

OPINION NO. 85-019

Syllabus:

A county department of human services may not, during fiscal years 1983-1984 and 1984-1985, choose a payment standard for general relief benefits which does not include the increases prescribed by Section 72 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983).

To: Patricia K. Barry, Director, Department of Human Services, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 14, 1985

You have asked for an opinion with respect to certain language in Section 72 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983). Am. Sub. H.B. 291 was the biennial budget bill for fiscal years 1983-1984 and 1984-1985. The relevant language of Section 72 prescribes increases in payment standards for general relief benefits.

The general relief program is established under R.C. Chapter 5113, which refers to it as "poor relief." See R.C. 5113.01. Pursuant to R.C. 5113.02, each county department of human services¹ (formerly known as the county department of welfare) is responsible for furnishing poor relief to eligible persons. R.C. 5113.03 provides that the Ohio Department of Human Services (ODHS) (formerly known as the Ohio Department of Public Welfare) "shall establish and review every two years, standards for mandatory minimum budget levels, and for maximum payments in which state participation is available." ODHS has promulgated, and amended from time to time, rules which implement this requirement by setting forth, for assistance groups of various sizes, both the minimum payment standards which a county may adopt (referred to in the rules as "Minimum Reimbursable Payment Standards") and the maximum payment standards for which state funds may be

¹ Am. Sub. H.B. 401, 115th Gen. A. (1984) (eff. July 20, 1984) provided that all references in the Revised Code to county departments of welfare should be deemed to refer to county departments of human services, and that all references in the Revised Code to the Department of Public Welfare should be deemed to refer to the Department of Human Services. R.C. 329.01; R.C. 5101.01. See 1984 Op. Att'y Gen. No. 84-080 n. 1.

available (referred to in the rules as "Maximum Reimbursable Payment Standards").² See, e.g., [1984-85 Monthly Record] Ohio Admin. Code 5101:1-21-04 at 283-84, 417-18, 762-63, 887-88; 7 Ohio Admin. Code 5101:1-21-04.³

Your question concerns the uncodified language of Section 72 of Am. Sub. H.B. 291, which states:

General Relief Benefit Increase

Included in appropriation item 400-506, General Relief and General Relief Medical, for fiscal years 1983-1984 and 1984-1985, are sufficient funds for a benefit increase for General Relief recipients effective January 1, 1984. The Department of Public Welfare shall increase the minimum reimbursable standard allowance by \$2.00 per month and the maximum reimbursable standard allowance by \$3.00 per month for a family of one and increase the minimum and maximum reimbursable standard allowances for other family sizes by approximately 5 per cent per month. The Department of Public Welfare shall also increase the housing allowance by \$3.00 per month for a family of one in a housing unit with two rooms and increase the housing allowance by approximately 5 per cent per month for other family and housing unit sizes.

In choosing a payment standard pursuant to this section, each county shall increase its payment standard for the standard allowance by at least five per cent. However, this provision shall not be construed to require that a county choose a payment standard higher than the maximum reimbursable payment standard established pursuant to this section.

ADC and GR Benefit Increases

On or before November 1, 1984, the Department of Public Welfare shall revise estimates of Aid to Dependent Children, Aid to Dependent Children-Foster Care and Adoption Assistance, and General Relief and General Relief Medical recipients in fiscal year 1984-1985. At such time the Department of Public Welfare shall determine the sufficiency of the appropriations in fiscal year 1984-1985 in appropriation items 400-503, Aid to Dependent Children, 400-506, General Relief and General Relief Medical, and 400-528, ADC-Foster Care/Adoption Assistance, to support the estimated cost of the revised estimate of recipients.

The Department of Public Welfare shall use the amount by which the total appropriation in fiscal year 1984-1985 for appropriation items 400-503, 400-506, and 400-528 exceeds the total revised estimated cost in fiscal year 1984-1985 for such items to determine the percentage by which the payment standard for Aid to Dependent Children and ADC-Foster Care recipients, and the standard allowance and the housing allowance for General Relief recipients can be increased effective January 1, 1985. The percentage by which such benefits are increased shall be approximately the same for each of the items and shall not exceed approximately 5 per cent.

On or before November 1, 1984, the Director of Public Welfare shall notify the Director of Budget and Management of the

² A county must pay a certain percentage of expenditures for general relief. See R.C. 5101.16. Thus, the range between the minimum payment standards which a county may adopt and the maximum payment standards for which state funds may be available affords a county some control over the amount which it must spend for relief payments, subject, of course, to other applicable provisions, such as Section 72 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983).

³ The version of this rule currently in effect was adopted March 20, 1985, effective April 1, 1985. It contains the same provisions as the emergency rule appearing in [1984-85 Monthly Record] Ohio Admin. Code 5101:1-21-04 at 887-88, but has not yet been published in the Ohio Administrative Code.

percentage increase it has determined such benefits can be increased effective January 1, 1985. On or before November 15, 1984, the Director of Budget and Management shall notify the Controlling Board of such percentage increase and shall request that the Controlling Board make any transfers between appropriation items 400-503, 400-506, and 400-528 that are necessary to provide the benefit increase.

The Department of Public Welfare shall implement any benefit increase made in accordance with the paragraphs under this heading in the same manner as the benefit increases described under the headings "Aid to Dependent Children Benefit Increase" and "General Relief Benefit Increase."

In transferring appropriations from appropriation item 400-506 to items 400-503 and 400-528, the Controlling Board shall add corresponding amounts of federal matching funds to the 400-503 and 400-528 accounts at the percentage indicated by the state and federal division of the original appropriation in this act. These federal funds are hereby appropriated. (Emphasis added.)

Pursuant to Section 72, each county was required to increase its payment standard for the standard allowance by at least five percent, effective January 1, 1984. You have indicated that ODHS has determined that the standard allowance for general relief recipients should be increased by an additional five percent effective January 1, 1985, that it has increased the minimum and maximum payment standards by that amount, and that it has instructed the counties to increase their payment standards for 1985 by at least five percent. You have also indicated that no controversy exists on the question whether Section 72 requires the counties to implement a percentage increase as determined by ODHS, effective January 1, 1985, and that your request does not raise any such question. Your question is, rather, whether, once a county department of human services has implemented an increase, effective January 1, 1985, as prescribed by Section 72, it may subsequently, during the biennium to which Am. Sub. H.B. 291 applies, change to a lesser payment standard which is above the minimum payment standard established by rule 5101:1-21-04, but which is below the standard for that county established by implementing the five percent increases for 1984 and 1985 pursuant to Section 72. The argument presented in favor of allowing such a change is that Section 72 requires an increase as determined by ODHS for January of 1985, but that it does not mandate that the increase continue during succeeding months.

Section 72 provides that the 1985 benefit increase is to be made "in the same manner as the benefit increases described under" the heading "General Relief Benefit Increase." That heading provides that, in choosing a payment standard, each county shall increase its payment standard for the standard allowance by the prescribed percentage, but that a county need not increase its payment standard higher than the maximum reimbursable payment standard established under that section. This language is, thus, applicable to both the 1984 and the 1985 increases, and it requires that, unless a county is already meeting the new maximum reimbursable payment standard, it choose a payment standard which provides an appropriate percentage increase over the standard which the county had chosen prior to the effective date of the increase prescribed by Section 72. The language of Section 72 provides no option for a county to retain its old payment standard (unless that standard is the same as the maximum reimbursable payment standard established by rule 5101:1-21-04) or to reduce its standard below the level established when the increases prescribed by Section 72 are implemented.⁴ Section 72 clearly contemplates that benefit increases for general welfare recipients are to be provided for fiscal years 1983-1984 and 1984-1985. Permitting a county to implement the increases and then to choose a payment standard which does not include the required increases would, as your letter indicates, conflict with the

⁴ There is, I believe, no question but that a county which chooses a payment standard higher than that required by Section 72 could reduce that standard to the level prescribed pursuant to Section 72.

spirit of the legislation. It would, further, conflict with the language of Section 72, which permits a county to choose a payment standard only within the limits set forth therein.

You indicate that some objections have been raised to this lack of flexibility on the grounds that prohibiting a county from choosing a lesser payment standard conflicts with the discretion granted the counties by R.C. 5113.03⁵ and rule 5101:1-21-04 to choose any standard within the range established by ODHS. The argument that the counties are, under R.C. 5113.03, entitled to select any payment standard within the range established by ODHS, notwithstanding the language of Section 72, is, in my judgment, without merit. Section 72 sets forth a recent statement of law, duly enacted by the General Assembly of Ohio. See generally Ohio Const. art. II, §15. Its effectiveness as law is not affected by the fact that it is contained in an uncodified provision. See City of Reynoldsburg v. Wesley, 39 Ohio Misc. 166, 166, 316 N.E.2d 926, 927 (Mun. Ct. Franklin County 1974) ("even though [a section of an act] was not given a Revised Code section number, it is part of the law"). See generally R.C. 103.131 (the Director of the Legislative Service Commission is responsible for giving the proper sectional numbers to acts of a general and permanent nature passed by the General Assembly). The fact that Section 72 was not codified may indicate that its application is to be temporary. See Cowen v. State ex rel. Donovan, 101 Ohio St. 387, 129 N.E. 719 (1920); City of Reynoldsburg v. Wesley. The requirement of Section 72 that a county implement the increases in payment standards for general relief which are prescribed therein is, however, by its terms, applicable to any choice of a payment standard which is made "pursuant to this section." Since Section 72 applies to fiscal years 1983-1984 and 1984-1985, I find that any selection of a payment standard by a county for any period during that biennium is subject to the requirement of Section 72 that the specified increases be provided, effective as of the date indicated and throughout the period covered by the act. See generally State ex rel. Francis v. Sours, 143 Ohio St. 120, 124, 53 N.E.2d 1021, 1023 (1944) ("[t]he polestar of construction and interpretation of statutory language is legislative intention. In determining that intention courts look to the language employed and to the purpose to be accomplished"). Thus, I conclude that Section 72 restricts the discretion which counties have to select a payment standard within the limits set forth pursuant to R.C. 5113.03. See generally R.C. 1.51; R.C. 1.52; Ex parte Hesse, 93 Ohio St. 230, 234, 112 N.E. 511, 512 (1915) ("[i]t is settled that where there are contradictory provisions in statutes and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction, and further, that where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation"); State v. Sellers, 14 Ohio App. 2d 132, 138, 237 N.E.2d 328, 332 (Ashland County 1968) (assuming, arguendo, that there is a conflict, more recent and specific provisions will prevail over older general provisions).

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R.C. 5113.03 states:

Poor relief shall be given on a budgetary basis and shall be sufficient to assist in maintaining health and decency, taking into account the requirements and the income and resources of the recipient. A person may receive poor relief for as long as he meets the eligibility requirements.

The department of public welfare shall establish, and review every two years, standards for mandatory minimum budget levels, and for maximum payments in which state participation is available.

The department may adopt, amend, or rescind rules under Chapter 119. of the Revised Code that establish the maximum authorized amount, scope, duration, or limit of payment for medical services. A county may authorize payment for medical services that are less than the amount, scope, or duration of the limits established by the department.

It is, therefore, my opinion, and you are hereby advised, that a county department of human services may not, during fiscal years 1983-1984 and 1984-1985, choose a payment standard for general relief benefits which does not include the increases prescribed by Section 72 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983).