department check, that check must have been **issued** prior to the time of the recipient's death. Since the known practice of your office is to write and mail assistance checks on the 10th day of each month, the situation might arise where a recipient who is entitled to assistance on the first day of that month might die prior to the time when a check was made and mailed, that is **issued**. I am of the opinion, however, that the legislature intended that as to all persons on approved lists who are living on the first day of any month and who are entitled to assistance for that month, and yet who die prior to the time of receiving the check for assistance or prior to the time when the check was **issued**, the check "may be paid to any person living with or caring for recipient at the time of recipient's death." I am of the opinion that the courts of our state would hold that all checks of this nature would be deemed to have been issued on and after the first day of the benefit month regardless of the time when the check was actually issued.

Trusting that the foregoing sufficiently answers your inquiry. I remain

By GEO. H. HUNKER, Jr.

Asst. Atty. General