

Opinion No. 41-3732

February 27, 1941

BY: EDWARD P. CHASE, Attorney General

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

{*43} This opinion is written in connection with your inquiry dated February 24, 1941.

Under the provisions of Chapter 18, Laws of 1937, with particular reference to recoveries and provability of claims, this office is of the opinion that neither state department officers nor local department administrators may or should attempt to bind the state by any positive statement or agreement with an applicant as to the recovery of provability of a claim against him for the amount of Department of Public Welfare assistance received by him.

Naturally the state officer or local administrator may give the applicant the assurance that if he has told the truth in his application as to the amount of property owned by him, and that if he does not subsequently acquire a substantial amount of property in excess of his needs, and if he does not die possessed of a great amount of property, that no recovery will be sought against him, and no claim will be filed against his estate upon his death. At the time application is made for Department of Public Welfare benefits, no person, not even the prospective recipient, can know whether or not his station in life will or will not substantially change. Any number of things may happen after the recipient starts receiving benefits, which contingency may alter the situation, and certainly if the recipient becomes substantially richer, your department does not want to be bound by an agreement made at the time the application is taken.

Your department may adopt a form of application blank. See Section 11-a, Chapter 18, Laws of 1937. The proposed application blanks previously submitted to this office are correct as to form if amended as suggested by Opinion No. 3722, written by this office, dated February 19, 1941. As director, you may prepare the manual of instructions; this is certainly one of your administrative duties. See Section 7, Chapter 18, Laws of 1937.

Trusting that the foregoing answers your inquiry, I remain

By Geo. H. Hunker, Jr.

Asst. Atty. General