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ARIZONA ATTORNEY GENERAL

DARRELL P. SMITH, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

July 2, 1965

DEPARTMENT OF LAW LETTER OPINION NO. 65-26-L (R-104)

REQUESTED BY: James R. Thomas, Executive Secretary
Crippled Children's Services

QUESTION: Are there any restrictions relative to
residency, nationality or citizenship
governing the admission of patients to
our "Arizona State Board of Crippled
Children's Services" program?

ANSWER: No.

The Legislature in 1961 removed jurisdiction of crippled children's services from the State Department of Public Welfare and placed it under the jurisdiction of a separate State Board of Crippled Children's Services (A.R.S. § 46-501, et seq.)

Although there are specific requirements for residency and citizenship as conditions precedent to eligibility for general welfare assistance under A.R.S. § 46-233, and residency requirements for eligibility for aid to dependent children pursuant to A.R.S. § 46-292, no such restrictions were carried over into the 1961 provisions for crippled children's services.

A.R.S. § 46-503 grants broad powers to the State Board of Crippled Children's Services and provides in part that it shall:

"2. Supervise, control, and establish policies for the state board of crippled children's services.

"3. Adopt all rules, regulations and

policies for the operation of a
crippled children's program.

. . .

"6. Establish and administer a program of service for children who are crippled or who are suffering from conditions which lead to crippling. The program shall provide for: . . .

. . .

"(f) Cooperation with medical, health, nursing and welfare groups and organizations and with any agency of the state charged with administration of laws providing for vocational rehabilitation of physically handicapped children.

"(g) Cooperation with the federal government through its appropriate agency or instrumentality in developing, extending and improving services for crippled children.

"(h) Receipt and expenditure of funds made available to the state board for services to crippled children by the federal government, the state or its political subdivisions, or from other sources. . . ."

Your question, commencing with qualifications of eligibility of persons to receive crippled children's services, in reality

raises the question of whether A.R.S. § 46-501 et seq., are unconstitutional as an improper delegation of legislative authority. Arizona Constitution Article IV, § 1 provides:

"The legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives but the people reserve the power to propose laws. . ."

The Supreme Court of Arizona is committed to the rule that a statute will not be declared unconstitutional unless it is invalid beyond reasonable doubt. State v. Davey, 27 Ariz. 254, 258, 232 Pac. 884 (1925). Every reasonable intendment will be taken in favor of the validity of a statute. Valley National Bank of Phoenix v. Glover, 62 Ariz. 538, 560, 159 P.2d 292 (1945).

In Senior Citizens League v. Department of Social Security of Washington, 228 P.2d 478 (1951), the question of the validity of the delegation of authority to classify recipients or applicants, as vested by the statute in the Department of Social Security of the State of Washington, was decided in favor of the validity of the statutory delegation of authority. The court therein stated:

"The growth of present social security laws of this state with their different needs, resources, eligibility and other terms is traceable not to any constitutional sanction but largely to the federal security agency. . ." Ibid. at p. 490.

This consideration we believe to be very important in reference to the statutes creating and enfranchising Arizona State Board of Crippled Children's Services. Federal regulations require

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a "separate administrative agency" for crippled children's services which explains why our Legislature created a separate Arizona State Board of Crippled Children's Services in 1961. (42 U.S.C.A. 701 et seq.; 42 C.F.R. [Public Health] 200 et seq.) Sub-sections (f) and (g), A.R.S. § 46-503(6), invoke the rules and regulations of both federal and other cooperating welfare program authorities.

The federal regulations cited above require as a condition precedent to the availability of federal funds for crippled children's services that the State have a state plan for such services which plan must conform to certain federal requirements. Federal funds are allocated to participating states according to their "plans" and as to the number of live births in the state and the number of crippled children to be served.

History of the governmental welfare effort shows that there has always been a concern that welfare be administered at the local level. It is not clear that this tendency is more than an effort to simplify administration. Mahoney v. County of Maricopa, 49 Ariz. 479, 483, 485, 68 P.2d 694. The cited decision declares constitutional the transfer of the administration of all forms of public assistance to the State Department of Social Security and Public Welfare. The statute (Chapter 69, Laws 1937: A.R.S. § 46-131, et seq.) relieved the county boards of supervisors of the administrative duties in relation to the welfare laws. Mahoney, supra, at p. 494.

In large measure this same development is manifested in present welfare program administrative statutes, principally because of the effect of the subsidization of state programs by federal aid.

The adoption of a federal statute, or a set of federal regulations, by the legislature of a state, does not render the statute in which such adoption is effected, unconstitutional. Valley National Bank of Phoenix v. Glover, supra, at p. 561. The

validity of such adoption depends only upon whether or not the statute or the set of regulations was in existence at the time the adoption was sought to be effected. Ibid.

A good example of this use of a federal administrative statute, and federal regulations, to complement legislation by a state legislature, is contained in Senior Citizens League, supra. In that decision, the objection had been made that the definition of "need" was left to a determination "by the standards of the department". This delegation of authority to determine questions of "need" was considered, together with the federal regulations and statutes, in the welfare area, and determined to be a valid statutory enactment. (See also Lichter v. United States, 334 U.S. 742, 57 S.Ct. 1294; and Reif v. Barrett, 355 Ill. 104, 188 N.E. 899.)

Circumstances of residence are no longer of an "essential" nature in administration of welfare programs, in general. In considerable part this is the result of "reciprocity", which is made a part of the welfare statute. (A.R.S. § 23-503(2) as to Vocational Rehabilitation, A.R.S. § 23-644(B) as to Employment Security.) Residence and citizenship, as qualifications, are rendered insignificant under penal, reformatory, mental health and imprisonment statutes, with respect to which reciprocity is provided for under A.R.S. § 41-906.

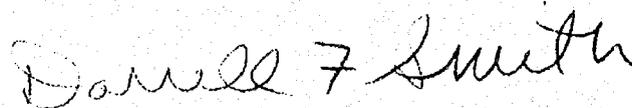
The transient, indigent, crippled child is no less the object of commiseration just because of his direct relationship to interstate travel. He is just as much public charge as is his resident brother. Federal regulations require a state "plan" and separate administrative boards for crippled children's services. This requirement was accommodated by our legislature by the enactment of the amendment in 1961. The statute by which this was accomplished was intended to comply not only with that federal regulation requirement, but with others, which included cooperation by the State Board of Crippled Children's Services with

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other crippled children's service programs. Interstate cooperation in welfare services by state government administrators has built up a method of doing business, a reciprocity, a cooperation, all under the supervision of rather long term federal administrative regulation. This basis for state participation, long established in the welfare program field, renders critical consideration of "residence" in relation to eligibility, superfluous. At least, this might have been the purpose and intention of the Legislature, and it is a particularly apt conclusion, so we believe, in relation to crippled children services and programs.

We do not believe that there was a legislative intent to impose refined considerations of periods of "residency", and to insert those requirements into the crippled children's services program. We do not believe that there is a fixed requirement as to residency, in relation to the availability of crippled children's services. At best, such a requirement would only distinguish between certain "periods" of residency. We believe the legislature intended that the Arizona State Board of Crippled Children's Services should regulate this facet of eligibility, in the regular course of the administration of its services, in cooperation with other programs, and in view of the supervision afforded by federal regulation. The answer to your question is in the negative.

Respectfully submitted,



DARRELL F. SMITH
The Attorney General

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