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Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California

October 22, 1971

Honorable Anthony C. Beilenson
Senate Chamber

Welfare - #20079

Dear Senator Beilenson:

You have asked the following two questions
concerning educational grants and loans.

QUESTION NO. 1

Does federal law permit scholarships or loans
not made or insured under any program administered by
the Federal Commissioner of Education to be exempted from
consideration as income for public assistance purposes?

OPINION NO. 1

In our opinion federal law does not permit
such exemption.

ANALYSIS NO. 1

Section 233.20 (a)(4)(ii) of Chapter II of
Title 45 of the Code of Federal Regulations relates to
federal requirements for state plans for public assistance
programs, and provides in pertinent part that a state plan
must:

"(ii) Provide that, in determining
need and the amount of the assistance payment
the following will be disregarded:

* * *

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
CARL M. ARNOLD
JAMES L. ASHFORD
JERRY L. BASSETT
EDWARD BERSHATSKY
EDWARD RICHARD COHEN
JOHN CORZINE
DENNIS W. DE GUIR
CLINTON J. DEWITT
ROBERT CULLEN DUFFY
ALBERTO V. ESTEVA
LAWRENCE H. FEIN
JOHN FOSSETTE
HARVEY J. FOSTER
JOHN C. GANAHL
ROBERT D. GRONKE
PHILIP T. KILDUFF
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
JAMES A. MARSALA
EUGENE W. MCCABE
PETER F. MELNICOE
MIRKO A. MILICEVICH
ROSE OLIVER
TRACY O. POWELL, II
JAMES REICHEL
MARGUERITE ROTH
MARY SHAW
ARTHUR R. SILEN
ROY K. SIMMONS
MARY-LOU SMITH
RUSSELL L. SPARLING
JOHN T. STUDEBAKER
BRIAN L. WALKUP
THOMAS D. WHELAN
DAVID E. WHITTINGTON
JIMMIE WING
DEPUTIES

"(e) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education."

No other grants or loans are excluded as income for the purposes of public assistance. Thus in our opinion federal law does not permit the exclusion of scholarships or loans not made or insured by the federal government.

QUESTION NO. 2

Is it a violation of equal protection to allow an exemption from consideration as income for the purposes of public assistance of educational grants or loans made or insured under programs administered by the Federal Commissioner of Education and not allow the same exemption for educational grants or loans made or insured under programs administered by the state?

OPINION NO. 2

In our opinion there is no violation of equal protection.

ANALYSIS NO. 2

The right to equal protection is secured against congressional action by the due process clause of the Fifth Amendment of the United States Constitution. The due process clause imposes upon the federal government a somewhat similar standard as applied to the states under the equal protection clause of the Fourteenth Amendment of the United States Constitution and of course the Congress may not authorize the state to violate the equal protection clause (Shapiro v. Thompson, 22 L. ed. 2d 600; Conner v. Finch, 314 F. Supp. 364, 368).

Federal law requires that a state in determining need and the amount of assistance disregard any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education (see above).

There is a presumption in favor of a legislative classification. Hence, when the classification in a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. If the classification has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality. The equal protection clause does not require a choice between attacking every aspect of a problem or not attacking the problem at all (Dandridge v. Williams, 397 U.S. 471; Conner v. Finch, 314 F. Supp. 364).

Difficult judgments face every state and Congress when they consider how best to allocate funds available for public assistance concerning which a court is not empowered to second guess (Conner v. Finch, 314 F. Supp. 364, 369; Dandridge v. Williams, supra).

When Congress exempts certain moneys from income for the purposes of public assistance, both the states and federal government are required to expend additional amounts for public assistance, since such income otherwise operates to reduce grants. In its purpose of encouraging undergraduate education for public assistance recipients additional expense to the states was undoubtedly considered by the federal government. Furthermore, the decision had to be made as to what limits, control, or supervision over the exempt educational grants or loans was necessary in order to insure the best allocation of available funds for the legislative purpose. In this instance, the decision apparently was made to insure federal supervision and control by requiring that the grant or loan be made or insured under programs administered by the Commissioner of Education. Thus, state grant or loan programs lacking such federal supervision or control do not receive the exemption.

We think that the courts would hold this to be a proper basis of classification and, in our opinion, there would be no violation of equal protection to allow an exemption

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from consideration as income for the purposes of public assistance of educational grants or loans made or insured under programs administered by the Federal Commissioner of Education and not apply such exemption to educational grants or loans made or insured under programs administered by the state.

Very truly yours,

George H. Murphy
Legislative Counsel

By 
Mary Shaw
Deputy Legislative Counsel

MS:mc

SE 796 (Personal Property)

SEC. 24.2. Section 11155 is added to the Welfare and Institutions Code, to read:

11155. In addition to the personal property permitted by other provisions of this part, an applicant or recipient, including an applicant for or recipient of aid to families with dependent children, may retain items of personal property, other than cash, securities, instruments or other evidences of indebtedness, of a market value not to exceed one thousand dollars (\$1,000), and in addition property falling within the following categories:

1. The entire value of wedding and engagement rings, heirlooms and clothing.

2. The reasonable value of household furnishings and, in addition, other property used to provide, equip and maintain a household for the applicant or recipient up to a market value of three hundred dollars (\$300) for each item.

3. Equipment and material of reasonable value, including motor vehicles, which are necessary to implement an employment, rehabilitation or self-care plan necessary for employment of the applicant or recipient.

4. Any property right which is essential to land use or which is not available for the use of or expenditure by or in behalf of the applicant or recipient to meet a current or future need of the applicant or recipient.

In addition to all of the foregoing the director may at his discretion exempt other items of personal property not exempted under this section.

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

SDSW Regulation
Filed 11/1/71

42-207 PROPERTY WHICH MAY BE RETAINED BY AN APPLICANT OR RECIPIENT
(Continued)

42-207

AFDC

AFDC shall not be granted or paid to any family or on behalf of any orphan child when the members of the Family Budget Unit or the orphan child owns household furnishings valued, without regard to encumbrances, in excess of \$1,500; nor shall AFDC be granted or paid to any family or on behalf of any orphan child or to a family if the members of the Family Budget Unit or the orphan child owns any item used to provide, equip and maintain a household when such item is valued, without regard to encumbrances, in excess of \$300.

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AFDC

For purposes of this section, items used to provide, equip and maintain a household shall be limited to the following: stove, refrigerator, clothes washer, clothes dryer, dish washer, air conditioner, space heater, television set, phonograph, radio, kitchenware, all appliances, and cleaning and gardening equipment. All other items in the household, except for jewelry, heirlooms, clothing, motor vehicles, campers, trailers, boats, musical instruments and recreational equipment shall be considered as household furnishings.

See Section 42-215.31 for determination of value.

DO NOT WRITE IN THIS SPACE

Effective 11/1/71