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1. AID FOR THE AGED—INMATE OF PUBLIC INSTITUTION —ELIGIBLE FOR ALLOWANCE—MUST PAY SOMETHING TO SUCH INSTITUTION AND POSSESS OTHER QUALIFICATIONS AS SET FORTH IN SECTION 1359-2 G. C.—SECTIONS 1359-1 TO 1359-30 G. C., SENATE BILL 367, 96 GENERAL ASSEMBLY.

2. ELIGIBILITY TO RECEIVE AID—PAYMENT FOR MAINTENANCE—ANY SUM, HOWEVER SMALL, SINCE STATUTE PRESCRIBES NO MINIMUM AND MAKES NO REFERENCE TO COST OF MAINTENANCE.

3. STATUTE PRESCRIBES PAYMENT BY INMATE—PROMISE TO PAY NOT SUFFICIENT.

4. DIVISION OF AID FOR THE AGED—HAS SOUND DISCRETION TO DETERMINE IF INMATE, APPLICANT FOR AID, HAS SUBSISTENCE COMPATIBLE WITH HEALTH AND WELL BEING.

5. DIVISION OF AID FOR THE AGED, TO MAKE AWARD, NOT BOUND BY SUM INSTITUTION SEEKS TO CHARGE, BUT SHOULD DETERMINE AMOUNT NECESSARY TO GIVE APPLICANT SUBSISTENCE COMPATIBLE WITH HEALTH AND WELL BEING.

SYLLABUS:

1. Under the provisions of the statutes relating to aid for the aged (Sections 1359-1 to 1359-30, General Code) and particularly Section 1359-2 as amended in Amended Senate Bill No. 367 of the 96th General Assembly, an inmate of any public institution becomes eligible for an allowance from the funds provided by the state for aid for the aged, provided he pays something to such institution and possesses the other qualifications set forth in said Section 1359-2.

2. The eligibility of such inmate to receive such aid will be established by the payment for his maintenance of any sum, however small, since the statute prescribes no minimum, and makes no reference to the actual cost of such maintenance.

3. The statute specifies payment by the inmate, and a promise to pay woll not be sufficient.

4. The question whether an inmate of a public institution who makes application for an allowance for aid for the aged is sufficiently supplied with a reasonable subsistence compatible with health and well being, is a matter within the sound discretion of the division of aid for the aged.

5. The division of aid for the aged, in determining whether an award shall be made to an inmate of a public institution, or the amount of such award, is not bound by the sum which the institution seeks to charge, but should determine, under all the facts, what amount is necessary to give the applicant reasonable subsistence compatible with health and well being.

Columbus, Ohio, November 18, 1946

Hon. Frazier Reams, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

> "The General Assembly in recent special session passed Amended Senate Bill No. 367. This act, in addition to increasing the maximum awards payable as aid for the aged, further amended Section 1359-2 in that existing language of sub-paragraph (d) of Section 1359-2 which reads
>
> 'Is not an inmate of any public institution.'
>
> was amended to read as follows:
>
> 'Is not an inmate of a public institution to which he pays nothing for his maintenance.'
>
> The language of this amendment, when placed into the general law providing for the administration of aid to the aged, does not describe the intent, purpose and effect of this amendment with such clarity as would afford a readily ascertainable guide to the administrative procedures and policies necessary to execute

the provisions of this enactment. This amendment does not conform with the provisions of Section 3 (a) of Title I of the Federal Social Security Act which provides that the federal government will contribute to the assistance given by a state to

> '* * * each needy individual who at the time of such expenditure is sixty-five years of age or older and is not an inmate of a public institution * * *.'

and consequently all funds expended pursuant to this amendment would necessarily be derived solely from the tax revenues of the state.

In view of the foregoing circumstances the Division of Aid for the Aged feels obligated to seek a clear and authoritative definition of its powers and duties under this amendment before it undertakes the expenditure of the several millions of dollars of the public funds of this state which this enactment is estimated to require.

Consequently your opinion is respectfully requested as to the following questions concerning the amendment to sub-paragraph (d) of Section 1359-2 of the General Code as set forth in Amended Senate Bill No. 367:

1. Under this amendment would an inmate of any public institution, such as a county home, a county, state or federal hospital or penal institution be eligible for aid for the aged upon some payment to the institution for the cost of his maintenance, providing the other requirements of eligibility are satisfied?

2. Under this amendment would the eligibility of an inmate of a public institution be established by the payment for his maintenance of any sum, however small, or would eligibility depend upon the payment of an amount which has some real relation to the cost of his maintenance?

3. Would an inmate have to be making actual payments for his maintenance before he became eligible for aid under this amendment or would an agreement to pay upon receipt of the aid for aged award be sufficient to establish his eligibility for aid?

4. Would an inmate who, at the time of application for aid for the aged, is receiving full support in a public institution without charge because of the fact that other laws provide appropriations which are sufficient and available to maintain such inmate in that institution be considered, under the provisions of Section 1359-3 not to have

> 'income and resources available to him * * * sufficient * * * to provide him with a reasonable subsistence compatible with health and well-being'

so as to be eligible for aid for the aged?

5. In determining the amount of aid payable to an inmate of a public institution, pursuant to the aforementioned provision of Section 1359-3, is the Division of Aid for the Aged compelled to accept whatever amount, within the legal maximum, which the institution seeks to charge the inmate for his maintenance or does the Division have the power to inquire into the actual cost to the institution for the maintenance of an inmate and to compute the amount of aid payable to the inmate on the basis of expenditures of the institution on behalf of the inmate?

6. If the Division is empowered to inquire into the costs which a county home incurs for the maintenance of an inmate in order to determine the amount of aid payable, shall such inquiry be limited to the cost of those items which the superintendent is authorized by Section 2549 to charge against the account of an inmate whose property has been seized and sold, such items being 'board at a reasonable rate and items furnished for his exclusive use,' or shall the inquiry extend to all items of expenditure involved in the inmate's maintenance?

In addition to the specific questions enumerated above we would welcome any further comment you might be disposed to offer in the construction of this amendment."

The provisions for administration of aid to the aged are found in Sections 1359-1 to 1359-30 inclusive of the General Code. Section 1359-1 reads as follows:

"Subject to the provisions of this act every person of the age of 65 years or more shall, while residing in the State of Ohio, if in need, be entitled to aid as hereinafter specified."

The very general language of this section is qualified by Section 1359-2 which reads:

"*No person* shall be eligible for aid under this act *unless* he fulfills the following conditions:

(a) Has attained the age of 65 years or upwards:

(b) Is a resident of the state of Ohio; has so resided for not less than five years during the nine years immediately prior to making application for aid; and has been such a resident continuously for one year immediately prior to making such application;

(c) Is a citizen of the United States;

(d) Is *not an inmate* of a public institution to which he *pays nothing* for his maintenance;

(e) His income from any and all sources, *except aid payments,* does not exceed $600.00 a year;

(f) Is unable to support himself, and does not have available to him sufficient income and resources from a husband, wife, child, or other person who is responsible by law for his support and found by the division of aid for the aged able to support him;

(g) The net value, less all encumbrances and liens, of all real and personal property of such person does not exceed $3000.00; or, if married, the net value of the combined property of husband and wife does not exceed $4000.000; provided, however, that this condition, in the discretion of the division, may be waived upon the assignment of such property in trust to the division of aid for the aged as hereinafter provided; but, the reconveyance of any property so assigned under the provisions of this section or the release or cancellation of such assignment or the waiver of the priority of the lien thereby created may not be requested or demanded by the assignor except upon reimbursement to the state for all aid paid to the assignor or his spouse; and,

(h) Has not directly or indirectly deprived himself of property or income with the intent of qualifying himself or spouse for aid, or a greater amount of aid than that for which they would otherwise be eligible, or of defeating or circumventing any of the provisions of this act." (Emphasis added.)

Section 1359-3 provides:

"The amount of aid payable to any person shall be determined, in accordance with the rules and regulations of the division of aid for the aged, with due regard to his requirements and the conditions existing in his case and to the *income and resources available to him from whatever source,* and shall be sufficient, when added to the income and resources determined to be available to him, to provide him with a reasonable subsistence compatible with health and well being; but such aid shall not exceed $50.00 a month, and shall not exceed $600.00 a year. Provided that in cases of extraordinary need and insofar as not in conflict with the basis of need established in or under federal law, an additional allowance of not to exceed $200 in any calendar year may be made, in accordance with schedules adopted by the division, for medical, dental, optometrical or hospital care."
(Emphasis added.)

The two sections last above quoted were amended to their present reading by the recent special session of the general assembly and it is the change made in paragraph (d) of Section 1359-2 that gives rise to the

several questions which you have propounded. Prior to that amendment paragraph (d) read as follows:

"(d) Is not an inmate of any public institution."

Another change made by this amendment was in paragraph (e) which formerly read:

"(e) His income from any and all sources does not exceed $480.00 a year."

Here it will be noted that the maximum allowable income has been raised from $480.00 to $600.00 and the words "except aid payments" have been inserted.

Confining our attention for the moment to paragraph (d) of Section 1359-2 it will be observed that the statute in its present form contains a triple negative which is decidedly confusing. Here we have the provision that *"no person* shall be eligible *unless* (among other conditions) he is *not* an inmate of a public institution to which he pays *nothing."*

The rather obscure meaning of this language may be clarified by resolving it into a form which is affirmative throughout. It would appear that the legislature meant to say that "any person shall be eligible notwithstanding he is an inmate of a public institution provided he pays something toward his maintenance."

As the statute was worded prior to this amendment an inmate of a public institution although having all the other requirements for eligibility, was not entitled to any aid under the law in question. As your letter indicates, no person can receive federal aid under this system if he is an inmate of a public institution, and the state appears heretofore to have acquiesced in that arrangement by denying any aid from the system to a person who was an inmate of any such institution.

Plainly, therefore, the general assembly has by this change in the law undertaken to introduce a new class of beneficiaries who will receive aid from the state treasury alone, without any contribution from the federal government. Your several questions therefore are as to the status of this new class of recipients and the extent of the obligations which the state has assumed.

It would be idle to speculate as to the purpose which actuated the general assembly in making this change except insofar as it may appear from the terms of the act itself and from other statutes which are in pari materia or which in some way indicate the purpose of the act. It might be noted that as the law formerly stood a person who was an inmate of a public institution and was able to pay and did pay all or a portion of the cost of his maintenance, was absolutely barred from participation in the benefits of aid for the aged even although the payment which he made completely exhausted his resources. This situation might from a cold legal standpoint be justified since the theory underlying all public charitable institutions appears to be that if the inmate has no resources of his own and no one who is legally responsible and able to provide for his maintenance and care, he is to be maintained and supported nevertheless by such public institution, at the expense either of the state or of a local subdivision. A person who has no income or resources of his own and has no one legally responsible for his maintenance and able to respond would become a subject of public or private charity.

If he is being maintained in a private charitable institution, he would under the provisions of Section 1359-8, General Code, be eligible for old age aid. The provisions of this section appear to me to throw some light on the general legislative intent in enacting the amendment in question. It reads in part as follows:

> "The following provisions shall apply in every case where a recipient of aid is being maintained in any private charitable, fraternal, or benevolent home, hospital or institution (but excluding public institution):
>
> (a) Each such recipient, if eligible under this act, shall be entitled to aid in such an amount as determined by the division, based upon his individual needs, income and resources and within the limits fixed by law.
>
> (b) The reasonable cost of maintenance in such home, hospital or institution shall be considered in determining the needs of such recipient; and such reasonable cost of maintenance, as determined by the division, shall be included in the amount of aid allowed and paid to such recipient. * * *"

The legal effect of this provision appears to be that if the individual needs of the inmate are only partially provided for by the institution, the old age fund could be drawn on to supplement what the institution fur-

nishes, so that the general purpose expressed in Section 1359-3 supra may be attained, viz: that he may be provided "with a reasonable subsistence compatible with health and well being." On the other hand if the institution furnishes him with reasonable subsistence, of that character, then there is no excuse for any allowance of aid from the system.

If he is an inmate of a public institution he may nevertheless be liable for the cost of his maintenance if he has income or resources either personally or through the liability of those who may be legally responsible for his maintenance. Attention may be directed to the provisions of Section 1815-3, et seq., of the General Code. Section 1815-3 provides:

> "The department of public welfare, by an authorized agent, shall investigate the financial condition of the inmates of state benevolent institutions under its control and of the relatives liable for the support of such inmates, in order to determine the ability of any inmate or such relatives to make payment in whole or in part for the support of the said inmate and to provide suitable clothing as required by the superintendent of the institution; provided, that in all cases due regard shall be had for others who may be dependent for support upon such relatives or the estate of said inmate."

The next following section provides that from the information thus secured the department of public welfare shall determine the amount of support, if any, to be paid. The provisions of the sections last referred to appear to apply to all state benevolent institutions. Section 1815-2 establishes a maximum of $5.50 per week which may be collected by such institutions and also provides that less amounts may be accepted by the department of public welfare when conditions warrant.

Turning to county benevolent institutions, we may take for example the county and district tuberculosis hospitals. Here we find in Section 3139-10 a provision reading as follows:

> "* * * The board of trustees may require from any applicant admitted from the county or counties maintaining the hospital, payment not exceeding the actual cost of care and treatment, including the cost of transportation, if any. If, after investigation, it shall be found that any such applicant or patient or any person legally responsible for his support is unable to pay the full cost of his care and treatment in the district hospital, the board of trustees shall determine the amount, if any, said applicant, or patient or any such person legally responsible for his sup-

port, shall pay. The difference between such amount, if any, and the actual cost of care and treatment shall be paid by the county in which such applicant or patient has a legal residence."

As to the obligation of an inmate of a county home to pay the county for his maintenance, the law is not so clear. There is no statute expressly authorizing the county commissioners to charge him for such maintenance. The only provision bearing on the subject is found in Section 2548, General Code, which authorizes the commissioners, when an inmate of the home is found to have property real or personal, to subject it to a judicial sale and reimburse the county for the cost of keeping him. This statute was held in 1927 Opinions of Attorney General, page 2149 to include money on deposit to the credit of the inmate. But the allowances due a person from the funds for aid for the aged, are by the provisions of Section 1359-26, General Code, inalienable and exempt from judicial process. However, I am of the opinion that while the commissioners cannot enforce collection against an inmate of the county home by a resort to his allowance from the division of aid for the aged, and could not compel him to make a payment so as to bring him within the eligible class for such aid, yet if he voluntarily makes such payment, he does, as a matter of law, make himself eligible for aid. Obviously the commissioners have it within their power to induce him to make a payment and if possible procure an allowance of such aid and turn it over to the institution, under penalty of being refused admission or being turned out.

On the other hand, the granting of aid to any person is within the sound discretion of the officers of the division of aid, and rests on their finding that the applicant possesses all the qualifications set out in the law, and further *that he is in need;* and they might determine that an inmate of the county home has all of his necessities for maintenance provided for in the home, and that he is not, therefore, in need.

Returning to the provisions of Section 1359-3 which I have already quoted, it will be observed that it is there declared that the amount of aid payable to any person is to be sufficient when added to his income and resources from whatever source to provide him with a "reasonable subsistence compatible with health and well being" but *such aid* shall not exceed $50.00 per month or $600.00 a year. The recent amendment to this section shows a purpose on the part of the general assembly to liberalize the law as to the amount that may be allowed. Prior to the amend-

ment the maximum allowance was $480.00 per year, and that amount was to be diminished by the income of the applicant from all other sources. Now the maximum is $600.00 without any diminution. If, as hereinabove indicated, he is in a private institution then the system is to reimburse him in whole or in so far as necessary, within the limits of the law, for the cost of his maintenance. It seems to me to follow with equal clarity that if he is in a public institution where he is liable for his support and maintenance to the extent of his resources, the system may allow him, within the same limits, at least enough to enable him to pay the cost of his maintenance.

The whole effect of the law as it now stands would appear to take the burden of the support of a charitable patient or inmate off of the institution in which he resides and put it upon the division for aid to the aged.

Under the provisions of Section 1359-14, General Code, upon the filing of an application for aid, the division

> "* * * shall cause to be made an investigation and record of the circumstances of the applicant in order to determine the eligibility of the applicant for aid, his needs, and to obtain such other information as may be required by the rules and regulations of the division."

Then follow provisions for the determination by the division whether aid shall be granted and in what amount. It is further provided that an applicant aggrieved may appeal to the chief of the division whose "decision thereon shall be final."

As to the provision of Section 1359-2 supra, barring from the benefits of the system an inmate who pays "nothing," I cannot arrive at any other conclusion than that any payment, however small, is a sufficient compliance with the condition. If the general assembly had meant to make the payment cover the cost charged by an institution for maintenance of the inmate, or the reasonable expense thereof, or to establish any minimum, it would have been very easy to use words to that effect. It did not see fit to do so, and the language used is not in my opinion ambiguous.

The entire act relating to aid for the aged is to be given a liberal construction, in favor of those for whose relief it was designed. Section 1359-29, General Code, provides:

"This act shall be liberally construed to accomplish the purposes thereof. Nothing herein shall be construed as repealing any other act or part of an act providing for the support of the poor except insofar as plainly inconsistent herewith, and the provisions of this act shall be construed as an additional method of supporting and providing for the aged poor."

Specifically answering your several questions it is my opinion:

1. Under the provisions of the statutes relating to aid for the aged (Sections 1359-1 to 1359-30, General Code) and particularly Section 1359-2 as amended in Amended Senate Bill No. 367 of the 96th General Assembly, an inmate of any public institution becomes eligible for an allowance from the funds provided by the state for aid for the aged, provided he pays something to such institution and possesses the other qualifications set forth in said Section 1359-2.

2. The eligibility of such inmate to receive such aid will be established by the payment for his maintenance of any sum however small, since the statute prescribes no minimum, and makes no reference to the actual cost of such maintenance.

3. The statute specifies payment by the inmate, and a promise to pay will not be sufficient.

4. The question whether an inmate of a public institution who makes application for an allowance for aid for the aged is sufficiently supplied with a reasonable subsistence compatible with health and well being, is a matter within the sound discretion of the division of aid for the aged.

5. The division of aid for the aged, in determining whether an award shall be made to an inmate of a public institution, or the amount of such award, is not bound by the sum which the institution seeks to charge, but should determine, under all the facts, what amount is necessary to give the applicant reasonable subsistence compatible with health and well being.

6. The answer to the last foregoing question is believed to cover also this question.

Respectfully,

HUGH S. JENKINS
Attorney General