

the amount payable as assistance to dependent children under the Welfare Act.

It is true that the courts have generally held that the exemption provisions of the above quoted Act of Congress should be liberally construed to protect the fund for the purposes for which it is designed, but I do not think those who legally depend upon the veteran for support can be put in the class of creditors of the veteran seeking to avail themselves of the benefits of the government payments. On the other hand, I think it is manifest that such payments are for their benefit when necessary and that the county department is not infringing upon the exemption provisions of the Act of Congress in taking same into consideration as a resource. I think the answer to your first question as stated should be in the affirmative. However, this does not necessarily mean that such payments must all be applied to the support of dependents before assistance under the Welfare Act may be granted. Under the Welfare Act of 1936 the county board and the State board on appeal are vested with a certain amount of discretion in such matters, but I think, in such cases, the Act requires that due regard must be given to the resources of the family and that such government payments under ordinary circumstances would constitute such a resource.

The answer to your second question is in the negative.

Limited, as stated in my answer to the first question, your third question, I think, should be answered in the affirmative.

TAX COMMISSIONERS, STATE BOARD OF: Whether county boards of welfare may contract for services of investigators beyond appropriation for same.

July 26, 1937.

Hon. C. R. Benjamin,
 Commissioner,
 State Board of Tax Commissioners,
 231 State House,
 Indianapolis, Indiana.

Dear Mr. Benjamin:

I have before me your request for an official opinion in answer to the following questions:

“Does section 24, chapter 3, Acts of 1936, provide authority for County Boards of Welfare to contract for personal service beyond appropriation for same?

“Will the application of section 6, chapter 41, Act of 1937, in anywise influence the interpretation of section 24, chapter 3, Act of 1936?”

Section 24 of chapter 3 of the Acts of 1936 provides as follows:

“County staff. The county director, with the approval of the county board, shall appoint and fix the compensation of such assistants as may be necessary to administer the welfare activities within the county and to perform all other duties required of the department.”

Acts of 1936, p. 31.

In my opinion, where the number of deputies or assistants, as well as the salaries, is fixed by law, the appointment of such number at the salaries fixed by law may be made notwithstanding the absence of an appropriation but, of course, no payment can be made until an appropriation is made. The above section apparently gives to the director, with the approval of the county board, the authority to appoint and fix the compensation of assistants on the basis of necessity and in cases where that limitation of necessity is strictly adhered to, it seems to me that the situation would be quite analogous to the situation where the number and salary are fixed by law. That is, the legislature having delegated to some agency of government the duty and authority to fix the number and compensation, when that is done it stands in the same situation as if the legislature had itself done so.

On the other hand, the question of necessity is not such a question as may be determined with finality by the county director with the approval of the county board. It is a question of fact, the solution of which would necessarily rest ultimately with the agencies having control of appropriations or perhaps finally with the court where a controversy arises.

It is obvious from what has been said that your questions cannot be answered categorically, but I think it is quite clear that the correct practice should be to secure the appropriation prior to the contracting for personal service since the *necessity* for such service might be open to question.

The Act makes ample provision, it seems to me, to take care of emergencies which would require the employment of additional assistants from time to time. Section 100 (b) of The Welfare Act of 1936 expressly provides that,

“If the appropriations for any or all of the welfare services of the county as contemplated in this Act shall be exhausted prior to the close of the fiscal year for which such appropriations have been made, then and in that event an emergency shall be deemed to exist as contemplated in chapter 150 of the Acts of the General Assembly of 1935, and the county council shall, in the manner prescribed by chapter 150 of the Acts of the General Assembly of 1935, make such additional appropriations as may be necessary to provide for the maintenance of the respective welfare activities of such county welfare board, * * *.”

Acts of 1936, p. 66.

Returning now to the specific language of your first question, I think that section 24 of chapter 3 of the Acts of 1936 authorizes the county director, with the approval of the county board, to appoint assistants and fix salaries necessary to administer the welfare activities within the county prior to appropriation for same only in cases where the same can be justified upon the basis of necessity; that the question of necessity cannot be determined with finality by either the county director or the county board and for that reason, at least the better procedure is to secure the appropriation prior to the making of appointments and the fixing of salaries.

Your second question is answered in the negative.

PUBLIC INSTRUCTION, SUPERINTENDENT OF: Special schools of instruction for physically handicapped children; whether State may reimburse local corporations for anything other than tuition, lunches and transportation.

July 27, 1937.

Hon. Grover Van Duyn,
Assistant State Superintendent,
Department of Education,
Indianapolis, Indiana.