b. He may withhold state salary payments from regular judges who fail, after demand, to refund to the state overpayments made to them for acting as special judges in other courts.

OFFICIAL OPINION NO. 39
November 18, 1968

PUBLIC WELFARE—Implementation of the Work Incentive Program—Recipients of Aid to Families with children benefits as eligible.

Opinion Requested by Mr. William R. Sterrett, Acting Administrator, Department of Public Welfare.

You have asked me whether the State Department of Public Welfare may, without specific Indiana enabling legislation, implement the Work Incentive Program (hereinafter referred to as “WIN”) created by the 1967 Amendments to the United States Social Security Act.¹ The WIN program would be performed in cooperation with the Indiana Employment Security Division and the federal government, and financed primarily by federal funds, with state contributions also required.

Although WIN itself is a new program, § 204(b) of the 1967 Amendments adds subparagraph (19) to § 402(a) of the Act.² That subparagraph requires states to refer qualified recipients of Aid to Families with Dependent Children (hereinafter referred to as “AFDC”) to the WIN program. Subparagraph (19) became effective July 1, 1968, in any state in which a state statute does not prevent the state from com-

¹ 204(a) of Pub. L. 90-248, 81 Stat. 884 to 889, adding Part C to Title IV of the Act, §§ 430 to 444, 42 U.S.C. §§ 630 to 644.
² 42 U.S.C. § 602(a).
plying, and will become effective on July 1, 1969, in every state. If the State of Indiana is not prohibited by statute from participating in such program beginning July 1, 1968, but decides not to participate at that time, the Secretary of Health, Education and Welfare shall withhold all further federal payments to the State for AFDC, and may withhold funds in any or all other categories of public assistance. However, another section of the statute authorizes the Secretary to waive such action. If he does, he must withhold sufficient money from other public assistance programs paid under the Social Security Act to equal the required state contribution to the WIN program.

The purpose of the WIN program is best set out in the Act creating it.  

“The purpose of this part is to require the establishment of a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in special work projects, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.”

3 § 204(c) (1) of the 1967 Amendments, annotated at 42 U.S.C.A. § 602.
5 § 443 of the Act, added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 643.
6 § 450 of the Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 630.
The WIN program, in some respects, redefines the aims of public assistance programs for families with dependent children. Section 401 of the Social Security Act since 1956 has stated the purpose of AFDC to be to encourage the care of dependent children in their own homes or in the homes of relatives, as well as to help parents or relatives to attain or retain capability for maximum self-support and personal independence "consistent with the maintenance of continuing parental care and protection." The purpose of the WIN program, however, is to train the mother of such children for employment outside the home, and to provide other care for her children while she is being trained and employed.

The purpose of WIN is to be carried out by the creation of three programs pursuant to § 432(b) of the Social Security Act:  

"(1) a program placing as many individuals as is possible in employment, and utilizing on-the-job training positions for others,

"(2) a program of institutional and work experience training for those individuals for whom such training is likely to lead to regular employment, and

"(3) a program of special work projects for individuals for whom a job in the regular economy cannot be found."

Although the programs all have the same purpose, i.e., training AFDC welfare recipients to become wage-earning members of society, each program is planned for distinct groups of persons referred. The programs are geared to the differences in present and potential performance capabilities of the referred individuals. The only program which may need further explanation is Program (3), special work projects for those individuals for whom a job in the regular economy cannot be found. The special work projects are to

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8 70 Stat. 848.
9 § 480 of the Social Security Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 630.
10 As added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 632(b).
be developed by the Secretary of Labor, by agreement with public agencies, private nonprofit organizations established to serve a public purpose and Indian tribes on an Indian reservation. The work is to serve a public purpose, and be work which would not otherwise be performed by regular employees. The employer will be reimbursed by the federal government (from state supplied funds) for a part, or, at the option of the Secretary of Labor, until July 1, 1969, all of the wages paid. The Secretary of Labor is in charge of all three programs which will, in the State of Indiana, be operated by the Indiana Employment Security Division, a state agency entirely financed with federal funds. The persons to be trained and placed by the programs, however, will be referred to the Employment Security Division by the county welfare departments.14

Each person referred will receive testing and counseling, and will be assigned to the appropriate program, if any. Training will include, among other things, counseling and training in such basic skills as elementary education, communications, grooming, employee attitudes and how to fill out a job application.

The Secretary of Labor must establish WIN in each state and in each political subdivision of a state in which he determines there is "a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children." The Secretary is to use his "best efforts" to provide such programs in other areas as well, or to transport persons to existing programs. The secretary has indicated that the Indiana counties in which initial programs are likely to be established (either now or on July 1, 1969) are Lake, Marion and the three-county area of Elkhart, LaPorte and St. Joseph.

11 § 433(e) (2) (A) of the Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 633(e) (2) (A).
12 § 204(d) of the 1967 Amendments, annotated after 42 U.S.C.A. § 633.
13 § 432(a) of the Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 632(a).
14 § 402(a) (19) of the Act, as added by § 204(b) of the 1967 Amendments, 42 U.S.C. § 602(a) (19).
15 § 432(a) of the Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 632(a).
The welfare department of the county in or for which a WIN program is established must refer to the program appropriate individuals who are receiving AFDC, are age sixteen or over and are not in school. Included are children, the mother, and other relatives whose needs are ordinarily taken into account in determining the amount of AFDC granted to the family. Various categories of persons receiving AFDC are excluded from those who must be referred, including persons ill and incapacitated, full time school children, and a person required at home to care for an ill or incapacitated member of the household.

A referred dependent child who refuses, without good cause, to participate under WIN or to accept a bona fide offer of employment is penalized by withdrawal of AFDC paid on his behalf. When a relative refuses to participate without good cause or accept a bona fide offer, his needs may no longer be considered. If the relative is the person who would ordinarily receive the aid for the family, the state must give the AFDC payment to a third person for the benefit of the remaining members of the family who are entitled to AFDC, or must pay directly those persons who provide services to the family.

Each WIN program is designed to insure that the participant benefit financially through his participation in the program. In other words, he or she is given a positive incentive to work for a living. This positive incentive is in addition to the penalty (explained supra) for failure to participate when qualified. Also, in order to insure a financial benefit through participation, each person referred must receive child care

16 § 402(a) (19) (A) of the Act, as added by § 204(b) of the 1967 Amendments, 42 U.S.C. § 602(a) (19) (A).

17 Fathers in AFDC are to be given priority in training in those states which have adopted the federal AFDC-Unemployed fathers program. Indiana has none. The only fathers who receive AFDC in Indiana are those who are physically or mentally incapacitated, Indiana Welfare Act of 1936, Acts 1936 (Spec. Sess.), ch. 3, § 1(l), as amended by Acts 1945, ch. 349, § 1, Burns IND. STAT. ANN. § 52-1001(l) and would, therefore, be excluded from the WIN program, supra note 16.

18 Supra, note 16.

19 Supra, note 16.
services paid for by the state during the participation period.\textsuperscript{20}
As previously stated, the program is financed primarily by the federal government, but a state contribution is also required. In addition, it is contemplated that the county will in most cases continue to make AFDC payments to the families of persons obtaining employment or training through WIN. Training, supervision, materials, administration, incentive payments and transportation are considered costs of the program,\textsuperscript{21} for which the state must make a twenty percent (20\%) contribution to the federal government.\textsuperscript{22}

In order that the financial responsibility of the state under WIN be clearly explained, it is necessary first to set out the provisions of the Welfare Act of 1936\textsuperscript{23} pertaining to AFDC payments. The county department of public welfare determines the amount of assistance which would be sufficient to provide for a qualified recipient a "reasonable subsistence compatible with decency and health, taking into consideration all needs essential to the well-being of the child."\textsuperscript{24} Payments are ordinarily made to the person essential to the well-being of the child\textsuperscript{25} for that person and the child or children. However, the total amount which may be paid each month, other than for medical expense, is limited to fifty dollars ($50.00) each to the first child and the person essential to his well-being. Twenty-five dollars ($25.00) is the limitation for each additional child or children, and for an incapacitated father of the children living in the home. Necessary medical

\textsuperscript{20} § 402(a) (15) (B) (i) of the Act, as added by § 201(a) (1) (C) of the 1967 Amendments, 42 U.S.C. § 602(a) (15) (B) (i).

\textsuperscript{21} § 435(b) of the Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 635(b). Administration costs only are charged under Program (3), special work projects.

\textsuperscript{22} § 402(a) (19) (C) of the Act, as added by § 204(b) of the 1967 Amendments, 42 U.S.C. § 602(a) (19) (C).

\textsuperscript{23} Acts 1936 (Spec. Sess.), ch. 3, as amended, Burns § 52-1001 through § 52-1417.

\textsuperscript{24} Welfare Act of 1936, § 72, as last amended by Acts of 1967, ch. 270, § 7, Burns § 52-1241.

\textsuperscript{25} Such person must be a mother, grandparent, brother, sister, step-parent, step-brother, step-sister, uncle, aunt, incapacitated father, or other person as established by the Social Security Act and State rule, with whom the child is living, Indiana Welfare Act of 1936, section 71, as amended by Acts 1947, ch. 200, § 16, Burns § 52-1240.
care is to be paid for, even should it make the monthly award exceed the statutory maximum.26

You have informed me that a family consisting of a mother and four (4) children and otherwise meeting the standards for AFDC could be expected to have needs amounting to approximately three hundred dollars ($300.00) per month. From that amount any family income would be subtracted to determine the AFDC payable. Assuming that this family has no income, because of the dollar limitations in the Indiana Act the public assistance paid to that family (exclusive of medical care) would be one hundred and seventy-five dollars ($175.00) per month. Therefore, the family has unfulfilled needs of one hundred twenty-five dollars ($125.00) per month.

Those persons who are employed or placed in on-the-job training pursuant to the WIN Program (1) will be paid at least the federal minimum wage of one dollar and forty cents ($1.40) per hour by their employers.27 Steady employment for forty hours per week would provide a monthly income of two hundred forty-two dollars ($242.00). The income of the family used to determine the need for AFDC is the net income to the employee, after taxes and social security deductions.28 Estimating the deductions at twenty-six dollars ($26.00) per month, the employee will have a net income of two hundred sixteen dollars ($216.00) per month from the three hundred dollar ($300.00) monthly needs of the family leaves a need of eighty-four dollars ($84.00) per month which the county welfare department would continue to pay the AFDC family as public assistance.29 In addition, the county

27 The Department of Labor intends to place no one in a job paying less than the higher of several standards, which include the federal minimum wage of $1.40 per hour. See Tentative Draft of WIN Interim Guidelines, United States Department of Labor, Manpower Administration, § 514.1(A) (1), at 16.
29 To simplify these computations, no allowance has been made for amounts of earned income which would be "disregarded" in an actual case. See Indiana Welfare Act of 1936, section 14b, as added by Acts 1951, ch. 310, § 1, Burns § 52-1113b.
department or the State of Indiana would be required to pay for child care for the family,\(^\text{30}\) which is estimated by the state welfare department to cost forty-three dollars ($43.00) per month per family. The State must also pay to the federal government twenty percent (20\%) of the cost of training, supervision, materials, administration and transportation of families.\(^\text{31}\) That cost is estimated by the state welfare department to average eighteen dollars and thirty-three cents ($18.33) per family per month.\(^\text{32}\) Thus, the State and county expense for such family per month would amount to approximately one hundred forty-five dollars and thirty-three cents ($145.33), rather than the one hundred seventy-five dollars ($175.00) now being paid. The family needs, computed according to state standards, would be met for the first time, and there would be a wage earner in the family paying taxes and bringing home a paycheck.

If the person in the same family eligible for the WIN program were eligible for Program (2), the institutional or work experience training program, rather than for immediate employment or on-the-job training, the system would be different. Trainees under Program (2) will not be paid wages or a salary. To their estimated needs for AFDC, the cost of transportation to the training program and other program participation expenses must be added.\(^\text{33}\) This cost is estimated

\(^{30}\) \$402(a) (15) (B) (i), of the Social Security Act, as added by \$201 (a) (1) (C) of the 1967 Amendments, 42 U.S.C. \$602(a) (15) (B) (i).

\(^{31}\) \$402(a) (19) (C) of the Social Security Act, as added by \$204(b) of the 1967 Amendments, 42 U.S.C. \$602(a) (19) (C).

\(^{32}\) This cost is an averaging of the total estimated cost for one year for 800 families of $176,000. No consideration has been given in this averaging to the fact that the "cost" of program (1) should be considerably less per family than the "cost" of programs (2) and (3) per family.

\(^{33}\) \$402(a) (19) (D) (ii) of the Social Security Act, as added by \$204(b) of the 1967 Amendments, 42 U.S.C. \$602(a) (19) (D) (ii).

Literature from both the Secretary of Labor and the Administrator of the Social and Rehabilitation Service of the Department of Health, Education and Welfare indicates that a state is required to pay additional expenses attributable to an individual's participation in Program (2) or (3), e.g., Policy Issuance, 1967 Amendments to Social Security Act Interim Policies and Requirements, issued by the Administrator on April 19, 1968, \$3R(10), at p. 7. However, I have found no such requirement in the federal statutes.
at thirteen dollars ($13.00) per month by the state welfare department. Thus the needs of the family as computed by the county department of public welfare would be three hundred thirteen dollars ($313.00) per month. The federal government will pay each trainee under Program (2) an incentive payment of up to thirty dollars ($30.00) per month. The incentive payment is to be "disregarded" by the county welfare department in determining the "need" of the recipient, which means that it shall not be used to reduce the AFDC payment the family would otherwise receive, and will remain a true financial incentive for the recipient to remain in training. In this program, as in the first program, the state is responsible for child care payments, estimated at forty-three dollars ($43.00) per month, and must pay twenty percent (20%) of the cost of training to the federal government, estimated at eighteen dollars and thirty-three cents ($18.33) per family per month. Although the family needs are three hundred thirteen dollars ($313.00) per month, the county would pay in AFDC the maximum statutory limit of one hundred seventy-five dollars ($175.00) per month, plus child care and the twenty percent (20%) payment to the federal government. The latter would add for the benefit of a member of the family sixty-one dollars and thirty-three cents ($61.33) to the amount now being paid to the family by the county. (However, one member of the family would be in training for the purpose of qualifying that person to move into Program (1), placement in normal employment or on-the-job training. Hopefully, this would result in removing the family from the public assistance rolls, and improve the chances that the children will be employable when they attain maturity.)

34 § 434 of the Social Security Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 634.

The work incentive payment is part of the "cost" of the program to which the state must contribute twenty percent (20%). § 435(b) of the Social Security Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 635(b).


36 Supra, note 30.

37 Supra, notes 31, 32.
Program (3) is for individuals who are presently neither employable in the regular economy nor capable of benefitting from institutional or work experience training. For those persons, jobs will be created with public agencies or private nonprofit organizations established to serve a public purpose, pursuant to agreement with the Secretary of Labor. The agencies must pay the employee the applicable minimum wage for the work concerned. The state (or county) will pay into a "pooled" federal fund for each such employee the lesser of the ordinary AFDC payments to the family or eighty percent (80%) of the employee's earnings.

In our example, the ordinary AFDC payment was one hundred seventy-five dollars ($175.00) per month. The employee's monthly wages (on the basis of forty [40] hours per week at one dollar and forty cents [$1.40] per hour), would amount to two hundred forty-two dollars ($242.00) per month. Eighty percent (80%) of that amount is one hundred ninety-three dollars and sixty cents ($193.60). Therefore, the state or county would pay the lower amount, one hundred seventy-five dollars ($175.00), into the federal pool each month. From the federal pool, the Secretary of Labor would reimburse the employer for a portion of the wages it has paid to the employee. If the wages are lower than the normal AFDC award to the employee, the state must pay the difference to the employee. In my example, the net wages were in excess of the AFDC award the family would otherwise be entitled to, so the state would not have any excess to make up.

38 § 433 (e) of the Social Security Act, as added by § 204 (a) of the 1967 Amendments, 42 U.S.C. § 633 (e). Agreements may also be made with Indian tribes with respect to Indians on a reservation.

39 Id. at subsection (4).

40 § 402 (a) (19) (E) (i) of the Social Security Act, as added by § 204 (b) of the 1967 Amendments, 42 U.S.C. § 602 (a) (19) (E) (i).

41 § 433 (e) (2) (A) of the Social Security Act, as added by § 204 (a) of the 1967 Amendments, 42 U.S.C. § 633 (e) (2) (A). During the fiscal year ending June 30, 1969, the Secretary may reimburse the public agency for all of the wages it pays under this program. § 204 (d) of the 1967 Amendments to the Social Security Act, annotated after 42 U.S.C.A. § 633.

42 § 402 (a) (19) (E) (ii) of the Social Security Act, as added by § 204 (b) of the 1967 Amendments, 42 U.S.C. § 602 (a) (19) (E) (ii).
However, in any event, the state must pay to the employee an additional twenty percent (20%) of his special work project earnings, in this case, forty-eight dollars and forty cents ($48.40) per month, as an incentive bonus. Unfortunately, it appears likely that it may take some time to develop forty-hour-a-week special work projects to employ all of the persons who must be placed in Program (3). It may well be that many, if not all, of these employees will have earnings of less than two hundred and forty-two dollars ($242.00) per month. In the event that the employee should earn one hundred dollars ($100.00) a month, for example, the state or county would pay eighty dollars ($80.00) to the federal pool, give the employee seventy-five dollars ($75.00) to bring him up to his regular AFDC standard, and give him an additional twenty dollars ($20.00) as an incentive bonus. In this program, as in the others, the state or county must provide child care, and must include expenses in determining need. However, only the cost of administration is considered “cost” for the purposes of a twenty percent (20%) state contribution to the federal government under this program. (For simplicity, I have used one average “cost” to apply to all three programs.) In the first example given herein for a special work project employee, the state and county would pay the following amounts:

\[
\begin{align*}
\$175.00 & \text{— to the federal pool} \\
48.40 & \text{— to the employee (incentive bonus)} \\
43.00 & \text{— child care (to a licensed agency)} \\
18.33 & \text{— to the federal government, administration expense}
\end{align*}
\]

\[
\$284.73 \quad \text{Total}
\]

In the second example, the state and county would pay:

\[
\begin{align*}
\$ & 80.00 \text{— to the federal pool} \\
75.00 & \text{— to the employee (to equal AFDC payment)} \\
20.00 & \text{— to employee (incentive bonus)}
\end{align*}
\]

\[43 \text{ Ibid.} \]
\[44 \text{ Supra, note 30.} \]
\[45 \text{ Supra, note 33.} \]
\[46 \text{ Supra, note 21.} \]
At least once every six months, the employment record of a participant in the special work project program must be reviewed in order to determine whether it has become feasible to place such participant in employment in the regular economy, or in another of the more advanced WIN projects.\(^47\) The major thrust in this, as well as the other two programs, is to train AFDC recipients for regular employment, if at all possible.

You have suggested that several Indiana statutes have a bearing on whether Indiana may participate in the WIN program at this time. The first is section 72 of the Indiana Welfare Act of 1936.\(^48\)

Section 72 reads in part as follows:

"The amount of assistance which shall be granted for any dependent child shall be determined by the county department with due regard to the resources and necessary expenditures of the family and the conditions existing in each case and in accordance with the rules and regulations made by the state department and shall be sufficient, when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health, taking into consideration all needs essential to the well-being of the child. The total amount paid to any dependent child other than for medical expense, for any calendar month, shall not exceed fifty dollars ($50.00), and the total amount paid to the person essential to the well-being of such dependent child other than for medical expenses, for any calendar month, shall not exceed fifty dollars ($50.00) The total amount paid to one dependent child

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\(^47\) § 433(h) of the Social Security Act, as added by § 204(a) of the 1967 Amendments, 42 U.S.C. § 433(h).

\(^48\) Last amended by Acts 1967, ch. 270, § 1, Burns § 52-1241.
and to the person essential to the well-being of such dependent child other than for medical expenses, for any calendar month, shall not exceed one hundred dollars ($100.00). If there is more than one dependent child or children in the same home, the total amount paid, other than for medical expense, for any calendar month, shall not exceed twenty-five dollars ($25.00) for each additional child or children; and if an incapacitated father of such children is living in the home, an amount not to exceed twenty-five dollars ($25.00) may be paid for the benefit of such incapacitated father.” (Emphasis added.)

This section further authorizes medical care payment in excess of the maximum amount established in the statute, and specifically permits payments for medical care to be made to the person or institution furnishing the services. No such provisions are contained in the statute concerning other AFDC assistance.

In 1947, this quoted section was amended to add to then existing dollar limitations the following language:

“or such additional amounts as may be established by rule and regulation of the state board of public welfare: Provided, however, the additional amounts so established by rule and regulation shall not be in excess of the maximum amounts hereafter established by the federal social security act or acts supplementary or related thereto as the basis for reimbursement from federal funds.”

Similar language was contained in Senate Bill No. 219 of 1967, when it was introduced in the General Assembly. However, the Senate Committee on Public Health, Welfare and Social Security, to which the bill was referred, recommended that the quoted language be deleted by amendment. The bill was so amended, and that language is not contained in the enrolled act, Acts 1967, ch. 270, § 1, which further amended section 72 of the Indiana Welfare Act of 1936 to its present

form. It can readily be seen that section 72, prior to its 1967 amendment, gave the State Department of Public Welfare a good deal of leeway to make the state AFDC program operate in conformity with the federal program. In my opinion, that leeway has been removed by the Legislature, at least under this section. Any change in the language of a statute must be construed by the courts to have been intended by the Legislature to have meaning, and to make a change in the law.\textsuperscript{50} The same statute which deleted the quoted language increased the amount of some of the dollar limitations. The maximum amount to be paid the person essential to the well-being of the child was increased from thirty dollars ($30.00) to fifty dollars ($50.00), the amount for each additional child after the first from twenty-three dollars ($23.00) to twenty-five dollars ($25.00), and an additional amount of twenty-five dollars ($25.00) can be provided for an incapacitated father of the children living in the home. In my opinion, the General Assembly can have intended to do only one thing: provide new and higher maximum limitations on the amount of AFDC benefits which could be paid to recipients and for the benefit of dependent children, but to make them absolute limitations, regardless of any changes in the federal law which authorize higher payments. (Congress, in enacting the Social Security Act Amendments of 1967, also limited the amount of state AFDC in which the federal government would participate, but accomplished its purpose by limiting the number of cases in which the federal government will reimburse the state, rather than by placing a maximum dollar limitation on the amount of each award for which the states will be reimbursed.\textsuperscript{51})

A careful study of the WIN programs, as outlined and illustrated above, shows, however, that in no case will those programs require AFDC payments to recipients which would exceed the maximum dollar limitations imposed by the General Assembly on such payments. In fact, the amount of AFDC payable directly to recipients will, in Programs (1) and (3),

\textsuperscript{50} Board of Comm'rs v. Sweeney, 134 Ind. App. 33, 43, 181 N.E.2d 241 (1962).

\textsuperscript{51} § 408(d) of the Social Security Act, as added by § 208(b) of the 1967 Amendments, 42 U.S.C. § 603(d).
be reduced considerably. Child care will be paid to a state-licensed child care agency, rather than to the recipient.\textsuperscript{52} The state's share of the cost of the WIN program will be paid to the federal government,\textsuperscript{53} as will the state's Program (3) contribution to the federal pool of the amounts outlined above, the largest of which in any individual case would be the amount of the AFDC otherwise payable to a family.

Nevertheless, all of the persons referred to WIN programs must be recipients of or relatives of recipients of AFDC. WIN amounts to a vocational training program for those persons who, in Indiana, will be primarily the mothers of dependent children, as previously pointed out. The Indiana General Assembly has already authorized a training program for the mothers of dependent children, and has limited it severely in size by limiting the amount of funds which the state and county in combination may expend:

"When a mother of such dependent child or children is found to be able to benefit from vocational training for the purposes of helping her attain self-support and personal independence, additional amounts of money may be made available and payments made for vocational training to persons, corporations, associations, institutions, or agencies furnishing such vocational training.

"Any county department desiring to adopt a plan for furnishing vocational training shall submit such plan to a state department of public welfare for review, and if such plan is approved by the state department of public welfare, reimbursement of state funds to the county department shall be made as provided for under section 80 of this act. \textit{The total expenditures of both state and county funds shall not exceed the sum of fifty thousand dollars in any biennium.}^\textsuperscript{54} (Emphasis added.)"

Since the cost of the State of Indiana's WIN program for one year alone has been estimated by your Department to be $396,350.00 (after federal reimbursement of $384,510.00), it

\textsuperscript{52} \textit{Supra}, note 30.
\textsuperscript{53} \textit{Supra}, note 22.
\textsuperscript{54} § 72a, as added by Acts 1961, ch. 214, § 1, Burns § 52-1241a.
is apparent that the quoted statute prohibits the state and its counties from participating in WIN at the present time. In my opinion, this statute does not constitute a failure to appropriate sufficient funds, but is a legislative limitation on the size of a vocational training program which may be undertaken by the state and its counties. Therefore, in spite of the board provisions of the Indiana Welfare Act of 1936 for cooperation with the federal government, section 72 of the Act, as amended, prohibiting further payments in the form of AFDC and section 72a, prohibiting such extensive vocational training of AFDC mothers with state and county funds, prevent the State of Indiana from participating in WIN at this time.

You have asked me to outline for you any changes which should be made in Indiana statutes by the 1969 General Assembly in order to enable the State of Indiana to continue to receive its full share of federal funds for AFDC, which would, of course, require that the state participate in the WIN program.

The easiest method to authorize the State to participate in the WIN program would be legislation specifically stating that the State may do so. However, such participation would conflict with other sections of the Indiana Welfare Act of 1936, and you may desire to consider proposing their amendment to the 1969 General Assembly.

For example, Section 75 of the Indiana Welfare Act of 1936 reads in part as follows:

"the county department shall decide whether a child is eligible for assistance under the provisions of this act and shall determine the amount of such assistance. . . . The county department shall make an award. . . . Such assistance shall be paid monthly to the recipient upon warrant of the county auditor, from the county welfare fund . . . in accordance with the awards made by the county board."

56 Burns § 52-1244.
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The act defines "recipient," as "any person who has received or is receiving assistance for himself or others under the terms of this act."\(^{57}\)

The 1967 Amendments to the AFDC part of the Social Security Act\(^{58}\) require that "vendor" payments be made for and on behalf of an AFDC family in some instances, and specify the method of determining the needs of the family when the relative with whom the child is living refuses employment or participation in WIN without good cause:

"if and for so long as any child, relative, or individual (referred to the Secretary of Labor . . .) has been found by the Secretary of Labor . . . to have refused without good cause to participate under a work incentive program . . . or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or . . . is determined . . . to be a bona fide offer of employment . . ."

"(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7) [determining need of the family], and aid for any dependent child in the family in the form of payments of the type described in section 606(b) (2) of this title . . . or section 608 of this title will be made. . . .\(^{59}\)

An exception is made in that § 606(b) (2) payments may be made for sixty (60) days on behalf of the relative if, during

\(^{57}\)Indiana Welfare Act of 1936, § 1(j), as amended by Acts 1945, ch. 349, § 1, Burns § 52-1001(j).

\(^{58}\)§ 204(b), adding § 402(a) (19(F) to the Social Security Act, 42 U.S.C. § 602(a) (19)(F).

\(^{59}\)Subsections (ii) and (iii) are omitted because they apply to a sixteen-year old or older dependent child who is referred to WIN, and would not affect Indiana. Children who have attained the age of sixteen are dependent children in Indiana only if they regularly attend school. Indiana Welfare Act of 1936, section 1(l), as amended by Acts 1945, ch. 349, § 1, Burns § 52-1001(l). Such dependent children may not be referred to the WIN program. § 204(b) of the 1967 Amendments, adding § 402(a) (19)(A)(vi) to the Social Security Act, 42 U.S.C. § 602 (a)(19)(A)(vi).
that period, the relative accepts counseling or other services made available by the state, aimed at persuading such relative to participate in WIN. Payments described in § 608 of Title 42 of the U.S.C. are those for foster home care of dependent children. Payments described in § 606(b)(2) are:

"payments with respect to any dependent child (including payments to meet the needs of the relative . . . with whom such child is living . . . ) which . . . are made to another individual who . . . is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual . . . ."

Thus, participation in WIN requires that the state and county welfare departments, when the relative with whom the child is living refuses without good cause to participate in the WIN training program or to take acceptable employment, pay assistance for such children to a person other than the relative with whom the child is living, and, under specified conditions outlined above, to eliminate the needs of that relative as a factor in determining family need for public assistance. Alternatively, foster home care must be provided by the state for the child living with such a relative, in appropriate circumstances. The question is whether Indiana law permits such "vendor" payments—i.e., does Indiana law require (a) that public assistance payments for the child be paid only to the relative with whom the child is living, and (b) does it provide in appropriate instances that a child be removed from the custody of that relative and placed in a foster home?

In Indiana, application for AFDC assistance must be made by "the parent or guardian of or other person standing in

Subsection (iv) is omitted because it presents no legal question different than the question presented by subsection (i).

60 Supra note 58.

61 § 408 of the Social Security Act, as amended by § 205(c) of the 1967 Amendments.

62 § 406(b)(2) of the Social Security Act, as amended by § 207(a) of the 1967 Amendments, 42 U.S.C. § 606(b)(2).
loco parentis to such dependent child.”\(^63\) The investigation of an applicant by the county department shall include a visit to the home of “the person who will have custody of the child during the time assistance is granted.”\(^64\) The child must be living in a family home of a specified relative,\(^65\) who is the “person essential to the well-being of the child,”\(^66\) and therefore may be a “recipient” to whom assistance is paid.\(^67\)

However, I do not find any requirement in the Indiana statute that assistance payments be made for the person essential to the well-being of the child. The Indiana statute concerning such payments appears to be permissive rather than mandatory. It sets a maximum, but no minimum, payment which may be made to or on behalf of such person.\(^68\)

You have informed me that payments of assistance for the dependent child or children are presently made to and in the name of the person essential to the well-being of the child, although the statute requires payments to be made “to the recipient,” \textit{i.e.}, the child. It is obvious, of course, that assistance money provided by taxpayers cannot be given to and spent by young children. Section 129\(\frac{1}{2}\) of the Act has apparently been used as a guideline for making the assistance payments for children to the relative with whom they are living:

“Nothing in this act shall be construed as authorizing any state or county official, agent, or representative, in carrying out any of the provisions of this act to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child, except pursuant to any proper court order.”\(^69\)

\(^{63}\) Indiana Welfare Act of 1936, Section 73, Burns § 52-1242.

\(^{64}\) Indiana Welfare Act of 1936, Section 74, Burns § 52-1243.

\(^{65}\) Indiana Welfare Act of 1936, Section 71(b), as amended by Acts 1947, ch. 200, § 16, Burns §§52-1240(b). See also note 25, \textit{supra}.

\(^{66}\) State Board of Public Welfare, Rule No. 2-410, Burns IND. RULES AND REGS. ANN. (52-1241)-1.

\(^{67}\) Indiana Welfare Act of 1936, section 72, as last amended by Acts 1967, ch. 270, § 1, Burns § 52-1241.

\(^{68}\) \textit{Ibid}.

\(^{69}\) Burns § 52-1417.
There is no provision in the Indiana Welfare Act that AFDC assistance payments may be made to a "responsible" person on behalf of the AFDC recipient if the latter is incapable of taking care of himself or his money, as there is for the blind and disabled.70 However, section 5 of the act establishing the jurisdiction of courts having juvenile jurisdiction in the State of Indiana defines a "dependent child" as:

"any boy under the age of eighteen (18) years or any girl under the age of eighteen (18) years, who is dependent upon the public for support, or who is destitute, homeless or abandoned."71 (Emphasis added.)

Any child who is a recipient of AFDC assistance is dependent upon the public for support, and falls within this definition. A county welfare department may file a petition with a court having juvenile jurisdiction requesting that a dependent child be made a ward of the juvenile court or of the county welfare department.72 If the court finds that the child comes within the provisions of that act (i.e., he is found to be dependent), the court may, among other alternatives,

"(1) Place the child on probation or under supervision in his own home or in the custody of a relative or other fit person, upon such terms as the court may determine; . . .

"(3) The court may make such child a ward of the court, a ward of the department of public welfare of the county, or a ward of any licensed child placing agency in the state willing to receive such wardship; . . .

"(5) Make further disposition as may be deemed to be to the best interests of the child, except as herein otherwise provided."73 (Emphasis added.)

70 See 1967 O.A.G. p. 46.
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It is my opinion that pursuant to the wide discretion vested in the juvenile court under this statute, that court could make a dependent child a ward of the welfare department of the county, or of the court, and order that the child be left in the home of the relative, with assistance payments to be made directly to providers of services, or to be disbursed for the benefit of the child by the agency of which the child is made a ward. The court could also place the child in a foster home, if the circumstances call for it. Thus it appears that the State of Indiana, under existing law, can comply with the federal requirements for "vendor" payments or foster home care only by bringing an action in court. If the General Assembly desires that the State participate in WIN, it would be wise to clarify this situation, and specifically authorize "vendor" payments upon an administrative decision by the State or a county department that the person who otherwise would receive the payments is unwilling without good cause to accept WIN program participation.

Another section of the Indiana Welfare Act of 1936 requires the county department to determine the needs of applicants for AFDC

"with due regard to the resources and necessary expenditures of the family and the conditions existing in each case . . . and shall be sufficient, when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health, taking into consideration all needs essential to the well-being of the child."74

(Emphasis added.)

The WIN amendments to the Social Security Act, as previously set out and quoted,75 require that the needs of a relative who refuses without good cause to participate in a suitable WIN program will no longer be considered in determining the family's needs. Under section 72 of the Indiana Welfare Act

74 Section 72, as last amended by Acts 1967, ch. 270, § 1, Burns § 52-1241.
75 § 204 (b) of the 1967 Amendments to the Social Security Act, adding § 402 (a) (19) (F) (i) to the Social Security Act, 42 U.S.C. § 602(a) (19) (F) (i).
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of 1936, as quoted above, it is not possible, in my opinion, for the needs of a family member to be ignored, in making a determination of need, for that reason. Therefore, an amendment of that section would be appropriate if the General Assembly desires that the State participate in WIN.

OFFICIAL OPINION NO. 40
November 20, 1968

TOWNSHIP OFFICERS—PUBLIC WELFARE—Federal Food Stamp Program—Federal Commodities Distribution Program—Same area may not use both

Opinion Requested by Hon. Marie T. Lauck, State Senator.

This is in response to your question asking whether Marion County may use the Federal Food Stamp Program or the Commodities Distribution Program, or may use both. You further inquired whether retail stores at which federal food stamps are used to purchase food may be required by a trustee of a township to itemize to him the food purchased.

The Federal Food Stamp Program is authorized by 7 U.S.C. §§ 2011 through § 2025, Pub. L. 88-525, enacted August 31, 1964. The purpose of the law, as set out by Congress in 7 U.S.C. § 2011, is two-fold: (1) to raise levels of nutrition among low-income households, and (2) to strengthen our agricultural economy and create more orderly marketing and distribution of food.

Coupons, or stamps, which are issued to eligible households under the program may be used to purchase food at the face value of the coupons from approved retail stores, 7 U.S.C. § 2013(a). Eligibility of households is determined by those