

OPINION 33

OFFICIAL OPINION NO. 33

December 3, 1971

Mr. William R. Sterrett, Administrator
State Department of Public Welfare
701 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Sterrett:

This is in reply to your request for my Official Opinion concerning whether 1971 Public Law No. 163, as found in Burns' Section 52-1208, IC 1971, 12-1-5-9, conflicts with 1971 Public Law No. 161, as found in Burns' Section 52-1125a, IC 1971, 12-1-3-11.

ANALYSIS

Both Burns' Section 52-1208 and Burns' Section 52-1125a, *supra*, deal with a method of designating a responsible person to receive and disburse welfare funds for the benefit of recipients who are unable to manage these funds. Both statutes deal with essentially the same problem.

Burns' 52-1208, *supra*, states as follows:

"If the recipient is an aged person and is found by the county department to be incapable of taking care of himself or his money, the county department may designate, upon petition to and with approval of the circuit court judge, a responsible person to whom the installments of the assistance shall be paid for the benefit of the recipient, and may prescribe such requirements as will secure the use of such funds for the sole benefit of the recipient. Payment to the person so designated shall be considered as the equivalent of payment to the recipient."

The pertinent part of Burns' 52-1125a, *supra*, is as follows:

"If an applicant for public assistance is physically or mentally incapable of completing an application

for assistance or if a recipient of public assistance is incapable of managing his affairs or refuses to take care of his money properly to comply with state department rules, regulations and policies, the county department may designate, upon petition to and with the approval of the judge of the circuit court, a responsible person to act for the applicant or recipient and receive on behalf of the recipient any assistance which he is eligible to receive under the provisions of IC 1971, 12-1-3 through 12."

It is fundamental law that statutes be given a harmonious construction when they deal with the same subject matter and do not have an irreconcilable conflict. Bd. of Comr's of County of Marion vs. Bd. of School Comr's of City of Indianapolis (1960), 166 N.E.(2d) 880. Also see State vs. Daviess Circuit Court (1967), 230 N.E.(2d) 761.

Burns' 52-1125a, *supra*, applies to all welfare recipients, whereas Burns' 52-1208, *supra*, applies only to "an aged person."

Burns' 52-1208, *supra*, sets forth two reasons for the use of protective payments when "an old person" is the person for whom the benefits are to be utilized, namely, the inability to take care of himself or his money. These same reasons are found in Burns' 52-1125a and apply to all recipients. An additional ground is also set forth whereby a protective payment may be made when a recipient "refuses to comply with state department rules, regulations and policies." Aged persons are within the broader definition of the word recipient which is used in Burns' 52-1125a and accordingly this portion of said statute would apply to older persons receiving assistance.

Furthermore, when a statutory construction can be posed which allows all the provisions of both statutes to be given effect, this construction should be utilized. The foregoing construction of these statutes fulfills this requirement. See In Re Adoption of Chaney (1958), 150 N. E.(2d) 754.

OPINION 33

CONCLUSION

It is, therefore, my official opinion that the statutes—Public Law Number 136 and Public Law Number 161—are *not* in conflict. They should be construed together as permitting a legal method of designating a responsible person to receive and disburse welfare funds for the benefit of any needy recipient who is physically or mentally unable to manage his own affairs.