

Opinion No. 51-5470

December 28, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Alva A. Simpson Jr. State Director Department of Public Welfare Santa Fe, New Mexico

{*182} This is in reply to your letter of November 2nd requesting my opinion on the question of whether the State Board of Public Welfare can adopt a regulation which will conform our state law with the federal requirement that the first \$ 50. of income earned by applicants or recipients of aid to the blind can be disregarded in determining their eligibility for such public assistance.

The Social Security Act, Title X, Grants to States for Aid to the Blind, Section 1002 (a) requires that a State plan for aid to the blind must:

"(8) provide that the state agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that in making such determination, the State agency shall disregard the first \$ 50 per month of earned income;"

This requirement will be mandatory on July 1, 1952, the following provision being in effect for the period beginning October 1, 1950, and ending June 30, 1952:

"(8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the blind; except that the State agency may, in making such determination, disregard not to exceed \$ 50 per month of earned income."

Payment to states from federal funds are available only if the state has "an approved plan for aid to the blind", Sec. 1003 (a). The Social Security Agency has taken the position that the New Mexico State Plan for Aid to the Blind must be conformed to the federal requirement, as stated, by July 1, 1952, as a condition of continued approval of said plan. The Federal Agency has pointed out that the 1951 State Legislature could have enacted legislation to bring about conformity of the state law but has failed to take proper action.

This raises the question of whether compliance with the Social Security Act could be accomplished by administrative action of the State Board, which in turn raises the question of whether the Board has sufficient authority under our state laws. The following sections and excerpts from our statutes set forth the powers, duties and authority of the Department of Public Welfare and of the State Board.

{*183} The Welfare Department has the power: "To adopt, amend and repeal by-laws, rules and regulations." Sec. 73-103 (a), N.M. Stat., 1941 Comp.

The Department shall:

"Formulate detailed plans, make such rules and regulations, and take such action deemed necessary or desirable to carry out the provisions of this act, and which are not inconsistent therewith." Sec. 73 104 (d).

"Cooperate with the federal government, in matters of mutual concern, pertaining to public welfare and public assistance, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such public welfare and assistance." Sec. 73-104 (e), N.M. Stat., 1941 Comp.

"Act as the agent of the federal government in welfare matters of mutual concern in conformity with the provisions of this act, and in the administration of any federal funds granted to this state, to aid in furtherance of any such functions of the state government." Sec. 73-104 (g), N.M. Stat., 1941 Comp.

The State Board of Public Welfare has been charged with the following duties:

"The state board shall formulate and establish all policies, rules and regulations for the government of the state department, and all administrative and executive duties and responsibilities of the state department shall be discharged by the director, subject to the authority of the state board." Sec. 73-106 (b), N.M. Stat., 1941 Comp.

Cooperation with the United States Government has been directed in the following provision:

"The state department is hereby designated as the state agency to cooperate with the Federal Government in the administration of the provisions of Title 1, Title 4, Part 2 and 3 of Title 5, and Title 10 of the Federal Social Security Act. The state board is hereby authorized and directed to cooperate with the proper departments of the Federal Government, and with all other departments of the state and local governments in the enforcement and administration of such provisions of the Federal Social Security Act, and any amendments thereto and the rules and regulations issued thereunder, and in compliance therewith in the manner prescribed in this act, or as otherwise provided by law." Sec. 73-109, N.M. Stat., 1941 Comp.

Public assistance shall be granted to any needy person who "has not sufficient income or other resources to provide a reasonable subsistence compatible with decency, and health." Sec. 73-111 (a), N.M. Stat., 1941 Comp.

"The amount of assistance which any person shall receive, shall be determined by the department with due regard to the resources and necessary expenditures of the case,

and the conditions existing in each case and in accordance with the rules and regulations made by the state department, and shall be sufficient, when added to all other income and support available to the recipient, to provide such person with a reasonable subsistence compatible with decency and health." Sec. 73-115, N.M. Stat., 1941 Comp.

An applicant for assistance to the needy blind must meet the conditions of eligibility set forth in Sections 111, 115 of Chapter 73. Sec. 73-123, N.M. Stat., 1941 Comp.

The foregoing statutes give the Board of Public Welfare broad powers and all of the legislation {**184*} indicates that it was the legislative intent that our State Department of Public Welfare participate to the fullest possible extent in the Federal Aid Program. A similar viewpoint was expressed by the courts in the cases of *Multnomah County v. Luhn*, 178 Fed. 2d 159; *State ex rel Mitchell, Attorney General, v. Townsend*, 171 P. 2d 651, and *Morgan v. Department of Social Security*, 127 P. 2d 686. In the *Multnomah County* case, *supra*, the Court stated:

"The law defining the powers and duties of the state welfare Commission * * * requires the commission among other things, to serve as the state agency in the administration and supervision of the administration of all public assistance programs; to effect uniform observance of such standards throughout the state; and to promulgate and enforce such rules and regulations as are necessary to assure full compliance with the terms of federal and state laws. These requirements may be regarded as a legislative declaration of intention to place the state in position to take advantage of the benefits tendered under the federal act, and the state statute should be construed in relation to the purposes and objective of that act."

This language is equally applicable to our New Mexico statutes.

It is my opinion that the state law is sufficiently elastic to permit compliance with changes in the Federal Social Security Act and it is my opinion that the State Board of Public Welfare by adopting a proper regulation can conform the state law to the federal requirement that in determining need of applicants seeking aid to the blind their first \$ 50 of income earned shall be disregarded.