

MAINE STATE LEGISLATURE

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No

December 31, 1952

To George C. West, Assistant Attorney General, assigned to the Department of Health and Welfare.

Re: Margaret B. Saunders - Divesting of Property

The attention of this office has been directed to the case of Mrs. Margaret B. Saunders of Mechanic Falls, by Governor Frederick Payne and others, who have asked us to review the legal aspects surrounding the circumstances under which Mrs. Saunders has been denied Old Age Assistance by the Department of Health and Welfare.

In a Fair Hearing Decision rendered by David H. Stevens, it was stated that the denial of Old Age Assistance in the case of Margaret B. Saunders was based on the fact that "Mrs. Saunders did indirectly divest herself of property without reasonable consideration. . . ." Such decision would have been as a result of §265, Chapter 22, R. S. 1944, as amended.

A resume of the facts will be helpful in considering this problem, and, briefly, they are these:

It appears that Mrs. Saunders, a lady of some 85 or 86 years of age, was, in 1951, an owner in common with one Harold J. Goss of a certain property in which Mrs. Saunders had made her home for 54 years. Mr. Goss, exercising his legal right, brought a petition for partition of the said property, and as a result of this action the court ordered the property to be sold at auction.

At this point, Mrs. Saunders, being concerned with her future life, sought ways and means which might ultimately result in her having a place in which to live. Upon the advice of her attorney, arrangements were made with one Sam Hayman, a local used-car dealer, whereby Mr. Hayman would bid on the property at the auction on behalf of Mrs. Saunders, and if/were the successful bidder, then Mrs. Saunders would further execute a deed to Mr. Hayman for one-half undivided interest in the premises, the remaining half to be deeded to Mr. Hayman upon Mrs. Saunders' death. Mr. Hayman was to pay to Mrs. Saunders' executor the difference between \$4000 (the agreed fair value of the entire premises) and the amount paid by Mr. Hayman at the auction.

The bidding at the auction went to \$6600, at which figure Mr. Hayman became the successful bidder. The difference between \$4000 and \$3300 (the latter figure being the amount paid by Hayman for the one-half interest belonging to Mr. Goss), or \$700, was the figure to be paid to Mrs. Saunders' executor for Mrs. Saunders' half interest, to be conveyed by deed to Hayman at Mrs. Saunders' decease.

As a result of these circumstances it has been held by the Commissioner of Health and Welfare that:

1. Mrs. Saunders indirectly divested herself of property by the signing of an agreement binding herself to convey her one-half interest in the premises; and
2. This divesting of property was done without receiving reasonable consideration in that, the property having a value of \$4000, an agreement to convey one-half such property upon her death for \$700 rather than \$2000 was not reasonable consideration.

The situation, as described above, contains both questions of law and questions of fact.

The law involved is here quoted:

"Any applicant for or recipient of old age assistance, who divests himself directly or indirectly of any property without a reasonable consideration or for the purpose of qualifying for such assistance, shall forfeit all right to receive assistance under the provisions of sections 256 to 274, inclusive. . ."

It must be considered here that it was not upon Mrs. Saunders' motion that a sale of this property was required, but rather the sale was ordered by a court of the State of Maine. Rather than being a voluntary act upon her part, there was thrust upon her, by virtue of a court order, the necessity for some kind of action. The actual facts bear witness to the necessity for some action on her part. At the auction there were three bidders, a garage owner, interested in a small portion of the property, who dropped out of the bidding at a comparatively low figure, Mr. Goss, co-owner, and Mr. Hayman, bidding under his agreement with Mrs. Saunders/

What would have been the result if Mr. Hayman had not been bidding? Mr. Goss would have obtained the premises after the first bidder dropped out and surely at a cost that would not have approximated the value of the property.

Instead of such a situation you have a picture where Mrs. Saunders has a home for the remainder of her life, and her estate receives \$700 upon her death.

Consulting actuarial tables, we find that Mrs. Saunders has, if her property were a life estate (which in reality is what she has), such an interest that it could hardly be said she divested herself of property without reasonable consideration. The yearly value of her property (approximately \$600) multiplied by her factor as given in actuarial tables (2.4 for a woman 86 years old) would be approximately \$1900 or one-half the reasonable value of the entire premises.

For the reasons outlined above, we are of the opinion that, legally, Mrs. Saunders' action did not result in a divesting of property without reasonable consideration, but, rather, her action was forced upon her by court order, and that she received reasonable consideration.

With respect, then, to the Fair Hearing Decision issued by the Commissioner of Health and Welfare, in so far as it was based upon legal opinion given by you, we should like this opinion to be considered as replacing any given by the Attorney General's office which might have held the action of Mrs. Saunders to be a divesting of property without reasonable consideration.

We should like to add that the Attorney General has personally visited Mrs. Saunders, examined her property, interviewed numerous citizens familiar with the problem and has intimately acquainted himself with the entire situation. It is with this background that the present opinion is being written.

This decision should not involve any loss of federal funds appropriated for the purposes of old age assistance.

Alexander A. LaFleur
Attorney General

jgf/c
cc: Hon. Leslie Jacobs, Auburn
Frank Foster, Esq., Mechanic Falls