

July 22, 1937

Gerard D. Reilly
Acting Solicitor of Labor
United States Department of Labor
Washington, D. C.

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ARIZONA ATTORNEY GENERAL

Dear Mr. Reilly:

We have received your telegraphic request for an opinion with reference to whether the State Board of Health of Arizona has authority, under our state law, to formulate and administer a plan of maternal and child health service such as was submitted by the Health Department under date of June 25, 1937, to the Children's Bureau of the Department of Labor; and further, whether state and local funds and federal funds granted to the state for the purposes outlined in the aforesaid plan may be expended under authority of the State Board of Health of this state.

We are of the opinion that the Arizona State Board of Health has this authority, both with reference to formulating the plan and with reference to the expenditure of state and federal funds. Under the provisions of Article 5 of Chapter 61, Revised Code of Arizona, 1928, the State of Arizona agreed to and accepted the conditions of the Act for the Promotion of the Welfare and Hygiene of Maternity and Infancy, enacted by the Congress of the United States and approved November 23, 1921, and in such act designated the Child Hygiene Division of the State Board of Health as the state agency to cooperate with the Children's Bureau of the Department of Labor in the administration of the provisions of the aforesaid act. This act has not been amended by any subsequent legislature, unless the provisions of Chapter 69, Laws of the Regular Session, State of Arizona, 1937, effected such repeal by implication. The legislature, by this last-named act, set up what is commonly known as the "Arizona Board of Social Security and Public Welfare," and defined the powers and duties of this board. The provisions of this act which may in anywise affect the question here involved are those contained in Section 7 of this act.

Under Section 7, the State Department of Social Security and Public Welfare is charged with the administration of all welfare activities of the state as hereinafter defined in Chapter 69. Subsection (a) of Section 7 provides that the State Department shall:

"(a) Administer all forms of public assistance including general home relief, outdoor and indoor care and medical care for persons in need, old age assistance, aid to dependent children, aid to the blind, service to crippled children; and shall administer all institutions now administered by the State Board of Public Welfare; supervise agencies and institutions caring for dependent or mentally or physically handicapped or aged adults; approve the incorporation of charitable agencies; and administer such other welfare activities or services as may be vested in it; provided, however, that nothing in this section shall be construed to mean the state institutions operated by the Board of Directors of State Institutions."

Subsection (b) provides that the State Department shall:

"(b) Administer all child welfare activities, including importation of children; licensing and supervising of private and local public child-caring agencies and institutions; the care of dependent, neglected and delinquent children in foster family homes, or in institutions, especially children placed for adoption."

Subsection (c) refers to the administration by the State Board of a program of service for children who are crippled or who are suffering from conditions which lead to crippling, and charges the Board with the care of such children.

Subsection (d) has reference to, and charges the Board with, the care of the blind and the duty of taking steps toward the prevention of blindness and the care of those already suffering from this condition.

Subsection (e) places upon the Board the general duty of assisting other departments of the State or Federal

Government upon request; performing any services in conformity with the purposes of Chapter 69.

Subsection (f) requires the State Board to act as the agent of the Federal Government in the furtherance of any of the functions of the State Department as outlined in Chapter 69.

Subsection (g) requires the Board to carry on research and compile statistics relative to the public welfare program throughout the state; to cooperate with superior courts in cases of delinquency and related problems and to develop plans, in cooperation with other public and private agencies, for the prevention and treatment of conditions giving rise to public welfare and social security problems.

Subsection (h) permits the Board to make the rules and regulations necessary or desirable to carry out the provisions of the act and not inconsistent with the act.

The last subsection, Subsection (i), places upon the Welfare Board the administration of such further welfare functions as may be vested in the Board by law.

The balance of the act provides for the setting up of the personnel of the Board, the departmental organization; provides for the formation of county boards to assist the State Board in the local problems in each county; makes available certain funds for the use of the State Board; and repeals all acts or parts of acts in conflict with Chapter 69 - specifically repealing Chapter 35 of the Session Laws of 1933, commonly known as the "State Welfare Board Act." This statute has been construed in one case by the Supreme Court of this state, this case being W. P. Mahoney, et al., Appellants, vs. The County of Maricopa, a political subdivision of the State of Arizona, Appellee, and reported in 68 Pac. (2d) 694 (Advance Sheet). In this case the Supreme Court had under consideration the effect of Chapter 69 upon the duty of the counties of the state to care for the indigents residing within the counties, and in that decision held that the duty of providing medical and material care for all indigents had been transferred from the counties to the State Board of Social Security and Public Welfare. The Court laid down a very broad rule, holding that the State Board of Social Security and Public Welfare was invested

with the entire charge of the administration of all welfare activities of the state, and of all forms of public assistance authorized under or by virtue of any statute, excepting only the institutions now operated by the Board of Directors of State Institutions of this State, and further, that all provisions for the administration of welfare activities and public assistance of any nature, by any other person, board or political subdivision of the state, had been repealed by Chapter 69.

If, therefore, the plan which was formulated and submitted by our State Board of Health under date of June 25, 1937, has for its main object and purpose a program for the advancement of the public welfare and providing public assistance, within the meaning of Chapter 69, then the State Board of Health must have lost its authority to formulate such a plan or to administer the same. Likewise, if the Act for the Promotion of Welfare and Hygiene of Maternity and Infancy, of November 23, 1921, as accepted by the State of Arizona, has for its purpose the rendering of public assistance or the advancement of public welfare, within the meaning of Chapter 69, then it must necessarily follow that, insofar as Section 2723, supra, designates the State Board of Health as the state agency for handling these matters, it has been repealed and the State Board of Social Security and Public Welfare substituted as the state agency.

An examination of Chapter 69, however, reveals that the main purpose of the act is the care of the needy and unfortunate, whether such care be medical or material, and the formulation of a broad program for the care of the unfortunates. It is seen that nowhere in Chapter 69 is any reference made to a program of education with reference to maternal care or prenatal child care, and that nowhere in Chapter 69 is there an indication that the purpose of the act is to furnish any form of assistance, whether educational or material, to any persons except those in actual need, or those unable to properly care for themselves by reason of physical handicaps.

Subsections (a) and (b) of Chapter 69, above quoted, appear upon casual examination to provide broadly for the administration by the State Board of all forms of public assistance and all forms of child welfare activities, but it is seen that in each instance the legislature has indicated the type of public assistance and child welfare activities it intended to empower the State Board to administer by an enumeration of certain duties specifically imposed upon the State Board, this enumeration immediately following the general provisions of

the Act. We believe the true construction of these provisions to be that which follows by substituting the words "such as" for the word "including" in each of these subsections. These are the only two sections of the Act which could be considered to transfer the duty of administering a plan of Maternal and Child Health from the State Health Department to the Social Security Board.

The Act of Congress providing for the Promotion of the Welfare and Hygiene of Maternity and Infancy, above referred to, has a broader import and a broader purpose than the mere furnishing of care to the needy or unfortunate. It is in nowise a relief measure, or a measure having for its main purpose the care of indigents, but it is rather a program for the education of the general public along certain health lines.

We are therefore of the opinion that the powers and duties of the State Board of Public Health and its various subdivisions, whether with reference to the formulation of plans in co-operation with the Children's Bureau of the Department of Labor, or the expenditure of funds furnished by the state or any of its subdivisions, have been in no manner diminished or changed by the enactment of the aforesaid Chapter 69. In this conclusion we are strengthened by the fact that in its General Appropriation Bill, the legislature which enacted Chapter 69 also made a direct provision and direct appropriation to the Health Department for the advancement of the purposes and the carrying out of the program set up in the plan prepared by our State Health Department and submitted to the Children's Bureau under date of June 25, 1937.

Very truly yours,

JOE CONWAY
Attorney General

MARK WILMER
Assistant Attorney General

E. G. FRAZIER
Special Assistant
Attorney General