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PUBLIC WELFARE DEPT. — POWER TO PROMULGATE
RULES REQUIRING COUNTY WELFARE TO CONDUCT IN-
VESTIGATION—§5113.09 R.C.

SYLLABUS:

1. Under the provisions of Section 5113.09, Revised Code, the Department of Public Welfare has authority to make and promulgate a rule requiring that a county welfare department, when a case is transferred to it from the Soldiers' Relief Commission, shall conduct its own investigation in determining the eligibility and need of the applicant, and maintain the case record in its own office.

2. The Department of Public Welfare has authority, under the provisions of Section 5113.09, Revised Code, to withhold and discontinue reimbursement of state funds to a county department of welfare, until the rules promulgated by it are obeyed.

Columbus, Ohio, May 29, 1959

Hon. Mary Gorman, Director, Department of Public Welfare
Columbus, Ohio

Dear Madam:

I have before me your request for my opinion, reading as follows:

“During the past year many counties have used various methods to shift soldiers’ relief cases to the poor relief program. This action, of course, has been taken in order to obtain state general fund reimbursement under section 5113.12 of the Revised Code.

“The manner in which such transfer of cases is made is of vital concern to the Department of Public Welfare. This department has a mandatory responsibility for supervising the local administration of the poor relief program. Section 5113.09 of the Revised Code reads in pertinent part :

“The department of public welfare shall :

“(A) Make reasonable rules for the effective administration of poor relief ;

“(B) Make investigations of local administration and issue orders for the correction of any violations of law or regulation ; and reimbursement may be discontinued by the state until such orders are complied with ;

“(D) Determine the kinds and amounts of obligations for poor relief and the administration thereof on which state reimbursement will be based ;

“Pursuant to the authority for supervising the poor relief program as quoted above, the Department of Public Welfare early in 1958 developed a policy to govern the transfer of cases from the soldiers’ relief program. This policy was issued as Public Assistance Letter No. 185, dated May 13, 1958, a copy of which is attached.

“The new Director of Public Welfare early in 1959 began an evaluation of the contracts, agreements, and other arrangements which had come into being under the provisions of Public Assistance Letter No. 185. Many of these arrangements appear to us to violate section 329.05 of the Revised Code which prohibits a county department of welfare from managing or controlling a soldiers’ relief commission. In other cases, the soldiers’ relief commission appeared to retain control over the determination of eligibility and need in cases for which state reimbursement was subsequently claimed as poor relief cases. We believe that as long as the soldiers’ relief commission retains control over a case it is not a poor relief case and under the law is not eligible for state reimbursement. We believe that requirements 1 and 5 of Public Assistance Letter No. 185 represent a delegation of the county welfare department’s responsibility under Chapter 5113 of the Revised Code to a soldiers’ relief commission without legal authority.

“The Director of Public Welfare desires to amend Public Assistance Letter No. 185 to provide that, when a case is trans-

ferred from soldiers' relief to poor relief, the poor relief authority must conduct its own investigation, determine eligibility and need, and maintain the case records in its own office. Our objective would be to provide that a soldiers' relief commission could refer cases to poor relief authority but would have no part in determining eligibility and need and no control over the case as a poor relief case. We request your opinion (1) as to whether or not the Department of Welfare under section 5113.09 of the Revised Code has the authority to require that a county welfare department, when a case is transferred from soldiers' relief, conduct its own investigation, with its own staff determine eligibility and need, and maintain the case record in its own office. We further request your opinion (2) as to whether or not the department has authority to withhold state general revenue fund reimbursement as a method of enforcing the type of regulation contemplated in our first question."

Section 5113.09, Revised Code, from which you have quoted, gives your department broad powers over local agencies which are concerned with the distribution of poor relief.

1. On the general proposition as to your authority to establish rules for the administration of poor relief, paragraph (A) of said Section 5113.09 is so clear that it leaves little room for interpretation. It is the manifest purpose of the statute to enable you to make such rules as will produce the highest efficiency by a local agency in the distribution of poor relief. Paragraph (B) gives you broad authority to make investigations of local administration and to issue orders for the correction of any violations of law or regulations, and it is to be noted that reimbursement may be discontinued by the state until such orders are complied with.

You are authorized to prescribe forms and require reports from local relief authorities. Paragraph (D) authorizes you to determine the kind and amounts of obligation for poor relief, and the administration thereof, which shall form the basis of state reimbursement.

Section 5113.12, Revised Code, provides for partial reimbursement by the state of the funds distributed by local relief authorities, the provision of that section being as follows :

"Within the limits of funds appropriated to the department of public welfare, each local relief authority shall be reimbursed monthly not to exceed fifty per cent of its expenditures for poor relief and the administration thereof."

Your question, however, introduces the specific matter of the relation of the poor relief agencies to "soldiers' relief" as provided for in Section 5901.02, et seq., Revised Code. These sections provide for the establishment in each county of a commission known as the "Soldiers' Relief Commission" and set up a system entirely independent of the statutes relating to poor relief, whereby veterans of various wars are provided certain special relief with money furnished by appropriation of the county commissioners.

The county department of welfare, which is charged with the duty among others of administering poor relief for the county, is authorized by Section 329.05, Revised Code, to cooperate with other public agencies for the administration of relief and enter into agreements with such agencies for administering their respective duties. That section, however, closes with the following language:

"This section does not permit a county department of welfare to manage or control county or district tuberculosis or other hospitals, humane societies, detention homes, jails or probation departments of courts, or *soldiers' relief commissions*."

(Emphasis added).

While the provision just quoted does not in terms forbid the county welfare department from using the services of the Soldiers' Relief Commission for making investigations, it appears to me that that provision, together with the fact that the Soldiers' Relief Commission is set off under statutory provisions, quite apart from the statutes relating to poor relief, indicates an intention by the legislature that these departments should be operated separately, conceding, of course, that there may and should be friendly cooperation.

I do not overlook or dispute the proposition that a person who is entitled to "soldiers' relief" might also be entitled to poor relief, particularly if the funds available in the first named department are insufficient to provide adequate relief.

As I understand your first question, you are particularly concerned with your authority to establish a rule which would require a county welfare department, when a case is transferred to it from soldiers' relief, to conduct its own investigations with its own staff, and determine the eligibility of the applicant and maintain the case record in its own office. I can conceive of no reason why, in the light of the authority given your

department, you would not have a clear right to incorporate that proposition in a rule.

2. Coming to your second question as to the right of your department to withhold state revenue fund reimbursement as a method of enforcing such a regulation as has been above mentioned, I call your attention again to paragraph (B) of Section 5113.09, Revised Code. That paragraph reads:

“Make investigations of local administration and issue orders for the correction of any violations of law or regulation; and reimbursement may be discontinued by the state until such orders are complied with;” (Emphasis added)

The broad power of your department in making and enforcing regulations binding on the county relief authorities was forceably set forth in the case of *State, ex rel. Robison, Director of Public Welfare v. Henderson*, 162 Ohio St., 504. This was an action in mandamus brought by the director to require the commissioners of Harrison County to make and maintain certain records in the accounting procedures and to make reports to the Department of Public Welfare pursuant to regulations laid down by the Department under the authority of Section 5113.09, *supra*. The court granted the writ of mandamus, saying in the course of its opinion:

“The broad statutory authority of the department to make rules and to require accounting and reports as to persons permanently and totally disabled in a county, with reference to funds furnished by the state and accepted by the county for reimbursement for aid expended from local funds, whether such funds so furnished are state or federal in origin, can not be questioned by the county.

Accordingly, in specific answer to your questions, it is my opinion and you are advised:

1. Under the provisions of Section 5513.09, Revised Code, the Department of Public Welfare has authority to make and promulgate a rule requiring that a county welfare department, when a case is transferred to it from the Soldiers' Relief Commission, shall conduct its own investigation in determining the eligibility and need of the applicant, and maintain the case record in its own office.

2. The Department of Public Welfare has authority, under the provisions of Section 5113.09, Revised Code, to withhold and discontinue

reimbursement of state funds to a county department of welfare, until the rules promulgated by it are obeyed.

Respectfully,

MARK McELROY

Attorney General