

OLD AGE PENSIONS: State Board not relieved from liability to pay funeral expenses of deceased pensioner because he carried policy of insurance in the amount of \$108.00 payable to his wife.

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Mrs. Kate Ray Kuhn
Member County Old Age Assistance Board
Marion County
Hannibal, Missouri

Dear Madam:

This will acknowledge receipt of your letter requesting an opinion from this department, which reads as follows:

"We would like to request an opinion on the case of an applicant for Old Age Assistance.

"This applicant, who applied through the Marion County Board, has been certified and received the Assistance up until a few days ago when he passed away.

"He had an insurance policy amounting to about one hundred and eight dollars (\$108.00) made out to his wife.

"As you know, the State allows fifty dollars, (\$50.00) for burial fee to an applicant where there is no estate, if the case has been certified. This man had no estate, personal property amounting to about ten dollars (\$10.00) and nothing else beside the insurance.

"He and his wife have been on relief for two or three years and the house rent has been donated by a friend.

"The wife now has absolutely nothing and will have to go back on Direct Relief.

"We wonder if it would be possible for this applicant's wife to receive the burial fee granted by the State under

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the circumstances.

"Will you, please, advise me at your earliest convenience?"

Section 15 of the Old Age Assistance Act, Laws of Missouri 1935, page 312, provides:

"On the death of any person receiving old age assistance, such reasonable funeral expenses for burial shall be paid to such persons as the state board directs; provided, that such expenses do not exceed \$100.00 and the estate of the deceased is insufficient to defray the same."

You ask if it would be possible for this applicant's wife to receive the burial fee granted by the State in the instant case. You will note, from the above section, that the funeral expenses are to be paid to such persons as the State Board directs if the expenses do not exceed one hundred dollars and the estate of the deceased is insufficient to defray the same. We presume that what you desire to know is whether the State should pay burial expenses in the case in question, in spite of the fact that the deceased pensioner had an insurance policy payable to his wife in the amount of \$108.00. You do not state whether the policy in question is an old line life insurance policy or a fraternal benefit policy. If it is a policy in an old line life insurance company the proceeds thereof would inure to the wife's separate benefit, independent of the creditors, executors and administrators of the husband, under the provisions of Section 5739, Revised Statutes Missouri 1929, and would not be subject to the payment of funeral expenses. Said section reads, in part:

"Any policy of insurance heretofore or hereafter made by any insurance company on the life of any person, expressed to be for the benefit of the wife of the insured, shall inure to her separate benefit, independently of the creditors, executors and administrators of the husband: * * * *"

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If the policy was one of a fraternal beneficiary association the proceeds thereof would belong, absolutely, to the beneficiary and would not be subject to the payment of funeral expenses, under the provisions of Section 6011, Revised Statutes Missouri 1929, which reads as follows:

"No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment."

Even if the policy in question was made payable to the estate of the deceased the widow would be entitled thereto under the stated facts in your letter. Under the provisions of Section 107, Revised Statutes Missouri 1929, a widow is entitled, in addition to dower, to certain articles of property and such sums of money in exclusion of all its claims, charges, legacies and bequests as the Court may deem reasonable for the proper support of said widow for the period of one year after the death of the decedent. In addition thereto, the widow is allowed not to exceed the appraised value of four hundred dollars, under the provisions of Section 108, Revised Statutes Missouri 1929, and if the widow does not receive the property thus allowed the court shall order the money to be paid to the widow as her absolute property. The one year's allowance and the four hundred dollars provided for above is the absolute property of the widow and is not subject to the payment of any debts.

It is, therefore, the opinion of this department that the fact that a deceased pensioner had a policy of insurance payable to his wife, in the amount of \$108.00, would not relieve the State Board's liability to pay the reasonable funeral expenses for burial to such persons as the State Board directs, if such expenses do not exceed one hundred

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dollars and the estate of the deceased is insufficient to defray the same.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

JET:LC