

WELFARE, DIVISION OF:

Division of Welfare may use its State appropriated administration funds together with funds granted by the Federal Government to carry out a staff development program involving full-time educational leave to its selected employees.

OPINION NO. 263

August 13, 1964

Honorable Proctor N. Carter
Director, Division of Welfare
Department of Public Health and Welfare
State Office Building
Jefferson City, Missouri

Dear Mr. Carter:

This opinion is rendered in response to your inquiry reading as follows:

"The 1962 Public Welfare Amendments to the Federal Social Security Law emphasize provisions for services to help needy persons attain or retain capability for self-care and self-support and to maintain and strengthen family life for children. This approach recognizes the importance of rehabilitation in helping welfare recipients better to be able to care for themselves and, wherever possible, to become self-supporting. To be able to help people move from dependence toward self-reliance is largely dependent upon personnel capable of providing necessary services that can help to reduce the need for and the cost of the public assistance programs.

"To improve and up-grade staff skill and to increase the number of adequately trained and qualified public welfare personnel we plan a staff development program which will include in-service training and stipends to welfare staff on educational leave. In this connection we would appreciate receiving from you an opinion on the following question:

Honorable Proctor N. Carter

"May the Division of Welfare use its State appropriated administration funds together with funds granted by the Federal Government to carry out a staff development program involving the granting of full-time educational leave with pay to its selected employees to insure adequately trained personnel in conformity with methods of administration found by the United States Government to be necessary for the proper and efficient administration of State plans under the Federal Social Security Act?"

Framers of Missouri's Constitution of 1945 treat specifically the subject of public health and welfare, and Sections 37 and 39, Article IV of such Constitution provide:

"Sec. 37. Department of Public Health and Welfare--duties and powers of General Assembly. --The health and general welfare of the people are matters of primary public concern; and to secure them the general assembly shall establish a department of public health and welfare, and may grant power with respect thereto to counties, cities or other political subdivisions of the state."

"Sec. 39. Cooperation with federal and other state governments. --In all matters of public welfare the general assembly may provide by law for cooperation with the United States, or other states."

The foregoing constitutional provisions have been implemented by the enactment of Section 191.010 RSMo 1959, reading as follows:

"There is hereby created and established as a department of state government 'A Department of Public Health and Welfare', which may hereafter be referred to as 'the department'. The scope and purpose of the department of public health and welfare shall be to improve and protect the health of the people of the state of

Honorable Proctor N. Carter

Missouri; to care for the mentally ill and those who are ill from other causes, so far as the laws of Missouri shall provide; to provide care and maintenance for certain other persons, as provided by law; to administer laws concerning social welfare, including certain social security laws. The department of public health and welfare shall be composed of three divisions, namely: The division of health, the division of mental diseases, the division of welfare."

Section 207.010 RSMo 1959 alludes to duties of the Division of Welfare in the following language:

"1. The division of welfare is an integral part of the department of public health and welfare and shall have and exercise all the powers and duties necessary to carry out fully and effectively the purposes assigned to it by law and shall be the state agency to

"(1). Administer state plans and laws involving pensions or assistance to persons over sixty-five years of age, who are incapacitated from earning a livelihood or are without means of adequate support;

"(2). Aid to dependent children;

"(3). Aid or relief in cases of public calamity;

"(4). Aid for direct relief;

"(5). Child welfare services;

"(6). Pensions and services for the blind; and

"(7). Any other duties relating to social security which may be imposed upon the department of public health and welfare."

Honorable Proctor N. Carter

In addition to specific duties delegated to the Division of Welfare by the first paragraph of Section 207.010 RSMo 1959, quoted above, we find specific powers granted to the Division of Welfare by the following language from Section 207.020 RSMo 1959, as amended in 1961 (RSMo Cum. Supp. 1963):

"In addition to the powers, duties and functions vested in the division of welfare by other provisions of this chapter or by other laws of this state, the division of welfare shall have the power:

* * * * *

"(3). To administer, disburse, dispose of and account for funds, commodities, equipment, supplies or services, and any kind of property given, granted, loaned, advanced to or appropriated by the state of Missouri for any of the purposes herein.

* * * * *

"(5). To adopt, amend and repeal rules and regulations necessary or desirable to carry out the provisions of this chapter and which are not inconsistent with the constitution or laws of this state. * * *

"(6). To cooperate with the United States government in matters of mutual concern pertaining to any duties wherein the division of welfare is acting as a state agency, including the adoption of such methods of administration as are found by the United States government to be necessary for the efficient operation of state plans hereunder.

* * * * *

"(14). To establish or cooperate in research or demonstration projects relative to the welfare program, such as those relating to the prevention and reduction of dependency and economic distress, or which will aid in

Honorable Proctor N. Carter

effecting coordination of planning between private and public welfare agencies, or which will help improve the administration and effectiveness of programs carried on or assisted under the federal Social Security Act (42 U.S.C.A. § 301 et seq.) and the programs related thereto.

* * * * *

"(20). All powers and duties of the division of welfare shall so far as applicable apply to the administration of any other law or state law wherein duties are imposed upon the division of welfare acting as a state agency."

No where have we found the power to cooperate with the Federal government granted by statute with such certainty and purposeful scope as is expressed in the language quoted above from Section 207.020 RSMo 1959, supra, as amended in 1961.

At the expense of brevity we here re-emphasize the important powers given to the Division of Welfare as a further breakdown of quoted language from Section 207.020 RSMo 1959, supra, is accomplished. In subparagraph (3) of the statute we find power vested in the Division of Welfare to "administer, disburse, dispose of and account for funds * * * appropriated by the state of Missouri for any of the purposes herein". In subparagraph (6) of the statute we find power vested in the Division of Welfare to cooperate with the United States government, such power extending to "the adoption of such methods of administration as are found by the United States government to be necessary for the efficient operation of state plans hereunder".

We discover only one limitation, expressed in Section 207.020 RSMo 1959, affecting the specific powers granted, and it is found in subparagraph (5) of the statute, it pertains to the adoption, amendment and repeal of rules and regulations, and contains a prohibition against the same being "inconsistent with the constitution or laws of this state".

The United States, through the Secretary of Health, Education, and Welfare, has found that its prescribed methods of administration, including a staff development plan involving the granting of full-time educational leave with pay by states to their selected employees, is necessary for the proper and efficient administration of state plans under the Federal Social Security Act.

Honorable Proctor N. Carter

Evidence of such "finding" is found in the following language in the Office Memorandum of December 6, 1961, from Abraham Ribicoff, Secretary of Health, Education, and Welfare, directed to Mr. W. L. Mitchell, Commissioner of Social Security, on the subject of "Administrative Actions Necessary to Improve our Welfare Programs":

" * * * I would like you to proceed immediately to implement the following decisions:

* * * * *

"7. Improvement of State Staff Training and Development Programs. The central core of proper and efficient administration is personnel--adequate in number and appropriately trained to do the job required. With the changing characteristics of the public assistance caseload, and the need to emphasize more and more the preventive and rehabilitative aspects of public welfare, the existence in each State of an adequate staff development program is imperative. * * * Federal financial participation is now available for the administration of staff development programs, including in-service training and educational leave, as a part of the costs of administering public assistance. * * * Each state should have a State-wide staff development plan which would include both in-service training and opportunities for professional and technical education. * * * "

In implementing the directive of December 6, 1961, issued by the Secretary of Health, Education, and Welfare, the Commissioner of Welfare, at Part III of the Handbook of Public Assistance Administration, issued by the Bureau of Family Services, within the Welfare Administration, on October 16, 1963, has set forth requirements, as established under the authority of Titles I, IV, X, XIV, and XVI of the Social Security Act, requiring states to provide such methods of administration as the Commissioner of Welfare finds necessary for the proper and efficient operation of State plans. Part III, Section 3210 of the Handbook of Public Assistance Administration, referred to above, provides, in part:

Honorable Proctor N. Carter

" * * * For these reasons and upon direction of the Secretary, requirements for strengthening agency staff development programs are being established under the authority of titles I, IV, X, XIV, and XVI of the Social Security Act to require States to provide such methods of administration as the Secretary finds are necessary for the proper and efficient operation of State plans. Federal funds are available for the administration of staff development programs, including in-service training and educational leave, as a part of the costs of administering titles I, IV, X, XIV and XVI. The law provides for matching of training expenditures at 75 percent under specified timing and conditions. (See Handbook IV-4000)."

Part III, Section 3300 of the Handbook of Public Assistance Administration, dealing with requirements for a State plan of staff development, provides, in part, as follows:

"A State plan must include:

* * * * *

"C. 3, b. Provision for educational leave for employees, including

"(1). Provision for educational leave with pay for selected employees to fill positions designated by the agency as requiring professional and technical education. * * *"

The constitutional and statutory provisions discussed above clearly demonstrate on their face that their basic objective is a public purpose, as distinguished from aid to any private person.

The staff development plan heretofore referred to will involve disbursement of State appropriated funds as selected employees of the Division of Welfare are granted full-time educational leave with pay under the plan. In an opinion of this office dated April 19, 1946, three provisions of Missouri's 1945 constitution were cited as legal impediments to the State Social Security Commission's authority to grant a leave of absence to any employee with pay for the purpose of attending

Honorable Proctor W. Carter

some educational institution to better qualify the employee for some key supervisory position with the State Social Security Commission. We are not constrained to follow such opinion for three principal reasons: First, no effort was made in such opinion to discuss the language of the statutes giving specific powers to the State Social Security Commission as they might bear relation to the problem presented. Second, in citing Missouri's constitution of 1945, Article III, Sections 38(a) and 39(1) and (2), as impediments to the plan, such constitutional provisions were not demonstrated to be violated by the statutes prescribing powers and duties of the state agency involved. Third, the 1961 amendment to Section 207.020 RSMo 1959 gave additional powers to the Division of Welfare which were not spelled out in the statute as it existed in 1946, and are now found at subparagraphs (9) to (19), inclusive, of such statute.

Article III, Section 38(a), Missouri's constitution of 1945 provides:

"The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation, excepting aid in public calamity, and general laws providing for pensions for the blind, for old age assistance, for aid to dependent or crippled children or the blind, for direct relief, for adjusted compensation, bonus or rehabilitation for discharged members of the armed services of the United States who were bona fide residents of this state during this service, and for the rehabilitation of other persons. Money or property may also be received from the United States and be redistributed together with public money of this state for any public purpose designated by the United States."
(Underscoring supplied)

Article III, Section 39(1) and (2), Missouri's constitution of 1945 provides:

Honorable Proctor N. Carter

"The general assembly shall not have power:

"(1). To give or lend or to authorize the giving or lending of the credit of the state in aid or to any person, association, municipal or other corporation.

"(2). To pledge the credit of the state for the payment of the liabilities, present or prospective, of any individual, association, municipal or other corporation."

The underscored language found in Article III, Section 38(a), Missouri's constitution of 1945, quoted above, represents new matter of substance not found in Missouri's constitution of 1875. In such language we find an expression of Missouri's forward approach to the distribution of public monies for purposes, and under conditions, there stated. While we are inclined to rest the ultimate conclusion of this opinion on the language appearing in the last sentence of Article III, Section 38(a) of Missouri's 1945 constitution, quoted supra, we will take an additional step to demonstrate that the expenditure of state appropriated funds by the Division of Welfare to foster a staff development plan involving full-time educational leave with pay to its selected employees does not involve the giving of state aid to a private person in contravention of the constitutional provisions set out above.

Appropriations made by the legislature to the Division of Welfare covering the biennium from July 1, 1963, to June 30, 1965, disclose that a specific appropriation has been made for "administration" purposes. It must be conceded that such "administration" purposes are public purposes in light of the organization and functions of the Division of Welfare as outlined in the forepart of this opinion. A staff development program in the Division of Welfare goes to the very heart of "administration" of the Division's various programs, and must be considered germane to the public purposes for which the Division was created.

In State ex inf. Dalton v. Land Clearance For Redevelopment Authority, 364 Mo. 974, 270 SW2d 44, decided by the Supreme Court of Missouri in 1954, it was there contended that the Authority's proposal to sell real estate within a blighted area to private developers at a price less than the cost of acquisition constituted the giving of special privileges, the lending of public credit and the granting of public property, in aid of

Honorable Proctor N. Carter

a private person, association or corporation in violation of Article III, §§ 38(a) and 39, of Missouri's constitution of 1945. In holding that the constitutional provisions just cited were not violated by carrying out the provisions of the Land Clearance For Redevelopment law, the Supreme Court used language enunciating a principle which we feel must be applied to the facts at hand. We here quote from such opinion at 364 Mo. 974, l.c. 989, 990:

"The great weight of authority is that there is no private grant when land is cleared for the purposes herein contemplated and is thereafter sold at a loss, but for its then fair value. *Rowe v. Housing Authority of Little Rock*, 220 Ark. 698, 249 SW2d 551, 553; *Redevelopment Agency of San Francisco v. Hayes*, Cal. App., 266 P.2d 105, 125; *Ajootian v. Providence Redevelopment Agency*, R.I. Sup., 91 A. 2d 21, 26; *Gohld Realty Co. v. City of Hartford*, Conn., 104 A. 2d 365, 372; *Foeller v. Housing Authority of Portland*, 198 Ore. 205, 256 P. 2d 752, 767. In all of these cases it is pointed out that the primary purpose of a redevelopment project is a public purpose, and that any benefits to private individuals are merely incidental to the public purpose. To the same effect is *Laret Investment Co. v. Dickmann*, 345 Mo. 449, 134 SW2d 65. See also: *Jasper County Farm Bureau v. Jasper County*, 315 Mo. 560, 286 SW 381; *State ex rel. Kansas City Insurance Agents' Association v. City of Kansas City*, 319 Mo. 386, 4 SW2d 427."

The Missouri decisions cited in the language quoted above from *State ex inf. Dalton v. Land Clearance For Redevelopment Authority* were ruled in light of those provisions of Missouri's constitution of 1875 prohibiting appropriations by the legislature for purposes not public in nature, and not differing materially from our present constitutional provisions referred to herein on the subject.

Honorable Proctor N. Carter

Those employees of the Division of Welfare who are to be selected for participation in the staff development program and thereby receive full-time educational leave with pay, as a condition of their employment, cannot be considered as other than indirect beneficiaries of an appropriation made by the legislature for purposes of "administration" of the Division of Welfare in carrying out the public purpose of the law being administered.

Conclusion

It is the opinion of this office that the Division of Welfare may use its State appropriated administration funds together with funds granted by the Federal government to carry out a staff development program involving the granting of full-time educational leave with pay to its selected employees to insure adequately trained personnel in conformity with methods of administration found by the United States government to be necessary for the proper and efficient administration of state plans under the Federal Social Security Act.

The foregoing opinion which I hereby approve was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JLO/dg