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PHOENIX

April 1, 1974

DEPARTMENT OF LAW LETTER OPINION NO. 74-10-L (R-17)

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ARIZONA ATTORNEY GENERAL

REQUESTED BY: THE HONORABLE DOUGLAS S. HOLSCLOW
Arizona State Senator

- QUESTIONS:
1. Do the references in Senate Bill 1268 to various sections of the federal Social Security Act constitute legislation by reference?
 2. Do any of the provisions contained in Senate Bill 1268 amount to an unconstitutional delegation of legislative power?

- ANSWERS:
1. No; see body of opinion, part I.
 2. Yes; see body of opinion, part II.

I

Senate Bill 1268, 31st Arizona Legislature, Second Regular Session, refers to Titles IV-A and XVI of the Social Security Act in Section 36-2171. These references are made solely to establish eligibility classifications and apparently constitute the most direct and accurate method for describing those persons eligible for medical assistance under the proposed act. Similarly, Section 36-2173 directs the Department of Health Services to prepare a state plan for medical assistance which is in conformity with the provisions of the chapter and with those of Title XIX.

This type of conformity clause is necessary to ensure that Arizona's medical assistance plan will be entitled to federal grants under Title XIX of the Social Security Act; the Department of Health Services is authorized to receive and deposit federal monies pursuant to Section 36-2172.C. This procedure does not run afoul of our constitutional provision prohibiting revision or amendment by reference. Arizona Constitution, Article 4, Part 2, Section 14, since the references simply adopt applicable standards, a practice long accepted in Arizona. Clements v. Hall, 23 Ariz. 2, 201 P. 87 (1921); In re Forsstrom, 44 Ariz. 472, 38 P.2d 878 (1934).

II

Section 36-2172.B of Senate Bill 1268 differs from the above cited sections. While the section directs the Department of Economic Security to establish eligibility requirements in conformity with Title XIX and this chapter, no guidelines are provided. The Department of Economic Security is given so much leeway in determining the eligibility standards to be applied under the medical assistance program that the proposed bill clearly constitutes an impermissible delegation of legislative power.

While it is true that there is no universal formula for determining which powers must be retained by the Legislature and which may be delegated to an administrative agency, in many instances this determination must be made on a case by case basis. State v. Phelps, 12 Ariz.App. 83, 87, 467 P.2d 923 (1970). It is equally well established that "delegation of power must always prescribe the standards that are to govern the administrative agency in the exercise of the power thus delegated. . . ." 9 A.L.R.2d 871. See also 42 Am.Jur. 339, Public Administrative Law, § 44.

Proposed Section 36-2172.B provides no such standards. It merely requires conformity with the standards of Title XIX of the Social Security Act and Chapter 21, which the bill itself embodies. Title 21 contains no eligibility requirements, and Title XIX of the Act leaves eligibility open "to all individuals receiving aid or assistance under State plans approved under titles I, X, XIV, and XVI and Part A of title IV. . .", (42 U.S.C. § 1902(a)10) as well as creating the option of medical services for non-recipients who cannot afford such care subject to standards prescribed by the Secretary of Health, Education and Welfare. 42 U.S.C. § 1902(a)10B(i). The applicable federal regulations provide lengthy discussion of exclusions from these categories, but do not create eligibility requirements. 45 C.F.R. § 248.10.

The constitutional power of the Legislature to enact laws cannot be relinquished. State v. Marana Plantations, Inc., 75 Ariz. 111, 252 P.2d 87 (1953); Peters v. Frye, 71 Ariz. 30, 233 P.2d 176 (1950). The Legislature may, however, delegate a large measure of authority to an agency administering a law, so long as reasonably definite standards for exercise of this authority conferred by the statute are prescribed either explicitly or by inference to the statutory scheme as a whole. State v. Arizona Mines Supply Co., 107 Ariz. 199,

484 P.2d 619 (1971); State Compensation Fund v. De La Fuente,
18 Ariz.App. 246, 501 P.2d 422 (1972); Burns v. Herberger,
17 Ariz.App. 462, 498 P.2d 536 (1972).

As noted above, proposed Section 36-2172.B of Senate Bill 1268 provides no reasonably definite eligibility standards for medical assistance, either explicitly or by reference or inference to either state or federal law. As such, it amounts to an impermissibly broad delegation of legislative power running afoul of the requirement of separation of powers mandated by Article 3 of the Arizona Constitution. Ahearn v. Bailey, 104 Ariz. 250, 451 P.2d 30 (1969).

These same defects are apparent in proposed Section 36-2172.A, since no standards or criteria for operation of a medical assistance program for the "categorically needy, the medically needy and general assistance recipients" are prescribed or can be inferred from the proposed legislation.

In Automobile Club of Missouri v. St. Louis, 334 S.W.2d 355, 83 A.L.R.2d 612 (Mo. 1960), the court explained that, while it is true that the Legislature may empower officers, boards and commissions to carry out legislative purposes, promulgate rules effectuating legislative action and gather factual data necessary therefor, the provision in question failed to establish adequate criteria or standards to guide the executive branch. The court held, therefore, that the legislative body had attempted an unlawful delegation of legislative power. State ex rel. Everett Fire Fighters Local No. 350 v. Johnson, 46 Wash.2d 114, 278 P.2d 662, 666 (1955), is applicable here:

. . . The theory of delegation of authority is that the person or group, to whom authority has been delegated, acts for and as the agent of the person or group delegating such authority. That is not the situation here. Here the [Legislature] would be stepping out of the picture entirely and the [Department of Economic Security] would be performing a function which, by law, is the responsibility of the [Legislature].

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Everett v. Johnson, supra, was cited with approval by the Arizona Supreme Court in striking a municipal ordinance in Parrack v. City of Phoenix, 86 Ariz. 88, 340 P.2d 997, 999 (1959). "Standards of delegation are peculiarly required . . . where the legislature is enacting a new pattern of social conduct." State v. Traffic Tele. Worker's Federation, 2 N.J. 335, 66 A.2d 616, 9 A.L.R.2d 871 (1949); Panama Refining Co. v. Ryan, 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 446 (1935); A.L.A. Schecter Poultry Corporation v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947 (1935).

We urge that Section 36-2172.A and B be reconsidered to include definite guidelines for the Departments of Health and Economic Security to follow in establishing the medical assistance program and eligibility requirements thereof.

Respectfully submitted,

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by F.S.

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