

No. 471

**PUBLIC WELFARE—FEDERAL GOVERNMENT—
AGREEMENTS—EVACUEES—FUNDS, use of**

Held: Authority exists under the Public Welfare Act for the State Department of Public Welfare to enter into an agreement with the Federal Social Security Board, whereby the State Department may use state funds in rendering assistance to evacuees sent into Montana in case of emergency, such funds so used to be reimbursed by the federal government.

August 26, 1942.

Mr. J. B. Convery, Administrator
State Department of Public Welfare
Helena, Montana

Dear Mr. Convery:

I beg to acknowledge receipt of yours of the 20th instant, as follows:

“On April 8, 1942, the Administrator of the Federal Social Security Agency authorized the Social Security Board to provide ‘necessary assistance and service not provided by other agencies in behalf of the Army, the Wartime Relocation Authority, or other governmental agency in the removal of enemy aliens and other persons from prohibited areas and in providing assistance and service as necessary to the dependents of interned enemy aliens.’

“In turn the Social Security Board has delegated the authority to the State Department of Public Welfare to carry on the necessary work required by this order and to provide for the reimbursement of funds expended within the scope of this plan. In order to do this they are requesting that the State Department of Public Welfare and the Social Security Board enter into an agreement (a) that necessary service and assistance will be available to persons eligible under this plan and (b) that proper records will be maintained to account for

funds expended. Reimbursement may be given within the scope of this plan from the date of the President's authorization February 6, 1942 if proper financial and other records have been maintained.

"The agreement form has been set up by the Social Security Board and we are sending a copy of this to you for your study to inform us whether or not such an agreement would be in compliance with the state laws. We have in mind the powers contained within paragraph 325.31 of the Public Welfare Act. In this paragraph it states that the 'State Board is empowered to enter into contracts and leases . . .' Since the paragraph specifically mentions State Board, we are asking whether the agreement should carry the signature of the Administrator of the Department of Public Welfare acting in his capacity as Secretary of the State Board or whether it should be signed by the Chairman of the State Board after action by the State Board or perhaps signed by the Executive Director after consideration by the State Board and direction to him to do such signing."

The very evident purpose of the program outlined in your letter and as promulgated by the federal government is to prepare now for a not impossible situation which may arise in the future. The government is looking forward to and preparing for eventual contingencies which may arise during the progress of the war we are now conducting. In keeping with a modern establishment policy, our government recognizes its duty toward the safety, welfare and happiness of its citizens. It recognizes that in order to perpetuate our democracy, government must function at all times in the interest of the people who make up the government. The successful termination of this conflict is of vital concern not only to the national government, but more specifically to each and every state, city, county and hamlet which in the aggregate go to make up what we term our federal government. Every day we have evidences of the wholehearted support and contributions of local governments toward the prosecution of the war.

Recognizing the modern policy of government as above referred to, our state early adopted such policy and to this end enacted Chapter 82, Laws of 1937, known as the Public Welfare Act. This act is closely aligned with the Federal Social Security Act, and is designed to cooperate with the federal government in extending aid and assistance to the needy and dependent citizen, who, through no fault of his own, but due to economic or other conditions is unable to sustain himself. It was not adopted as a temporary policy, but recognized as settled, continuing responsibility on the part of the government. Its provisions are broad and well adapted to meet contingencies and emergencies which may at any time and under any circumstance arise to affect the welfare, health and happiness, not only of our own residents but those who may be temporarily within our borders.

It has many times been held by our Supreme Court that before any public officer, board or commission undertakes to act, he must find his authority therefor within some provision of the statutes or constitution of the state.

Lewis v. Petroleum County, 92 Mont. 563, 17 Pac. (2nd) 60.

Morse v. Granite County, 44 Mont. 78, 119 Pac. 286.

See also: 46 C. J. 1031; In re Farrell, 36 Mont. 254, 262, 92 Pac. 785.

Therefore, before your board may enter into this agreement with the federal government, it must look to the constitution and the laws of this state for authority to do so. Your board acts exclusively under the authority of Chapter 82, Laws of 1937, as amended. The constitutionality of Chapter 82 has never been directly passed upon by our Supreme Court. The purposes for which like legislation has been enacted, has, however, been considered by the court and held within the provisions of the state constitution.

In the case of *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 18, 55 Pac. (2nd) 685, indirectly touching upon the constitutionality of Chapter 109, Laws of 1935, creating the Montana Relief Commission, the court said:

"The courts are not concerned with the wisdom of legislative enactments. It is not their function to respond to the necessities enumerated in the chapter. It was the province of the legislature to view the general situation and to legislate in such a manner as to best contribute to the welfare of the people of this state. That province on the part of the legislature came well within the allotted powers of that body as contemplated by the division of powers under our form of government."

May we find any provision of Chapter 82, Laws of 1937, as amended, authorizing the board to enter into the agreement here in question?

Under Section VII of Part I, Chapter 82, *supra*, defining the authority and activities of the State Department of Public Welfare, we find the following pertinent provisions:

"(g) Assist and cooperate with our state and federal departments, bureaus, agencies and institutions, when so requested, by performing services in conformity with the purposes of this act.

"(h) Act as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the federal social security act, and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department."

Under Section III, Part I, *supra*, we find the following provision:

"(d) The state department of public welfare is hereby authorized and it shall be its duty to administer and supervise all federal funds allocated to the state and all state funds appropriated to the state department of public welfare, for the activities and purposes set forth under each part of this act. **The state department of public welfare is also hereby authorized and it shall be its duty to do all things, necessary, in conformity with federal and state law, for the proper fulfillment of the purposes set forth in this act.**" (Emphasis mine.)

It will be noted these provisions grant authority "to carry out the purposes of this act," and to "aid in the purposes and functions of the state department."

What are the purposes of the Welfare Act? Mr. Justice Angstman, in the case of *State ex rel. Williams v. Kamp, et al.*, 106 Mont. 444, 78 Pac. (2nd) (585), said:

"The obvious purpose of Chapter 82, Laws of 1937, was to cooperate with the federal government in caring for the needy and unfortunate. The aim of the legislature of Montana was to pass such a law that would meet with the conditions prescribed by Congress before the plan could be approved and the grants could be obtained from the United States."

And in the case of *State ex rel. Browning v. Brandjord, et al.*, 106 Mont. 395, 401, 81 Pac. (2nd) 677, our Supreme Court considering Chapter 87, Laws of 1937, quoted the public policy as expressed in that act by the Legislature, as follows:

"It is hereby declared to be a public policy that this state and all political subdivisions thereof, cooperate with any agency of the federal government in and for the construction, operation and maintenance of any plans or projects in aid of which such federal agency is about to or has expended funds furnished by the federal government, intended for a useful purpose, and calculated to furnish employment to the needy citizens of this state."

The agreement here in question is to all intents and purposes a means of cooperation between state and federal agencies toward the accomplishment of purposes for which your board was created. By entering into this agreement and performing services thereunder, your board is but acting "as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the federal social security act," as provided by paragraph (h) of Section VII, Part I, Chapter 82, Laws of 1937. It would be but performing "its duty to do all things necessary, in conformity with federal and state laws, for the proper fulfillment of the purposes set forth in this act," as provided under Section III of Part I, supra.

It is therefore my opinion ample authority exists within the Welfare Act for the State Department of Public Welfare to enter into the agreement in question and to use any state funds appropriated to the department to render temporary assistance to civilian evacuees, sent into the state by the federal government in emergencies, the funds so used to be reimbursed by the federal government.

As to the execution of the agreement, it is my opinion the State Board of Public Welfare, by resolution should authorize the State Administrator to execute the agreement in the name of the State Department of Public Welfare.

In other words, the agreement should be signed as follows:

"State Department of Public Welfare of the State of Montana, by
J. B. Convery, Administrator."

Sincerely yours,

R. V. BOTTOMLY
Attorney General