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OFFICIAL OPINION NO. 9

April 14, 1967

**PUBLIC WELFARE ACT—Assignment of Benefits Received
by Aged, Blind or Disabled Persons—Exemption from
Levy, Execution or Attachment—When Payment to
Third Party Is Permissible.**

Opinion Requested by Hon. Adam Benjamin, Jr., State Representative.

Your letter dated March 3, 1967, requests an opinion on the provisions of the Public Welfare Act which prohibit the assignment of assistance given to aged, blind or disabled persons. Your letter asks specifically:

“Under the Welfare Act, Burns’ 52-1001 et seq. ‘Assistance’ given aged, blind or disabled persons is apparently not assignable by specific statutory provision.

“Would an assignment given by recipients of such assistance to a third party be valid if the assignment were given after the services or assistance were already rendered to the recipient by the assignee?

“In other words, an assignment after the services rendered but before payment. In your opinion, is the statutory prohibition against such assignments broad enough to exclude even an assignment of this nature?”

The prohibition against assignment of assistance to be given to aged persons is contained in Acts 1936 (Spec. Sess.) ch. 3, § 41, as found in Burns § 52-1210, which reads as follows:

“No assistance given to any aged person under the provisions of this act [chs. 10-14 of this title] shall be transferable or assignable, at law or in equity, and

none of the money paid or payable under the provisions of this act shall be subject to execution, levy, attachment, garnishment or other legal process, nor shall such money become an asset for the payment of debts or expenses in bankruptcy or insolvency proceedings.”

Identical wording is used in the Welfare Act's provision against the assignment of assistance to be given to *blind* persons, Acts 1936 (Spec. Sess.) ch. 3, § 62, as found in Burns § 52-1231, and to be given to *disabled* persons, Acts 1936 (Spec. Sess.), ch. 3, § 82 (1) as added by Acts 1961, ch. 206, § 13, as found in Burns § 52-1251 (1).

The language of these above-cited sections to the effect that “No assistance given to any aged [blind, disabled] person under the provisions of this act shall be transferable or assignable, at law or in equity, . . .” is stated in a manner that is clear, direct and unequivocal, and in my opinion such language leaves no opening into which could be read an exception allowing the assignment of such assistance in favor of a third person who has already rendered goods or services to the welfare recipient. The subsequent language of the same section goes even further in providing that none of the money payable, nor even that which has already been paid and is in the hands of the recipient, can be subjected to execution, levy, attachment, garnishment or other legal process, which might be attempted by creditors, including individuals or corporations which may have already rendered goods and services to the recipient.

However, the Public Welfare Act takes several indirect precautions to protect creditors from irresponsible welfare recipients. Under § 39 of the Act, Burns, *supra*, § 52-1208, if an aged recipient is found to be incapable of taking care of himself or his money, the County Department of Public Welfare may designate a responsible person to whom the installments of assistance shall be paid for the benefit of the recipient. In addition, § 39a of said Act, Burns, *supra*, § 52-1208a provides for the appointment of a guardian for a recipient of aged assistance who is found to be incapable of managing his estate or business affairs because of his old age, infirmity, se-

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nility, improvidence, or being a spendthrift or a habitual drunkard. The appointment of a guardian for a *disabled* recipient is also authorized on similar grounds by Acts 1936 (Spec. Sess.), ch. 3, § 82j as added by Acts 1961, ch. 206, § 11, as found in Burns, *supra*, § 52-1261j. Although there is no express provision for the guardianship of *blind* recipients of welfare, § 60 of the Act, Burns, *supra*, § 52-1229 provides for payment to a responsible person for the benefit of the blind recipient, if he is found to be incapable of taking care of himself or his money.

Depending upon the nature of the services (as hereinafter described), some payments *are made directly* to the individual or corporation furnishing the services by the County Department of Public Welfare, thereby rendering any payment or assignment by the recipient of the welfare services unnecessary and further making it impossible for the recipient to assign such assistance to any other third person. Medical care awards shall be paid directly to the person, corporation, association, institution or agency furnishing such services, which payments may be made either during the lifetime or after the death of the recipient, who may be aged (Acts of 1936 (Spec. Sess.), ch. 3, §§ 34 and 37, both as amended, Burns, *supra*, § 52-1203 and § 52-1206); or blind (Acts of 1936 (Spec. Sess.), ch. 3, § 54, as amended, and as found in Burns, *supra*, § 52-1225); or disabled (Acts of 1936 (Spec. Sess.), ch. 3, § 82h, as added by Acts of 1961, ch. 206, § 9, as amended, and as found in Burns § 52-1251h).

Likewise, if medical, surgical, or hospital care is rendered by a public hospital or hospital operated by the Trustees of Indiana University, to a person there committed by the County Department of Public Welfare under the authority of the Acts of 1947, ch. 300, § 1, as found in Burns § 52-1131, the expense of such hospitalization is paid directly by the County Department of Public Welfare as prescribed under § 5 of ch. 300 of the Acts of 1947, Burns, *supra*, § 52-1135, without such payment ever passing through the hands of the person receiving such medical, surgical or hospital care.

Under the Public Welfare Act, the expense of burial for any person receiving assistance as an *aged* person (Acts 1936 (Spec. Sess.), ch. 3, § 40, as amended, as found in

Burns, *supra*, § 52-1209, or *blind* person (Acts 1936 (Spec. Sess.), ch. 3, § 61, as amended and as found in Burns, *supra*, § 52-1230), or a *disabled* person (Acts 1936 (Spec. Sess.), ch. 3, § 82k, as added by Acts of 1961, ch. 206, § 12, as found in Burns, *supra*, § 52-1251k), is apparently intended to be paid directly to the funeral director and cemetery authorities upon their filing with such county board sworn claims for their expenses incurred on account of the death of a welfare recipient.

An interesting comparison may be made with a similar but slightly different provision in the Employment Security Act, Acts 1947, ch. 208, § 3403, as found in Burns § 52-1558b, which reads as follows:

“Any assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this act [§§ 52-1525—52-1563b] shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt *until such benefits are actually received by the recipient*. Any waiver of any exemption provided for in this section shall be void.” (Emphasis added.)

While this section of the statute also makes void any assignment or encumbrance of any right to benefits which may become payable, however, once the benefits are actually received, such monetary benefits are apparently thereafter subject to execution or attachment by creditors.

From the above, it is my opinion that assistance in the form of money payments to aged, blind or disabled persons cannot legally be assigned to third persons who may have already furnished goods or services to the welfare recipient before such assistance is actually paid. Once the assistance has been paid to the aged, blind, or disabled recipient, it cannot be reached by any legal process for the collection of debts, even by the person or corporation who has already provided goods and services to the recipient. Such payments are to be used only for the direct benefit of the recipient, but such recipient could voluntarily pay from the assistance received for goods and services rendered. However, if the welfare re-

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recipient is irresponsible, a spendthrift, a drunkard, or otherwise unable to manage his affairs or money, the Court may appoint a guardian for the recipient (if he is aged or disabled), or the county department may make the payments to some responsible person to be used for the benefit of the recipient (if he is aged or blind). Certain kinds of expenses, such as medical care, hospitalization, and burial allowances are paid directly to the individual or corporation which has provided the services.

OFFICIAL OPINION NO. 10

April 17, 1967

ELECTIONS—Compensation for Precinct Board Members in City Primary.

Opinion Requested by Mr. Edwin Steers, Sr., Member, State Election Board.

Your letter of March 21, 1967, reads as follows:

“Pursuant to our telephone conversation I request your assistance in determining the amount the Marion County Election Board as well as the election boards in other counties may pay for precinct board members consisting of clerks, assistant clerks, judges and inspectors in the oncoming city primaries. The law seems to be conflicting. Section 29-4317, Burns’ Indiana Statutes, as amended in 1959, is as follows:

“Each judge, each clerk, and each assistant clerk of any city primary election or election shall be allowed and paid the sum of eight dollars (\$8.00); and each Sheriff shall be allowed and paid the sum of five dollars (\$5.00); and each inspector shall be allowed and