

Opinion No. 47

State Department of Public Welfare, Authority to Determine Amount of Assistance—County Department of Public Welfare, Must Comply With Order of State Department of Public Welfare—County Public Welfare Board, Decision of State Department of Public Welfare Is Binding Upon—General Relief.

Held: 1.—An applicant for General Relief may under the provisions of the Public Welfare Act appeal from a determination of the County Public Welfare Board and, after a fair hearing, the State Department of Public Welfare may fix the amount of relief to be granted and such decision shall be binding upon the County Public Welfare Board and shall be complied with by the County Department of Public Welfare.

August 25th, 1949.

Mr. N. C. Briggs
State Administrator
State Department of Public Welfare
Helena, Montana

Dear Mr. Briggs:

You have requested the opinion of this office upon the following factual situation:

"Recently a recipient of general relief in Big Horn County appealed to the State Department of Public Welfare for a fair hearing because he considered the amount of assistance less than the minimum necessary to meet his needs and those of his wife. The State Department arranged for the fair hearing and, as a result of this hearing, rendered a decision to the effect that the County Welfare Department was to determine the amount of need in this case while the Big Horn County Board was to grant assistance based upon the recommendation of the County worker. The worker determined need to exist in the amount of \$87.75 per month, but the Big Horn County Board granted only \$50.00 assistance to meet this need.

"Is a decision by the State Department as a result of a fair hearing, binding upon the County Department and County Board concerned?"

I have examined a certified transcript of the hearing on this matter which was held in Hardin, Montana, on the 30th day of July, 1949. I find that the appellant, the Big Horn County Public Welfare Board, and the State Department of Public Welfare were all adequately represented and that all three had opportunity to be heard with regard to the question to be decided, i. e. the amount of assistance to be awarded the appellant.

The specific statutory provision with reference to the granting of General Relief is Section XII, Part II, Chapter 82, Laws of 37, as amended by Section 1 of Chapter 47, Laws of 1949. Section 1 of Chapter 47 is as follows:

"Upon the completion of an investigation the County Public Welfare Board shall decide whether the applicant is eligible for assistance, the amount of assistance and the date on which the assistance shall begin.

"The amount of assistance granted any person or family shall, subject to the regulations and standards of the State Department, be determined by the County Department with due regard to the resources and necessary expenditures of the individual or family and the conditions existing in each case, and shall be sufficient to provide each person or family with a reasonable subsistence compatible with decency and health.

"As heretofore provided in this part, assistance disbursements made by the County Department to recipients shall be by warrant or check, payable from either the County or State funds, as available or as provided."

The above quoted section places the duty of determining the amount of relief needed in the County Public Welfare Board and read by itself would lead one to believe that the amount of the assistance to be accorded to an applicant rests solely in the discretion of the County Public Welfare Board based upon the recommendation of the County Welfare Department. However this Section must be read with and construed in the light of other Sections of the Public Welfare Act.

The Public Welfare Act makes provision for the applicant to appeal from the decision of the County Public Welfare Board to the State Department of Public Welfare. Section IV, Part II, Chapter 82, Laws of 1937, is as follows:

"All persons seeking public assistance from relief funds are hereby guaranteed the right of appeal to either the County Public Welfare Board or the State Public Welfare Department, or both. Individuals or committees with complaints or grievances shall be given a fair and impartial hearing by either the County Board or the State Department and it shall be required that due consideration shall be given all proven facts presented by such individuals or committees and the County Board or the State Department shall be required to relief such situations, if not otherwise prohibited by law and to the extent of funds available."

While providing for an appeal to the State Department from a ruling of the County Board, this section is not too clear as to the authority of the State Department to fix the amount of relief for an individual and bind the County Board in that respect. To clarify this point still another section of the Public Welfare Act must be examined.

Section XII, Part I, Chapter 82, Laws of 1937, is a general provision which relates to all types of assistance, i. e. General Relief, Old Age Assistance, Aid to Needy Dependent Children, Aid to the Blind, Aid to Silicotics, etc. Section XII is as follows:

"If an application for assistance under this act is not acted upon by the County Department within a reasonable time after the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or cancelled under any provision of this act, the applicant or recipient may appeal to the State Department in the manner and form prescribed by the State Department. The State Department shall upon receipt of such an appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing.

"The State Department may also, upon its own motion, review any decision of a County Department, and may consider any application upon which a decision has not been made by the County Department within a reasonable time. The State Department may make such additional investigation as it may deem necessary, and

shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act.

"In the case of the State Department reviewing a County decision on its own motion, applicants or recipients affected by such decisions of the State Department shall, upon request, be given reasonable notice and opportunity for a fair hearing by the State Department.

"All decisions of the State Department shall be final and shall be binding upon the County involved and shall be complied with by the County Department." (Emphasis mine.)

Section XII, above quoted, directly answers the question under consideration in this opinion. It provides that the State Department after a fair hearing shall make such decisions as to the granting of assistance and the amount of assistance as in its opinion is justified. The most important portion of Section XII and that which I have emphasized is the portion which says "All decisions of the State Department shall be final and shall be binding upon the County involved and shall be complied with by the County Department." Certainly the Legislative intent could not be phrased more succinctly or definitely.

A decision by the State Department as to the amount of relief to be granted to an applicant shall be binding upon the County involved (County Board) and shall be complied with by the County Department. The Act is framed so as to make the State Department supreme and leave the County Departments and County Boards mere links in the administrative chain and subordinate to the decisions of the State Department.

It is therefore my opinion that an applicant for General Relief may, under the provisions of the Public Welfare Act, appeal from a determination of the County Public Welfare Board, and, after a fair hearing, the State Department of Public Welfare may fix the amount of relief to be granted and such decision shall be binding upon the County Public Welfare Board and shall be complied with by the County Department of Public Welfare.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.