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Opinion No. 48

PUBLIC WELFARE - Appropriations, operational effect of act dependent on; PUBLIC WELFARE - Dependent children of unemployed fathers, constitutionality of act; PUBLIC WELFARE - Dependent children of unemployed fathers, operational effect of act; STATUTES - Operation, conditional upon receipt of funds. Section 71-508.1, R.C.M. 1947; Chapter 373, Laws of 1971.

- HELD:**
1. An act of the legislature extending welfare benefits to unemployed fathers of dependent children, but making the operation of the act contingent on the receipt of a designated amount of federal funds, is constitutional.
 2. The department of social and rehabilitation services may not implement Chapter 373, Laws of 1971, until it has received the amount of federal funds designated in the act.

August 10, 1972

Mr. Thomas H. Mahan, Counsel
Department of Social and
Rehabilitation Services
P. O. Box 1723
Helena, Montana 59601

Dear Mr. Mahan:

You have requested my opinion as to the constitutionality of that portion of Chapter 373, Laws of 1971, requiring the receipt of federal funds before Chapter 373 takes effect, and whether the department of social and rehabilitation services can implement Chapter 373, *supra*, in conformity with federal regulations of the Department of Health, Education and Welfare?

The title of Chapter 373 reads:

“An Act to Assure Eligibility for Aid to Dependent Children Assistance for the Care of Children Whose Father Is Unemployed but Seeking Employment, and, to Provide for the County Share of Participation in Grants for Such Persons, and Amending Section 71-508, R.C.M. 1947, and **Providing for the Effective Dates of the Act.**” (Emphasis supplied)

The title of an act is interpreted to show the intent of the legislature. **Board of Railroad Commissioners, et al. v. Gamble-Robinson Co., et al.**, 111 Mont. 441, 448, 111 P.2d 306 (1941). It can be seen from examining the title of Chapter 373, *supra*, that the act had several dates on which its effect was conditional. Section 4 of Chapter 373, *supra*, provides: “This act shall be effective July 1, 1972.” Absent section 4, the act would be effective on July 1, 1971, subject to the arising of a condition, pursuant to section 43-507, Revised Codes of Montana, 1947.

Section 3 of Chapter 373, *supra*, hereinafter referred to as section 71-508.1, R.C.M. 1947, makes the operation of the act contingent on the happening of a future event. It provides:

“The provisions of this act shall be effective only in those years in which the state of Montana shall receive in excess of four hundred thousand dollars (\$400,000) federal funds designated for the specific purpose of funding this act.” Section 71-508.1, R.C.M. 1947.

The effective date of a statute may constitutionally be contingent on the happening of a future event. 16 **Am. Jr. 2d**, Constitutional Law, § 258, p. 507. The Montana Supreme Court has previously considered a statute, the effectiveness of which was contingent upon the results of an

election. The statute provided for the submission of a town charter to certain voters for their acceptance or rejection. The statute stated in part:

“ . . . if a majority of the votes so cast at the election shall be in favor of the charter, then this act to be in full force and effect; but if a majority of the votes cast shall be against the charter, then this act shall remain suspended unless thereafter enforced as set forth.” An Act to Incorporate the Town of Butte, Section 23, Article 7, L. 1879.

After discussing a number of cases from other states, the court stated:

“These cases have been cited to show, first, that it is within the competency of legislative authority to enact laws, the taking effect of which may be conditional or contingent, depending upon some uncertain future event; and second, that it is competent for a legislature to delegate to one man or to a certain designated body or class of men, or to the whole people, the question as to when the contingency or event has or shall take place. And such determination is not in any sense the making of the law. It is declaring when a law already made shall go into effect.” *People ex rel. Boardman v. City of Butte*, 4 Mont. 174, 212 (1881).

An act can establish several contingencies prior to its becoming operational so long as the act is complete in and of itself. The Supreme Court of Oregon considered several statutes, portions of which were to become effective in the alternative on passage or failure of a sales tax referendum. The court said:

“We think the decision hinges on the question as to whether Chapter 539 was complete in and of itself when it was passed by the legislature and approved by the Governor. The act went into effect as a law upon the expiration of ninety days from and after the final adjournment of the legislative session. Const. art. 4, § 28. Its operative effect was suspended until the happening of the contingency designated in the act. If the act was complete in the sense that the legislative assembly had exercised its discretion and judgment as to the expediency or in expediency of the income tax exemption provisions — and we think it did — it had the power to determine the conditions on which the act should go into operation.” *Marr v. Fisher, et al.*, 182 Or. 383, 187 P.2d 966, 968-969 (1947).

The court noted that a law whose operative effect was made to depend on the contingency of a legislative enactment of another state was valid. *Marr v. Fisher, et al.*, *supra*, p. 969.

From an examination of Chapter 373, *supra*, it can be seen that the legislature exercised its discretion and judgment as to the expediency of providing assistance to dependent children with unemployed fathers. It can further be seen that Chapter 373 went into effect, subject to section 71-508.1, *supra*, on July 1, 1972. The act is then complete in and of itself, and now awaits the happening of the condition, that is, the receipt of four hundred thousand dollars in "federal funds designated for the specific purpose of funding this act." Section 71-508.1, *supra*.

Your second question is whether the department can implement Chapter 373, *supra*, in conformity with federal regulations of the Department of Health, Education and Welfare.

With your request for my opinion you enclosed a letter from Mr. John Skillern, Acting Associate Regional Commissioner, Assistance Payments, Department of Health, Education and Welfare. He states:

"It (Chapter 373) appears to be unworkable because neither the State nor the Federal government may know or be able to ascertain whether the State has received \$400,000 in Federal matching until the close of the year because estimates of expenditures are submitted by the State to the Secretary on a quarterly basis and the Federal share is remitted to the State monthly. If at the end of the year the Federal share is found to have amounted to less than \$400,000, it would be unfeasible to request a refund from those recipients who have received payment in an effort to nullify the program." Letter dated May 23, 1972.

Section 2, Chapter 373, *supra*, provides that counties shall reimburse the state when the state's share of the grants to the families included is insufficient or has been depleted. It further states:

"The state department, on receiving any appropriation for funding the unemployed father families payments, shall allocate such funds for such program so that it may be determined when, if at all, such funds as are appropriated for such programs are depleted."

Section 71-225, R.C.M. 1947, provides that the department of social and rehabilitation services shall:

". . . have full power to do all things necessary in order to avail itself of such aid, assistance and cooperation under federal legislation heretofore or hereafter enacted by Congress or under any proclamation or order of the executive, or of any executive department or agency, of the United States, now or hereafter promulgated or made."

Because the operation of Chapter 373, *supra*, is contingent on any year the federal government designates four hundred thousand dollars for the specific purpose of funding the act, and because the federal share is in matching money, the department cannot implement Chapter 373 until a state allocation is made in sufficient amount to insure that the state will receive four hundred thousand dollars or more designated as matching funds for the specific purpose of funding Chapter 373.

THEREFORE, IT IS MY OPINION that:

1. Section 71-508.1, R.C.M. 1947, which requires the receipt of federal funds before Chapter 373, Laws of 1971, may become operational, is constitutional; and
2. The department of social and rehabilitation services may not implement the provisions of Chapter 373, *supra*, until the state of Montana receives four hundred thousand dollars (\$400,000) in federal funds designated for the specific purpose of funding the act.

Very truly yours,

ROBERT L. WOODAHL
Attorney General