

MAINE STATE LEGISLATURE

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November 30, 1967

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Mental Health & Corrections

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Disposition of Funds of Deceased Patients and Inmates under
P. L. 1967, chapter 324 (34 M.R.S.A. § 9).

FACTS:

This office has received a request to interpret parts of P.L. 1967 chapter 324, (34 M.R.S.A. § 9) and to answer various related questions. The pertinent part of this Statute reads as follows:

"If any patient or inmate of any institution under the control of the department shall die, leaving on deposit in his personal account of such institution an amount not exceeding \$500, or leaving in the custody of the head thereof any personal property, and no executor of his will or administrator of his estate shall be appointed, the head of the institution may pay the balance of his account to the surviving spouse, and if none, to his next of kin, and if none, to the funeral director having any bill outstanding for the burial of the decedent, and if none, or if any balance remains after payment thereof, to any other preferred creditor or creditors who may appear to be entitled thereto, and shall deliver said personal property to the surviving spouse, and if none, to his next of kin, who may appear to be entitled thereto. Such payment or delivery shall not be made until 6 months have elapsed following the date of death of the patient or inmate. For any payment or delivery so made the head of the institution shall not be held liable to the decedent's executor or administrator thereafter appointed, or to his heirs, successors or assigns."

The specific inquiry involves a deceased patient of the Bangor State Hospital. At her death she had \$117.21 in her personal account. Subsequent to the death, the Hospital received a bill of \$300 from the funeral home which was in charge of burying the deceased.

QUESTION #1:

Who is to determine the "next of kin" as it is used in P.L. 1967 chapter 324?

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ANSWER #1:

See Opinion.

OPINION #1:

A Probate Court in the State of Maine usually makes the determination of who is "next of kin". See 18 M.R.S.A. § 1551. However, as I read P.L. 1967 324 there is no need to petition the Probate Court to determine "next of kin", where the deceased's personal account contains less than \$500 and there is no administrator or executor involved. It would appear that the head of the institution involved may determine the "next of kin" in accordance with the Laws of Descent and pay any money under \$500 to such person or persons. I would emphasize that the Statute uses the word "may," thereby giving the head of the institution discretionary power in this matter.

At this point we might add that we agree with your interpretation of the first paragraph of P.L. 1967 c. 324 that any money must be paid to the spouse before the next of kin; the next of kin before the funeral director; and the funeral director before the preferred creditors. The words "and if none" make this order of payment mandatory. It is also clear that any such payment should not be made until six months have elapsed since the death of the patient.

QUESTION #2:

Assuming that there is no spouse, no next of kin, and no outstanding funeral bills, what is the order of "preferred creditors?"

ANSWER #2:

See Opinion.

OPINION #2:

Since in situations under this section the amount of money involved will not be more than \$500, it would appear that the question of the order of preferred creditors is at best academic. In the great majority of cases the spouse, next of kin or funeral bill will eat up what little money there is under \$500. A determination of the order of "preferred creditors" is extremely difficult as it gets into whether or not the estate is solvent and other factual determinations which lead to much confusion. For these reasons we think it advisable not to get into this problem until a given factual situation arises.

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QUESTION #3:

To whom is the personal property of a deceased patient to be delivered where there is no spouse and no known next of kin?

ANSWER #3:

See Opinion.

OPINION #3:

It would appear that such personal property should remain in the hands of the institution in this situation. As opposed to the disposition of money, the disposition of personal property under P.L. 1967 chapter 324 stops with "next of kin"; that is, there is no provision for sale of such property for possible payment of debts. It would appear that the intention of the Legislature was that such property remain in the hands of the institution to dispose of as it sees fit, and to retain any proceeds of sale for the general purposes of the institution.

Should the property involved be of substantial value, an administrator should be called in to handle the problem.

QUESTION #4:

Who pays for a petition to a Probate Court to determine whether or not there are heirs?

ANSWER #4:

See Opinion.

OPINION #4:

The estate involved will pay for the expenses of administration. See 34 M.R.S.A. § 2515. However, as P.L. 1967 chapter 324 says that the head of the institution should petition for such a determination, it would be advisable that the funds for the petition come initially from the institution itself, later to be paid out of the estate.

WEW, Jr./mf

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