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which provision, so far as administration of the fund is concerned, serves the same function as notice required when a municipality elects to withdraw.

Your first question asked whether employees may withdraw from the Public Employes' Retirement Fund, and the answer is that only municipalities, (such as counties and departmental participating units), are authorized to withdraw from the fund. Employees who withdraw from service cease to be contributing members of the fund although they retain some rights therein until they withdraw their contributions. The inference is that an employee's withdrawal from service amounts to either a withdrawal from, or suspension of membership in, the fund.

In light of the foregoing explanation determining withdrawal from service to approximate withdrawal from the Public Employes' Retirement Fund, it is my opinion that deputy sheriffs, as employee-members of the Public Employes' Retirement Fund, are entitled to consider themselves withdrawn from service when they become county policemen eligible to membership in a pension trust established pursuant to the Acts of 1961, Ch. 285, *supra*; however, such withdrawal is not "in order to establish a new pension fund," it being automatically accomplished upon such establishment and resultant ineligibility to be employee-members of the Public Employes' Retirement Fund.

In answer to your second question, it is my opinion that notice is not required of employees withdrawing from service.

OFFICIAL OPINION NO. 34

August 7, 1963

Hon. Paul Hatfield
State Senator
706 Old National Bank Building
Evansville, Indiana

Dear Senator Hatfield:

This will acknowledge your recent letter in which you request my Official Opinion upon the following question:

Can an applicant receive old age assistance under the Welfare Act of 1936, as amended, with a trust fund in force between herself and a funeral home in the amount of \$580.00, which is to be used for burial expense at her death?

Although the present State Board of Public Welfare was created, and its predecessor board abolished, by Acts of 1945, Ch. 316, Secs. 1 and 2, as found in Burns' (1951 Repl.), Section 52-1102, and the notes thereto attached, the powers and duties of the present board are prescribed by Acts of 1936 (Spec. Sess.), Ch. 3, commonly known as The Welfare Act of 1936. Section 4(c) of the latter Act, as found in Burns' (1951 Repl.), Section 52-1103(c), makes it the duty of the State Board of Public Welfare to be responsible for the adoption of rules and regulations for the State Department of Public Welfare, and Section 5(f) of the same act, as found in Burns' (1951 Repl.), Section 52-1104(f), provides that such rules and regulations may be made by the department. The making and promulgation of rules and regulations of all state departments, boards and commissions is governed by Acts of 1945, Ch. 120, as found in Burns' (1961 Repl.), Section 60-1501 *et seq.*

In 1946, the State Board of Public Welfare adopted and promulgated its Regulation 2-202, which reads as follows:

"Regulation 2-202 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 de-

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fined as cash, stocks, bonds and the cash surrender value of life insurance.

“(c) Possession of intangible personal property that has no liquid cash value, or that has a cash value in which the equity of the applicant or recipient is no greater than the Standard Resource Allowance shall not render the applicant or recipient ineligible for assistance.

“(d) Possession of intangible personal property with an available liquid cash value in excess of the Standard Resource Allowance shall render an applicant or recipient ineligible for assistance; and utilization of some of the resources down to the amount of the Standard Resource Allowance is necessary before the applicant or recipient can be found eligible, except in unusual circumstances in which a reasonable leeway in excess of the Standard Resource Allowance is deemed advisable.

“(e) In determining eligibility on the basis of need, the net equity of the applicant or recipient in a resource of life insurance shall be the cash surrender value of the policy minus the amount of any lien, loan, accrued interest payments, or assigned portion of the policy.”

This regulation is presently in full force and effect, and under Acts of 1945, Ch. 120, Sec. 11, as found in Burns' (1961 Repl.), Section 60-1511, is to be judicially noticed.

Your question arises out of a trust agreement drawn nine (9) years ago in which a lady paid the sum of \$580.00 into a local bank to be held in trust for the sole purpose of defraying her funeral expenses. The instrument directed the bank-trustee to hold the money in a checking account, to make payment to a named funeral establishment upon the death of the settlor, and concluded with the following language:

“This agreement can only be revoked by the undersigned by delivery of a written revocation thereof to the Old National Bank in Evansville, Evansville, Indiana.”

The funeral firm issued an instrument itemizing a described casket, a concrete vault, a dress and services as having been "sold" to the lady for "future funeral." The itemized described property, according to our own investigation reports indicate that all itemized articles are presently in a storage house and all itemized articles are tangible personal property, the title to which would seem to rest with the undertaker until he is paid from the trust. Also shown were "cash advances" for grave opening and closing and for flowers. At the bottom of the instrument appeared the following language:

"Paid in Full by deposit in Old National Bank
April 2 1954 to our credit

by Mrs. Lura Hazel, Self
The Albert Johann & Sons Co.

/S/ Frances B. Mueller
Secy."

The lady is now confined to a nursing home, and has made application to the local county department of public welfare for old age assistance. That department has refused the application because the sum deposited exceeds the \$350.00 allowable as Standard Resource Allowance under Regulation 2-202, *supra*, and has demanded that the excess of \$230.00 be obtained from the bank and consumed as living expense prior to the granting of aid.

Furnished material discloses that this lady is without income other than a small sum received each month as social security. She now has a legal guardian who has sought help from the local legal aid society. Although the trust agreement apparently remains in effect, an order has been obtained from the Vanderburgh Probate Court authorizing her guardian to take steps to revoke it. Notice of the proposed revocation has been served upon the bank, which has replied that the transaction is considered as a completed sale which cannot be rescinded, and the funeral establishment has taken a like position. Any refund must, therefore, result from litigation.

A close analyzation of the situation presented leads to the conclusion that this application for old age assistance is not affected by Regulation 2-202, *supra*.

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In the first place, the regulation provides that an applicant shall be entitled to have intangible personal property of stated value. In using the term "have intangible personal property" the makers of the regulation apparently intended the meaning to be "possess" it, because the words "possession of intangible personal property" are subsequently used in the regulation in two instances.

Here, the applicant has seemingly surrendered possession of her money over nine (9) years ago, and entered into a trust agreement. While a disputed power of revocation was retained by her, such power does not fall within the definition of intangible personal property as set out in Regulation 2-202(b), *supra*. For that reason, she has no intangible personal property as defined in the regulation at this time.

Lest there be a misunderstanding of this Opinion, it is not my intention to convey the impression that any applicant for old age assistance in Indiana may first place his assets into a trust fund to be used for his burial or for any other purpose; on the contrary, such a planned arrangement would make an applicant ineligible to receive aid under Acts of 1936, Ch. 3, Sec. 32, as amended and as found in Burns' (1963 Supp.), Section 52-1201, which reads, in part, as follows:

"Assistance shall be given under the provisions of this act to any aged person who:

* * *

"(f) Has not, at any time within five years immediately prior to the date of the filing of an application for assistance, pursuant to the provisions of this act, made an assignment or transfer of property for the purpose of rendering or which will render him eligible for assistance under the provisions of this act."

It is rather the purpose of this Opinion to cover the specific facts stated in the problem which has been presented by you.

In the second place, Regulation 2-202(a), *supra*, provides that an applicant for old age assistance shall be entitled to have intangible personal property in which liquid cash value amounts to not more than \$350.00; however, the regulation

fails to define the term "liquid cash value." A search of authorities fails to disclose any definition of the phrase by a court of appellate jurisdiction; however, the words contained in the phrase have been defined individually.

The word "liquid" is defined in 54 C. J. S. at page 562, as follows:

"As an adjective, flowing freely like water; fluid; not solid; also, of assets, securities, etc., such as are cash or as can be promptly converted into cash."

The case of Real Estate Title, Ins. & Trust Co. v. Lederer, Collector of Internal Revenue (1916), 229 Fed. 799, in describing the assets of a corporation, said at page 805:

"(3) Some of its funds, which it called its capital investments, were invested in real estate and other investments of a less mobile character than investments which are commonly termed 'liquid.'"

In discussing the term "quick assets" the Circuit Court of Appeals, Second Circuit, said, in the case of In re American Knit Goods Mfg. Co. (1909), 173 Fed. 480, at page 483:

"* * * The trustee, on the other hand, claims that the word 'quick' was used merely to distinguish liquid assets from those permanently invested in the business, like real estate and machinery * * * We adopt this construction of the word as more reasonable than the construction contended for by the petitioners."

The term "cash" has also been defined by our courts, and at 14 C. J. S. pages 15 and 16, we find the following language:

"With reference to its availability for immediate use, it has been said that, in popular parlance, 'cash' is used to refer not merely to money, but to money in hand, under full control for use in paying obligations and liabilities, and has been defined as meaning money at command or in hand, either in current coin or other legal tender, or in bank bills or checks paid and received as money; money in the treasury; money

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on hand or subject to the owner's right of immediate possession; money on hand which a merchant, trader, or other person has to do business with; ready money."

In the situation described by your letter, the trust fund of \$580.00 has given rise to a dispute between the bank-trustee, the funeral establishment and the county department of public welfare. While the department has refused to accept the application for old age assistance until the excess over \$350.00 has been consumed in living expense, it is the position of the bank-trustee and the funeral establishment that the entire sum represents a transaction completed nine (9) years ago. They take the further position that there can be no revocation even though the court has entered an order granting power of revocation to a person other than the settlor. This dispute cannot be determined by me, but any decision of the question can come only through litigation.

Under these circumstances, it is apparent that under the several definitions set out above, this trust fund cannot be said to have "liquid cash value," and does not come within the meaning or spirit of Regulation 2-202, *supra*.

Finally, Regulation 2-202(d) provides that "utilization of some of the resources down to the amount of the Standard Resource Allowance is necessary before the applicant or recipient can be found eligible, except in unusual circumstances in which a reasonable leeway in excess of the Standard Resource Allowance is deemed advisable." The regulation uses the term "unusual circumstances" and it would appear that the facts which you present would certainly fall within the phrase so used.

It is, therefore, my opinion that under the circumstances of this case, the applicant for old age assistance under The Welfare Act of 1936, *supra*, as amended, cannot be denied aid on the ground that she possesses intangible personal property having liquid cash value in excess of \$350.00, because she does not possess such assets within the meaning or spirit of Regulation 2-202, *supra*, of the State Department of Public Welfare.