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Sacramento, California
October 19, 1971

Honorable Anthony C. Beilenson
Senate Chamber

Welfare - #20057

Dear Senator Beilenson:

QUESTION

You have asked whether the Director of the Department of Social Welfare is obligated to implement welfare statutes that are enacted and you ask us to indicate the authority of the county to carry out the statute.

OPINION AND ANALYSIS

In the absence of specific legislation or information regarding the legislation, we can only discuss generally the obligations of the director in implementing and the county in carrying out a statute.

The director is required to administer the laws pertaining to the administration of public social services, to formulate, adopt, amend or repeal regulations and general policies affecting the purposes, responsibilities, and jurisdiction of the department and which are consistent with law and necessary for the administration of public social services and perform such other duties as may be prescribed by law (W. & I.C., Sec. 10553).

In administering any funds appropriated or made available to the department for disbursement through the counties for welfare purposes, the department is required to establish regulations not in conflict with the law fixing statewide standards for the administration of all state or

federally aided public social service programs, defining and controlling the conditions under which aid may be granted or refused. All regulations established by the department shall be binding upon the boards of supervisors and the county department (W. & I.C., Sec. 10604).

Section 10554 provides that the director is the only person authorized to adopt regulations, orders, or standards of general application to implement, interpret or make specific the law enforced by the department.

Thus the director is required to formulate, adopt, amend or repeal regulations and general policies which are consistent with law and necessary for the administration of public social services. He is the only person authorized to adopt such regulations and policies to implement the law enforced by the department and all of the regulations established are binding on the county. Thus when regulations are necessary to carry out welfare statutes that are enacted, the director is required to promulgate such regulations.

The county welfare departments are required to administer public social services except for the control of administering the payment of grants for all aid programs (W. & I.C., Sec. 11050) pursuant to applicable laws and in the case of public social services for which federal or state funds are provided subject to the regulations of the department (W. & I.C., Secs. 10800 and 10803).

Therefore when the Legislature enacts a statute affecting the counties' administration of public social services, the counties are obligated under law to carry it out, even in the absence of regulations by the director. Where the new legislation is self-executing and clearly mandates the county departments to make certain changes in welfare administration which will be interpreted uniformly throughout the state, the counties can enforce the new laws without state regulation.

However, a serious problem of federal conformity arises where the newly enacted public social services statute and rules are not clear as to precisely how it should be implemented. Federal law requires that state plans for the categorical aid programs be administered or supervised by a single state agency, and take effect in all political subdivisions (counties) of the state--in other words, state

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plans must be uniform throughout the state (see Social Security Act Sections 2 (a) (1) and (3), 402 (a) (1) and (3)). This federal requirement of uniformity could possibly be violated where various counties throughout the state are attempting to implement, without directions, a statute which is capable of more than one interpretation, and if all the counties don't make such an attempt, the statute will not be in effect in every political subdivision of the state.

Thus, the counties in this situation are in the position of being under a duty to enforce the law, and, absent regulation, possibly being out of conformity with federal law if they try to perform such duty (unless, as indicated above, the statute is capable of obvious interpretation and every county enforces it). Therefore, in our opinion, when no regulations have been adopted by the director, the counties could take steps to perform their statutory duties of administering public social services under the new laws, subject to the potential problems discussed above.

Very truly yours,

George H. Murphy
Legislative Counsel

By *Mary Shaw*
Mary Shaw
Deputy Legislative Counsel

MS:mmm

SB 796 (Work-Related Expenses)

Sec. 28.1. Section 11451.6 is added to the Welfare and Institutions Code, to read:

11451.6. Notwithstanding Section 11008, any exemptions from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars (\$50) per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Inter-agency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967).

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11180.1)

SDSW Regulation
Filed 9/29/71

44-113 NET INCOME (Continued)

44-113

AB
APSH
ATD
OAS
AFDC

.23 Work Expenses - Definitions

.231 Personal Expenses - Expenses which are common to all persons who have earned income (either as an employee or from self-employment). Such expenses include costs of child care, minimum amounts involuntarily withheld by the employer (i.e., income tax, social security, etc.), and transportation to and from the job.

.232 Nonpersonal Expenses - Expenses which are mandatory to retain a specific job (either as an employee or from self-employment). Such expenses include costs of transportation to call on customers, special tools, special material or clothing, and union dues.

.233 Business Expenses - Expenses incurred in the production of income when self-employed.

.24 Work Expenses - Amounts Allowable Per Month

.241 All items listed in 44-113.23, except child care and business expenses - A standard deduction shall be allowed for these items according to the number of days worked during the month as follows:

1 through 10 days	\$25.00
over 10 days	\$50.00

DO NOT WRITE IN THIS SPACE

Effective 10/1/71