OPINION 29

instances, be capable of determination until the expiration of
the two-year period provided by Burns' 64-2606(n), supra,
which will expire at the latest no later than June 30, 1965.

OFFICIAL OPINION NO. 29

June 24, 1964

Mr. Albert Kelly, Administrator
Department of Public Welfare
701 State Office Building
Indianapolis 4, Indiana

Dear Mr. Kelly:

This is in answer to your letter of May 4, 1964, in which you
present eight questions concerning Acts of 1963, Ch. 432,
which, although vetoed by Governor Welsh, became law for
reasons expressed by the Supreme Court in the case of Charles
O. Hendricks, Secretary of State etc. v. State ex rel. Northwest
Indiana Crime Commission et al. (1964), — Ind. —, 196 N. E.
(2d) 66.

The act is concerned with medical aid to the aged, and al-
though its provisions resemble, in many respects, provisions
contained in Acts of 1936 (Spec. Sess.), Ch. 3, as amended, as
found in Burns' (1951 Repl.), Section 52-1001 et seq., com-
monly known as the Public Welfare Act of 1936, the new act is
separate and apart from the Welfare Act, and is not made
amendatory thereto.

To date the State Department of Public Welfare and the
Welfare Departments of the ninety-two counties have been
governed and controlled by the Public Welfare Act of 1936,
supra, and by rules and regulations adopted in accordance
therewith. Since the Departments have been supplying medi-
cal aid to the aged under the Welfare Act and its rules and
regulations, your questions concern the additional duties cre-
ated by the new act, and the effect thereof upon general wel-
fare administration throughout the state.

The new act was considered as having been vetoed by the
Governor, and was therefore not placed in the 1963 Supple-
ment to Burns' Indiana Statutes Annotated. The Supreme Court opinion, supra, which made the act effective, was filed subsequent to the publication date of the Burns’ 1963 Supplement. Hence, there are no Burns’ citations to which this Opinion may refer.

In your letter you first state that Section 99 of the Welfare Act of 1936, as amended, the same being Burns’ (1951 Repl.), Section 52-1302, authorizes the State Department of Public Welfare to review and to increase or decrease the amounts estimated in Part I of the several county welfare budgets. Thereafter, you ask the following question:

"Does the reference provision in Section 11 of Chapter 432 of the Acts of 1963 provide that the medical assistance for the aged provisions of Chapter 432 of the Acts of 1963 fall under Part I of the County Welfare Budget as provided for under Section 99?"

Before proceeding to answer your question, a brief statement of the reason therefor is in order. Section 99, to which you refer, as found in Burns’ 52-1302, supra, provides that the annual budget of each county department of public welfare shall be divided into two parts, designated as Part I and Part II. The latter part is established so as to contain the administrative expense of each county department, and Part I is established so as to cover the cost of old age assistance, assistance to dependent children, child welfare activities, and assistance to crippled children.

The section further provides that each county welfare board shall submit its proposed budget for the next ensuing year to the State Department of Public Welfare, together with the proposed tax levy, and upon examination of the proposed budget, that the State Department of Public Welfare is authorized to increase or decrease the amount set out in Part I; however, no such power of increase or decrease exists with respect to Part II. This power is made necessary under federal law, since one-half of the money supplied to recipients described under Burns’ 52-1302, supra, is supplied by the Federal Government.

Acts of 1963, Ch. 432, Sec. 11, to which you refer, reads as follows:
"The state department shall reimburse each county upon the same basis and in such percentages as now is required by law under the provisions of the general welfare laws, the same being Chapter 3 of the Acts of 1936 as amended and supplemented. The funds required for the administration, carrying out and complying with the provisions of this act shall be budgeted, appropriated and handled as other public welfare funds under the provisions of said general welfare act, and the provisions of said act relating to the procedures for raising, disbursing and handling public welfare funds shall be applicable to the raising, disbursing and handling of funds under this act. The provisions of these laws are, to the extent applicable, incorporated in this act by reference." (Our emphasis)

Analyzing Section 11 in its entirety, we see that the first sentence provides for reimbursement of the county departments of public welfare on the same basis and percentages as now provided in the Welfare Act of 1936, supra. Thus, the intent is shown to divide the costs under the new act in the same manner and upon the same basis as is now done, under the Welfare Act.

Burns’ 52-1302, supra, provides that Part II of the budget contain an estimate of the money needed for administrative expenses in carrying out the provisions of the Welfare Act. However, the actual carrying-out of the purpose of the act falls within Part I.

Therefore, when the General Assembly provided that the funds required for the administration, carrying-out and complying with the provisions of Acts of 1963, Ch. 432, supra, be “budgeted, appropriated and handled as other public welfare funds under the provisions of said general welfare act,” it provided that administrative expense should come within Part II of the budget and that the actual cost of carrying-out the purpose of the new act be classified under Part I of each county welfare budget.

Finally, the wording of the last sentence of Section 11, supra, to-wit: “The provisions of these laws are, to the extent applicable, incorporated in this act by reference,” would indi-
cate the intent to make the form of the budget under the new act identical, insofar as possible, with the welfare budgets as they have existed for the past several years.

It is therefore my opinion that the reference provision in Acts of 1963, Ch. 432, Sec. 11, supra, does provide that the medical assistance for the aged provisions of said act fall under Part I of each county welfare budget as provided for under Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 99, as found in Burns’ (1951 Repl.), Section 52-1302, supra.

Your second question concerns rules and regulations, and reads as follows:

“Must the rules and regulations be based on Chapter 432, Acts of 1963 as the legal base, or can The Welfare Act of 1936 be used also?”

The rule-making power under Acts of 1963, Ch. 432, supra, is created by Section 2 thereof, and particularly by subsections (1) and (3). The appropriate portions read as follows:

“The state department shall:

“(1) Take such action and make such rules and regulations as may become necessary to entitle the state to receive aid from the federal government for medical assistance for the aged in Indiana;

* * *

“(3) Take such action, give such directions, and promulgate such rules and regulations as may be necessary or desirable to carry out the provisions of this act, including the adoption of regulations and procedures to insure uniform equitable treatment of all applicants for medical assistance to the aged.” (Our emphasis)

There is nothing in this section which refers to Acts of 1936 (Spec. Sess.), Ch. 3, supra, commonly known as the Public Welfare Act of 1936.

Section 5 of the Public Welfare Act of 1936, as found in Burns’ (1951 Repl.), Section 52-1104, subsection (f), provides, in part:

“May make such rules and regulations and take such action as may be deemed necessary or desirable to carry
out the provisions of this act and which are not incon-
sistent therewith * * *” (Our emphasis)

Thus, we see that the Legislature specifically placed rule-
making powers in both the Public Welfare Act of 1936 and in
Acts of 1963, Ch. 432. In each instance, however, the power
created was limited “to carry out the provisions of this act.”
Since the two acts are separate and distinct, it necessarily
follows that any rules created must relate to one act or the
other, and must be based upon the particular act to which they
do relate.

It is, therefore, my opinion that rules and regulations made
in accordance with Acts of 1963, Ch. 432, must be based upon
that act alone and not upon the Welfare Act of 1936 as
amended.

Your next two questions relate to life insurance and are
based upon Acts of 1963, Ch. 432, Sec. 3(5), which reads as
follows:

“The ownership of real or personal property by an
applicant for medical assistance for the aged or by the
spouse of such applicant, either individually or jointly,
or of insurance on the life of the applicant shall not
preclude the granting of medical assistance for the aged
if the applicant is without funds for medical care.

“In determining the need for medical assistance, the
state department shall disregard such income and re-
sources as are necessary to meet the subsistence needs
of the applicant for himself and his legal dependents.

“The amount of income so disregarded shall not ex-
ceed twelve hundred dollars plus the premiums ex-
pended for hospital and medical care, including prepaid
medical care annually for an unmarried applicant, or
eighteen hundred dollars plus the premiums expended
for hospital and medical care, including prepaid medi-
cal care annually, for a married applicant and spouse
living together. Income shall not include the shelter
value of a residence occupied by the applicant nor the
value of gifts or services contributed in kind to the
applicant. The amount of resources so disregarded
shall not exceed twenty-five hundred dollars in net
value of personal property of which not more than five hundred dollars shall be in cash or maturity value of stocks or bonds for an applicant who is unmarried or not living with the spouse, nor more than one thousand dollars for a married applicant and spouse living together. The limit in net value of personal property shall not include household goods, wearing apparel, or personal effects; nor shall the resources in real property exceed the home for a married or unmarried applicant.”

With respect to this subsection, you ask—

“Does this mean that the value of life insurance should be completely ignored in determining eligibility?”

and—

“Is insurance to be considered as part of the $2,000.00 or $1,500.00? If so, at what value—face or cash surrender?”

Because of their similarity these two questions are being considered together.

The figures which you use are reached by deducting from the twenty-five hundred dollar resource allowable under Section 3 (5), supra, the portion thereof classified as cash, stocks or bonds, and these figures constitute the amount of personal property, with stated exceptions, which may be owned by an applicant for medical aid under Acts of 1963, Ch. 432, supra.

The facts giving rise to these questions are that the Public Welfare Act of 1936, as amended, makes no reference whatever to life insurance; however, under the rule-making power of that act the State Board of Public Welfare has adopted its Regulation 2-202, which reads, in part, as follows:

“Intangible Personal Property—Old Age Assistance

“(a) In consideration of the fact that intangible personal property may serve the purpose of providing a fund from which emergencies or burial expenses may be paid, each applicant for, or recipient of, old age assistance shall be entitled to have intangible personal
property in which the liquid cash value of the equity of the applicant or recipient amounts to not more than $350, and still be eligible for assistance. This amount of $350 shall be known as the Standard Resource Allowance and shall be in effect in all counties in the state.

"(b) For the purpose of determining eligibility for old age assistance, intangible personal property is defined as cash, stocks, bonds and the cash surrender value of life insurance." (Our emphasis)

The result of this regulation is to exclude from old age assistance or medical care under the Public Welfare Act of 1936 those persons who retain life insurance having cash surrender value in excess of $350.00. Since the effect of the new act is to create a medical aid plan separate and apart from the plan which already exists under the Public Welfare Act, you are confronted with an existing life insurance limitation under one plan which may not exist under the other.

Looking at Acts of 1963, Ch. 432, Sec. 3(5), supra, in its entirety, we see, in the first paragraph, an expressed intent that ownership of real or personal property or of life insurance shall not preclude the granting of medical assistance under the new act. The second paragraph of Section 3(5), supra, differs from the first, relating to the determination of need, and it provides for the disregarding of such income and resources necessary to meet the subsistence needs of the applicant and his legal dependents.

The third paragraph of the subsection first limits the amount of income to be disregarded, and then sets out the amount of resources to be disregarded, using the figures upon which your question is based. Finally, the subsection makes provision concerning limitations on the value of personal and real property.

The answer to the questions stated above must therefore turn upon whether the Legislature intended life insurance to fall within the classification "resources" limited in the third paragraph of Section 3(5).

From the construction of Section 3(5) as a whole, I do not believe that the Legislature so intended.
In the first place, the third paragraph of the subsection would appear to classify resources as personal property because after stating the limit applicable to resources, it speaks of the "limit of net value on personal property."

In the second place, the first paragraph of the subsection distinguishes between personal property and life insurance by separating the two terms by the word "or." Had the Legislature intended to include life insurance within the classification of personal property, I do not believe that it would have used verbage to distinguish between the two terms.

It is therefore my opinion that life insurance should be completely ignored in determining eligibility for medical aid under Acts of 1963, Ch. 432, Sec. 3 (5), supra, and that life insurance is not to be considered a part of the resources necessary to meet the subsistence needs of an applicant and his legal dependents.

In arriving at this conclusion, I am aware of the various types of life insurance being written, and such conclusion is based upon a limited interpretation that the phrase "life insurance" refers only to straight life policies on the life of the applicant. Specific questions concerning other types of life insurance might result in a different conclusion.

Your next question also concerns Acts of 1963, Ch. 432, Sec. 3 (5), supra, and reads as follows:

"Is the value of an automobile to be considered as a part of the $2,000.00 or $1,500.00? If so, at what value—Blue Book or market?"

Since automobiles fall within the class of personal property, and since the statute contains no language to exclude them from the class, it was apparently the intent of the Legislature to so classify them under this section.

While the use of the "Blue Book" is helpful in determining the value of a motor vehicle, the figures therein contained are not conclusive, and as a matter of fact fall within several classifications, the same being wholesale, retail and trade-in values. These figures are based only upon the model and year of the vehicle; they do not take into consideration the condition of the vehicle, the difference in prices over the state, or the
element of local supply and demand. Therefore, it is my opinion that the sum which must be used is the market value of the car, the same being the amount of money required to replace the automobile in its existing condition, and that the value thereof is to be considered as a part of the amount of personal property limited by Section 3(5), supra.

Also relating to Section 3(5), supra, you ask:

"Are items of jewelry and heirlooms considered as personal effects? If so, can their value be limitless?"

This question arises out of the last sentence of Section 3(5), supra, reading as follows:

"* * * The limit in net value of personal property shall not include household goods, wearing apparel, or personal effects; nor shall the resources in real property exceed the home for a married or unmarried applicant.* * *"

Although the Public Welfare Act of 1936, as amended, is separate and distinct from the act with which we are here concerned, the situation there with respect to intangible personal property is of interest. It is first pointed out that no section of that act makes reference to jewelry or heirlooms; however, Regulations 2-203(b) and 2-304(b), adopted in accordance with that act, contain the following identical language:

"* * * Property of sentimental value such as heirlooms, personal jewelry and personal effects shall not be considered in determining eligibility on the basis of need, except upon a special finding by the county board of public welfare setting forth the facts and reasons for such action * * *"

Since Section 3(5), supra, makes no mention of jewelry or heirlooms, but uses the term "personal effects" only, we must determine what that term was intended to include.

There is in Indiana no statute or case at Appellate level defining the term "personal effects"; however, there are nu-
numerous cases from other jurisdictions which give light to your question. Three of these are as follows:

"'Personal effects' are personal property having a more or less intimate relation with person of possessor, such as wearing apparel, jewelry or other items of property of such character." Hatch v. Jones, 81 Ariz. 5, 299 P. (2d) 181.

"In common understanding, the expression 'personal effects', without qualifying words, when used in a will, includes only such tangible property as attended the person, or such tangible property as is worn or carried about the person." In re the Sorensen's Estate, 46 Cal. App. 2d 35, 115 P. (2d) 241.

"Where used in a limited sense or without qualification, 'personal effects' will be limited to personalty worn or carried about or attending the person, but where amplified by qualifying words or phrases, the term includes all personalty intimately associated with testator." In re Douglass' Estate, 70 Cal. App. (2d) 279, 161 P. (2d) 66.

From these authorities it would appear that items of jewelry fall within the class of personal effects.

An heirloom, on the other hand, may or may not fall within such class, the word being defined by Webster's New International Dictionary, Second Edition, as follows:

"Any furniture, movable, or personal chattel, which by law, special custom, will, or settlement descends to the heir with the inheritance; hence, any piece of personal property owned by a family for several generations."

Thus, if an heirloom is property such as a brooch, a ring, a watch, a shawl, or other piece worn or carried by the person, it may be properly classified as a personal effect. If, on the other hand, it is a large piece of personal property not carried on the person, it may not be so classified. Therefore, whether an heirloom is to be classified as a personal effect must be determined from the facts in each individual instance.
Since Section 3(5), supra, contains no limitation as to value of personal effects possessed by the applicant, we must conclude that no limitation was intended to exist.

Your last two questions relate to persons who change their county residence after having been granted medical aid under Acts of 1963, Ch. 432, supra, and read as follows:

“Should responsibility for payment of cases moving from a county remain with the original county?

“Should responsibility be transferred immediately or at the end of one (1) year as in the categories of Old Age Assistance, Assistance to Dependent Children, or Assistance to the Disabled?”

The Public Welfare Act of 1936, as amended, covers this problem and Section 49 thereof, as found in Burns’ (1951 Repl.), Section 52-1218, provides that any recipient of old age assistance who moves to another county with the approval of the State Department of Public Welfare may receive aid from the county from which he moves until he has resided in the new county for one full year, after which he may receive aid from the county to which he has moved.

Since Acts of 1961, Ch. 210, Sec. 2, amended Section 37 of the Public Welfare Act of 1936, as found in Burns’ (1951 Repl.), Section 52-1206, so as to provide medical care under that act to persons whose incomes are insufficient to cover necessary medical expense, county responsibility under that act is now covered by Section 49 thereof, as found in Burns’ 52-1218, supra.

Acts of 1963, Ch. 432, supra, on the other hand, makes no provision for changing of residence, and the only provisions as to residence will be found in Section 3, which reads, in part, as follows:

“Medical aid for the aged shall be granted to any resident of this state sixty-five (65) years of age or older who meets the following conditions:

* * *

“(3) Is a citizen of the United States and a resident of the State of Indiana, including residents of the state who are absent therefrom. In no event shall the
word 'resident' be construed more restrictively than as defined by the Secretary of Health, Education and Welfare under the Social Security amendments of 1960 as a basis of eligibility for grants-in-aid for medical services for the aged."

and in Section 4, the pertinent portion of which provides that—

"An application for medical assistance for the aged under the provisions of this act shall be made to the county department of the county in which the applicant resides * * *"

Thus, we must conclude that either the Legislature overlooked the matter of changing residence or specifically intended to omit it.

From an examination of Acts of 1963, Ch. 432, supra, as a whole, it would appear that the Legislature did not have in mind a condition of extended medical care, since such needs are already provided for under the Public Welfare Act of 1936, as amended, and specifically by Burns' 52-1206, supra.

This interpretation is given strength by Acts of 1963, Ch. 432, Sec. 13, supra, which begins with the following language.

"If, at any time during the continuance of any allowance granted under the provisions of this act * * *"

(Our emphasis)

Thus, it would appear that more than one allowance to a particular individual was contemplated and that such an allowance was contemplated to terminate.

Further, the fact that Section 3 (3), supra, contains no provision as to length of time resided in the county and that Section 4, supra, provides that application be made to the county in which the applicant resides, would indicate the legislative intent to require a new application to be filed by a recipient under this act upon the changing of his residence from one county to another.

Of course, we must keep in mind the fact that a short period is required for the administrative processing of an applica-
tion. This is a problem of administration rather than law, and provision for this short interim period may be made through rule and regulation.

It is therefore my opinion that responsibility for payment of aid under Acts of 1963, Ch. 432, supra, by the county in which application is filed, does not remain with the original county after residence has been changed, except that necessary care during the short period during which a new application is processed may be provided in accordance with rules and regulations.

The matter as to responsibility in the new county must turn upon when residence is established there. While the Public Welfare Act of 1936, as amended, has set forth the specific requirements relating to establishment and changing of residence for welfare purposes, the Legislature has specifically chosen not to follow these rules in this act, but has stated simply that an applicant must be a citizen of the United States and a resident of the State of Indiana. The term “residence” in Indiana has been defined as “the being in a given place with the intention of making it one’s permanent home.”

McCollen v. White, 23 Ind. 43;


It is closely related to “domicile,” and with respect to the two terms, we find the following material in 11 I. L. E. at pages 6 and 7:

“A domicile, once established by origin or choice continues until a new domicile is acquired.

“In order to effect a change of domicile, the old domicile must be abandoned, without an intention to return to it, and a new domicile acquired with the intention of making it a permanent abode. Domicile is acquired instantaneously on removal and location, animo manendi.

“Residence in a place for any length of time for any temporary purpose, with the intention to return to a domicile elsewhere, or without a present intention to remain at such place for an indefinite time, does not
1964 O. A. G.

constitute an abandonment of the former domicile, and is insufficient to effect a change of domicile."

It is therefore my opinion that responsibility should be transferred upon the establishment of a new residence and a new application for assistance under this act should be filed.

By way of summary, it is my opinion, with respect to Acts of 1963, Ch. 432, *supra*, that:

1. Section 11 of the act does provide that the medical-assistance-for-the-aged provisions of said act fall under Part I of each county welfare budget as provided for under Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 99, as found in Burns' (1951 Repl.), Section 52-1302, *supra*.

2. Rules and regulations made in accordance with Acts of 1963, Ch. 432, *supra*, must be based upon that act alone and not upon the Welfare Act of 1936 as amended.

3. Life insurance of the type designated in this Opinion should be completely ignored in determining eligibility for medical aid under Acts of 1963, Ch. 432, Sec. 3(5), and that life insurance is not to be considered a part of the resources necessary to meet the subsistence needs of an applicant and his legal dependents.

4. The sum which must be used with respect to an automobile is the market value of the car, the same being the amount of money required to replace the automobile in its existing condition, and the value thereof is to be considered as a part of the amount of personal property limited by Section 3(5).

5. The term "personal effects," as used in Acts of 1963, Ch. 432, Sec. 3(5), *supra*, includes jewelry and also includes heirlooms which are carried on or about the person. There is no limitation of value upon personal effects.

6. Responsibility for payment of aid under Acts of 1963, Ch. 432, *supra*, by the county in which application is filed, does not remain with the original county after residence has been changed, except that necessary care during the short period during which a new application is processed may be provided in accordance with rules and regulations.
7. When a recipient of medical aid under this act changes his residence from one county to another within this state, county responsibility should be transferred upon the establishment of a new county residence and a new application should be filed.

OFFICIAL OPINION NO. 30

June 25, 1964

Hon. A. Morris Hall
State Senator
302 Marion National Bank Building
Marion, Indiana

Dear Senator Hall:

This is in answer to your letter of May 14, 1964, wherein you request an Official Opinion from me, pertaining to the proper charge for the recording of school fund mortgages, in view of the provisions contained in the Acts of 1963, Ch. 204.

The third paragraph of your letter reads as follows:

"The specific question to be answered is whether or not the County Recorder who uses the photographic reproduction method shall charge $2.00 for the first page and $1.00 for each page thereafter on a school fund mortgage or shall charge the sum of $1.00."

The answer to your question requires an examination of the Acts of 1955, Ch. 322, Sec. 1, and the amendments thereto, the last amendment being made by the Acts of 1963, Ch. 204, Sec. 1, and found in Burns' (1963 Supp.), Section 49-1308a, which reads, in part, as follows:

"The recorders of the various counties of this state shall, on behalf of their respective counties, tax and collect, upon proper books to be kept in their offices for that purpose, the fees and amounts provided herein on account of services rendered by said recorders. The fees and amounts so taxed, which shall be in full for all services of the recorder, shall be designated as