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Sacramento, California
November 19, 1971

Honorable Anthony C. Beilenson
Senate Chamber

Welfare - #21632

Dear Senator Beilenson:

QUESTION

Do Public Social Services Manual¹ Sections 44-333.14 and 44-333.16 violate the law by placing the burden of proof upon the recipient?

OPINION AND ANALYSIS

Subdivision (b) of Welfare and Institutions Code² Section 11004 (Chap. 578, 1971 Stats.) establishes the reporting responsibility of recipients under public assistance programs supported by state funds,³ in the following language:

"(b) Any applicant for, or recipient or payee of, such public social services shall be responsible for reporting accurately and completely

¹ Hereinafter referred to as P.S.S.M.

² All further code references are to the Welfare and Institutions Code, unless otherwise indicated.

³ Aid to Families With Dependent Children, Old Age Security, Aid to the Blind, Aid to the Potentially Self-Supporting Blind, Aid to the Needy Disabled, and Medi-Cal.

within his competence those facts required of him pursuant to subdivision (a) [facts material to a correct determination of eligibility and grant] and to report promptly any changes in those facts."

With regard to such reporting responsibility of the recipient, P.S.S.M. Sections 44-333.14 and 44-333.16 provide as follows:

".14 Knowledge

".141 A recipient is presumed to be informed as to the provisions for eligibility and his responsibility for reporting (see Sections 40-131.3 and 44-333.2) and reasonably to understand these provisions.

".142 A recipient is presumed to know of changes in his income, need, resources and other circumstances affecting his individual situation.

".16 Responsibility for Reporting Not Met: Willfully Withheld Information

"A recipient has failed to meet his responsibility for reporting if he has willfully failed to report pertinent facts or has employed any willfully fraudulent device in connection with eligibility or grant determination.

".161 Willful Failure to Report

"Unless the recipient effectively rebuts the presumptions of Section 44-333.14 by clear and convincing evidence, his failure to report shall be considered willful, irrespective of the recipient's negligence, mistakes, misinterpretations, errors, or inadvertence.
(Emphasis added.)

"(f) If it is found that a recipient or a family was possessed of property in excess of the amount permitted by law, and it cannot be established that the recipient or family received such aid in bad faith, without honestly believing eligibility was properly established, the amount collectible shall be limited to an amount equal to the market value of the excess property or the amount of aid granted during the period the excess property was held, whichever is the lesser.

* * *" (Emphasis added.)

Subdivisions (a) and (f) of Section 11004, in our opinion, impose a duty upon the county welfare departments to fully inform recipients of all pertinent eligibility factors and reporting responsibility; however there is no mention of any presumption of willfulness in the Welfare and Institutions Code in cases involving overpayments. The question is therefore raised as to whether or not P.S.S.M. Sections 44-333.14 and 44-333.16 are in conflict with subdivisions (a) and (f) of Section 11004.

Although administrative interpretation of statute, while not controlling, is entitled to great weight, whatever the force of administrative construction final responsibility for interpretation of law rests with the courts (Morris v. Williams, 67 Cal. 2d 733). Under the terms of Government Code Section 11374, no regulation adopted by an administrative agency is valid unless consistent with and not in conflict with statute. Also an administrative officer or body may not alter or enlarge the terms of a legislative enactment (e.g., see Eisenberg's White House v. State Board of Equalization, 72 Cal. App. 2d 8).

".162 Willfully Fraudulent Device

"A willfully fraudulent device consists of any misrepresentation, oral or written, of facts material to a correct determination of eligibility and grant."

The consequences of willful failure to report are: (1) the overpayment adjustment period is one year rather than six months (P.S.S.M. Sec. 44-333.132); (2) the total overpayment is adjustable in all cases rather than no right to adjustment existing in the last month where aid is discontinued (see P.S.S.M. Secs. 44-335.1 and 44-335.13); and (3) there is more property out of which the overpayment may be adjusted (see P.S.S.M. Secs. 44-333.12, 44-333.19 and 44-335.131). Thus, as shown above, the results of considering failure to report grant changes causing overpayment as willful can involve a greater loss of property to the recipient.

In our opinion the effect of P.S.S.M. Sections 44-333.14 and 44-333.16, supra, is to create a rebuttable presumption of willful failure to report on the part of the recipient, where an overpayment of the welfare grant has occurred due to an unreported change in circumstances. The burden of proof is thereby shifted to the recipient to establish that his failure to report was not willful.

Also concerning a recipient's reporting responsibility, subdivisions (a) and (f) of Section 11004 (Ch. 578, Stats. 1971) read as follows:

* * *

"(a) Any applicant for, or recipient or payee of, such public social services shall be informed as to the provisions of eligibility and his responsibility for reporting facts material to a correct determination of eligibility and grant.

* * *

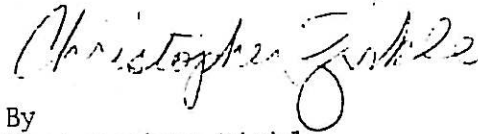
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Subdivisions (a) and (f) of Section 11004 impose upon county welfare departments a duty to inform recipients of their reporting responsibility, which in our opinion would additionally require county welfare departments to affirmatively establish that the recipient was so informed. Section 11004 (f) further indicates that counties have the burden of affirmatively establishing bad faith on the part of the recipient. However, since under P.S.S.M. Sections 44-333.14 and 44-333.16 failure to meet reporting responsibility is presumed to be willful, regardless of any showing by the county that the recipient was informed of his responsibility as to the particular unreported facts, the entire burden of proof is thereby shifted to the recipient.

Thus, we think that imposition upon the county welfare departments of the duty to inform recipients, under subdivisions (a) and (f) of Section 11004, would be at least partially negated by operation of this regulatory presumption. We therefore conclude that the courts would hold P.S.S.M. Sections 44-333.14 and 44-333.16 to be void as inconsistent with or altering the terms of the statute.

Very truly yours,

George H. Murphy
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By
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