MAINE
LEGISLATIVE RESEARCH COMMITTEE

Second Report
to
Ninety-sixth Legislature

Indians

Federal Laws re Health and Welfare Program

December, 1952

STATE OF MAINE

SUMMARY REPORT

to

NINETY-SIXTH LEGISLATURE

LEGISLATIVE RESEARCH COMMITTEE

From the Senate:

Frederick N. Allen, Cumberland, Chairman

Albert C. Brewer, Aroostook

Foster F. Tabb, Kennebec

From the House:

Edward E. Chase, Cape Elizabeth

John H. Carter, Bethel

Lloyd T. Dunham, Ellsworth

Lewis D. Bearce, Caribou (Deceased)

Roy U. Sinclair, Pittsfield

David W. Fuller, Bangor

Louis Jalbert, Lewiston

Director:

Samuel H. Slosberg, Gardiner

December 3, 1952

To the Members of the 96th Legislature:

The Legislative Research Committee hereby has the pleasure of submitting to you the second section of its report on activities for the past two years. This year, due to the large number of items on our agenda and the scope of these studies, we are submitting our report to you in sections.

This second section deals with the committee's studies of the Indians of Maine, and the relationship of Federal Laws to our Health and Welfare problems, both studies having been directed by the 95th Legislature.

LEGISLATIVE RESEARCH COMMITTEE

By: Frederick N. Allen, Chairman

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INDIANS OF MAINE

ORDERED, the senate concurring, that the legislative research committee be, and hereby is, directed to make a complete study of all problems concerning Indians in the state; and be it further

ORDERED, that the committee report the results of its study to the 96th legislature.

Under the foregoing order, the committee has made an investigation of the present status of the members of the Penobscot and Passamaquoddy tribes of Indians living on the tribal reservations in the State. In so doing, the committee has visited the Indian reservations in order to observe conditions at first hand. In addition, the members have had the benefit of various reports and other material. The following survey is intended to bring to the attention of the members of the 96th legislature some of the problems confronting the state in its relations with the two tribes. This committee on December 12, 1951, notified the Governor on certain matters calling for immediate attention. These matters dealt with administrative problems the committee felt could and should be handled by the Governor and the Department of Health and Welfare without the two year wait until the committee filed its report.

We are glad to note the amount of interest in the condition of the Indian tribes displayed by the Governor and other state officials and also by our

citizens in general. We wish to recognize the work of the American Friends' Service Committee with the Indians of Maine. In 1951, this organization conducted a work camp at the Penobscot Reservation, and during the summer of 1952, has had projects at both the Passamaquoddy and Penobscot Reservations. The Social Action Committee of the Maine Council of Churches has taken as one of its projects a study of the legal basis of the relationship between the Indians and the State of Maine; the voting rights of Maine Indians; and the powers and responsibilities of our state government with reference to the Indians residing here. The resulting study contains material from Constitutional, legislative, and judicial sources.

EDUCATION

The committee is most appreciative of the untiring efforts of the Roman Catholic Sisters of the Order of the Sisters of Mercy who have, for many years, taught in the state supported schools on the reservations of both the Penobscot and Passamaquoddy tribes. These schools have provided educational facilities near home for the children of both tribes, thus avoiding transportation by boat in the case of the Penobscots before the present bridge was built, and transportation by bus in the case of the Passamaquoddys. These schools on the reservations

should be continued for the benefit of the younger children so that they will be near their homes. From our information, the elementary school on the Penobscot reservation includes the first five grades only; and after completing five grades, all of the children there attend the schools of Old Town. This has been so since 1950.

Assimilation of the Indians into our society can be expedited by having Indian children attend schools located off of the reservations at a reasonably early age. We accordingly recommend a program under which the schools on the Passamaquoddy reservation be limited to five grades also, rather than covering eight as at present, and that after completing five grades, these children attend schools off the reservation so as to have an opportunity to mingle with other children.

The committee strongly recommends that an adequate school lunch program be carried out for the complete school year on all reservations. We are advised that this is planned for the 1952-1953 school year, but was not in effect for all of the 1951-1952 year.

Various surveys of the situation on the reservations have called attention to the lack of organized recreation and facilities for it on all reservations.

Increased efforts in this direction under proper supervision should tend to eliminate delinquency, especially among the younger members of the tribes.

The committee recommends that the responsibility for the education of the younger members of the two tribes be transferred from the Department of Health and Welfare to the Department of Education.

The committee believes that it would be beneficial for more of the boys living on the reservations to have training along vocational lines (i.e. trade school or manual training) and for more of the girls to receive training in domestic science; and that these matters should receive consideration in the educational program.

The Commissioner of Health and Welfare, David H. Stevens, has made some very interesting suggestions for the carrying on of a homemaking program for Indian girls in the elementary grades in connection with the reservation schools. Such a program would of course be dependent upon the age limit of teaching at the reservations.

On visiting the reservations during the fall of 1952, committee members observed excellent renovations to the schoolhouses located there.

POLITICAL STATUS

As a general rule until at least 1884, Indians were not considered citizens of the United States by birth due to the theory of the federal courts that they were not born "subject to the jurisdiction thereof" (meaning of the United States) as required by the federal constitution in order to acquire citizenship in this manner. To become citizens of the United States or of the state where they resided, legislative action or treaties were necessary. Indian nations or tribes were said to be distinct, semi-independent political communities owing a qualified subjection to the United States. They were said to be domestic, dependent nations or quasi sovereignties and not amenable to the laws of the state where located. The Supreme Judicial Court of Maine in the case of state vs. Newel held in 1892 that the Penobscot and Passamaquoddy Indians were not political communities within the meaning of the federal constitution, and that the members of these tribes were subject to the laws of the state; this despite the fact that the words "so long as they shall remain a nation" are to be found in the treaty of the Penobscots with the Commonwealth of Massachusetts and also with the State of Maine.

Until the year 1871, the United States conceded to some of the Indian tribes the right to make treaties

with the United States as nations or states in a limited sense. In that year this method of dealing with these tribes was abrogated, and since then the federal government has regulated its relations with them by Acts of Congress or by contracts.

Under the Citizenship Act of 1924 and the Nationality Act of 1940, all Indians born in the United States are considered nationals and citizens of the United States. An Indian who has become a citizen of the United States is a citizen of the state where he resides by reason of the 14th Amendment to the Constitution of the United States.

The Revised Statutes of Maine for 1944 provide that the polls and estates of Indians are exempt from taxation. The Constitution of Maine (Article II, Section I) as amended by Article LXI of amendments now provides that "Every citizen of the United States of the age of 21 years and upwards excepting paupers, persons under guardianship, and Indians not taxed", etc. shall be an elector. These provisions were in effect for some time, and would apparently have the effect of discouraging most male Indians from voting, and also any female Indians who owned taxable property. In 1947, the statutory provision was amended to read that "The polls and estates of only those Indians who reside on tribal reservations" should be exempt from

taxation. In view of the fact that Congress has now enacted a law making all Indians born in this country citizens of the United States, it seems clear now that Indians living off the tribal reservations and so not claiming any exemption from taxation by reason of being Indians can qualify as electors in the same manner as other residents of the state.

The committee recommends that the Constitution of Maine be amended to permit Indians living on the tribal reservations to vote for county, state, and federal office holders.

It is our feeling that the policy of the state should be directed toward a more complete assimilation of our Indian citizens into our society, and that our ultimate goal should be to do away with the tribal reservations. This last would, of course, be a long range proposition.

Inasmuch as there is a definite difference of opinion between some of the Indians on the one hand and the agents of the state on the other hand as to the rights of the members of the two Indian tribes and the obligations of the state toward them, the committee recommends that an effort be made to assemble all of the treaties bearing on this subject so that they can be studied in determining the duties of the

State of Maine. A careful study has been made by the Department of Health and Welfare covering the public, private, and special acts and resolves relating to the members of the two Indian tribes, and also covering what is now available from the treaties involved. This does not settle the question to the satisfaction of a good many of the Indians; and something further is obviously required. A reexamination and redrafting of the laws relating to the Indian tribes is also in order.

HEALTH

In 1951 there were 1230 members of the two tribes located in Maine. We are advised that in 1822 there were only 656 members; so their numbers are not declining. The annual tribal census of the Penobscot Tribe between the years 1838 and 1899 shows a minimum of 360 members in 1890 and a maximum of 392 members in 1892. From a membership of 469 in 1929, this tribe has steadily increased to 623 in 1951. This last figure includes members of the tribe living both on and off of the reservation. In fact, they have shown a rather steady increase, especially as medical treatment has become more readily available.

However, much remains to be done in the direction of better sanitation and cleaner living conditions.

The actual health of the inhabitants of the reservations appears reasonably good, but it is our recommendation that more effort be put into a public health program to improve living conditions and to bring about a general clean up.

It appeared to the committee during its inspections that facilities for purchasing proper foods were not sufficient or were not conveniently located for the residents of the reservations. This situation should be improved and efforts made to encourage the use of foods which will promote good health.

HOUSING

At the time of the inspections by the committee at the various reservations, much needed repairs were in progress on some of the houses. However, many of the occupied dwellings on all of the reservations were in various stages of dilapidation. Some should be cleaned up and repaired. Others should be torn down. Additional sanitary facilities are needed in some cases. At Peter Dana Point and Pleasant Point there were instances of definite fire hazards from dry grass and brush around the homes; these hazards should be eliminated. We feel that preliminary plans for a building program such as is now being considered by the Department of Health and Welfare should be presented to the 96th legislature. Such a program

must of necessity cover a period of some years' time. This might well include steps for the relocation of the Indian groups at Peter Dana Point and Princeton.

In carrying out a long range program of repairing or rebuilding, the committee feels that as much as possible, the Indians should be employed under proper supervision. We wish to commend the work done by the representatives of the American Friends' Service Committee in encouraging the members of the two tribes to improve their own homes. The progress on the Passamaquoddy reservations during the past summer has been most encouraging, with materials and some supervision being provided by the state and labor being provided by the Indians.

On visiting the reservation at Peter Dana Point in 1951, it appeared that a water supply was needed which would be more convenient for some of the residents. This has since been provided by laying several hundred feet of pipe to several outside covered faucets from which water can be carried to the homes. This will eliminate unsatisfactory wells.

RESOURCES

The committee feels that there is a good possibility that the timber on Indian Township in Washington County

and also on some of the islands in the Penobscot River above Indian Island, could be developed under the supervision of the Forest Commissioner so as to produce more revenue for the tribes. Work along this line has been in progress since 1930 on Indian Township where the Forestry Department of the University of Maine operates a summer camp for Forestry students. Scientific forestry methods there should be extended in this manner or by the State Forestry Department.

The islands in the Penobscot River above Old Town were reserved to the Penobscot Tribe. In addition to the allotments of land made on Indian Island, which is the first above Old Town, the other islands which were large enough for that purpose were divided into lots in 1866 and the lots were assigned to various members of the tribe. The titles and boundaries of these lots have now become confused to such an extent that if it is desired to cut lumber, the expense of deciding who owns it is unreasonably large. The Commissioner of Health and Welfare, David Stevens, has suggested that the state might purchase these islands, and that the state Forestry Department could assume the management of them for the benefit of the tribe, the whole area being known as

the Penobscot Indian Forest or by some other name. The committee recommends that this be done.

The committee has been advised that in Maine, as elsewhere in the United States, the title of Indians to tribal lands is subordinate to the title of the government, state or federal as the case may be. In other words, where tribal land has been allotted to members of the tribe, they do not hold in fee simple, but have titles which can be terminated by appropriate action of the government. The original deeds recorded in Penobscot County bear this out, as they provide that the grantees, who are actually allottees, and their heirs and assigns shall hold "during the pleasure of the Legislature", and not "forever" as is usually provided in other conveyances. This may simplify materially the matter of dealing with lots whose owners are unknown or have left the tribe completely, if it is desired that these islands be acquired as recommended.

In the past, some members of both tribes have engaged in agricultural pursuits. This has now been largely given up; but the committee would like to see garden projects and cultivation of land undertaken again with the help of agents of the University of Maine Extension Service.

LAW ENFORCEMENT

It is essential that there be on each reservation a constable or some other law enforcement officer, and that he be paid an adequate compensation for his work. We feel that in the past, the compensation offered has been too small; and that this has made it difficult to attract and keep conscientious officers. There is also said to be some question as to whether or not local municipal courts in municipalities adjoining or near Indian reservations have jurisdiction over such reservations. Any possible misunderstanding along these lines should be cleared up by legislative enactment.

ADMINISTRATION OF INDIAN AFFAIRS

In the years before 1800, the intention of both parties to the "treaties" was that the Indian Tribes were to relinquish certain rights and were to receive certain payments in return. There was probably no governmental plan of rehabilitating or uplifting the Indians through education and training; no thought of conferring voting rights on them outside of their tribal organization; no thought of assimilating them into the general population. The fact that the instruments embodying the rights and obligations of the parties were called "treaties" and refer to a tribe as a "nation" shows that the tribes intended to retain a

certain degree of autonomy, a situation which today may be inconsistent with actual conditions. To equip our Indian citizens with education and training such that they will be better able to cope with modern life now requires specialized guidance. If the state is ever to reduce its expenditures made for the two Indian tribes to relieve against unemployment, economic distress, desertion of families, and other problems, there must be a change in policy. The dole is not enough. There should be a sympathetic understanding of the economic and social problems of the Indians. What is needed is personnel trained in social work and the handling of inter-racial problems as well as in the efficient management of the state's funds.

The committee recognizes that from an administrative point of view, the practice of having an Indian Agent appointed by the Governor of the State and confirmed by the Council, and then having him carry out his duties under the supervision of the head of the Department of Health and Welfare, is wrong. This alone would make it difficult to employ one or more "Agents" with professional social work training and experience, even if the compensation were increased. At the present salary it is most doubtful if proper personnel with such background could be obtained.

We recommend that there be established a Division of Indian Affairs under the Department of Health and Welfare; and that a Director of Indian Affairs be appointed by the Commissioner of Health and Welfare and be directly responsible to the commissioner. This director should be a person with adequate qualifications; and efforts should be made to obtain a person for this position who can solve the problems involved in a manner satisfactory to the members of the two Indian tribes or at least to a majority of them. This would eliminate the position of Indian Agent as it has heretofore existed.

The Commissioner, Mr. Stevens, has pointed out the possibility of a Division of Indian Affairs outside of the Department of Health and Welfare with a director to be appointed by the Governor. This idea also has merit, but the committee does not favor establishing what would be a new department for two principal reasons. The first is that a new department would involve added expense and personnel. The second is that the funds for Old Age Assistance and Aid to Dependent Children, where Indians are concerned, would still have to be handled by the Department of Health and Welfare due to the existing federal legislation on these subjects; while the education of Indian children should be a responsibility of the Department of Education.

REFERENCE MATERIAL

The committee is glad to direct the attention of readers of this report to the following material:

1 - Maine Indians: Study made by Ralph Proctor in 1942 for the Legislative Research Committee.

2 - Our Maine Indians: Synopsis published in 1951 by Maine Council of Churches, Portland, Maine.

3 - Indians of Maine: Study made in 1951 by Indian Rights Assoc., 1505 Race St., Philadelphia 2, Pa.

4 - Suffrage of Indians: Opinion of John S. S. Fessenden, former Deputy Attorney General of Maine, dated July 23, 1940.

5 - Indian Funds: Opinion of Leroy R. Folsom, former Assistant Attorney General of Maine, dated November 30, 1944.

6 - Treaties, etc: Treaties, bonds, and other documents relating to land titles and claims of the Indian tribes which are on file in the office of the Secretary of State were printed in the Legislative Resolves for 1843.

7 - Treaties: See opinion of the Supreme Judicial Court of Maine in the case of State vs. Newell, 84 Maine 465 (1892), in which the Court discusses the various treaties.

8 - Property Rights of Members of the Penobscot Tribe See opinion of the Supreme Judicial Court of Maine in the case of John vs. Sabattis, 69 Maine 473 (1879).

9 - Political Status: See opinion State vs. Newell (Supra) Page 468.

FEDERAL LAWS re HEALTH AND WELFARE PROGRAMS

> ORDERED, the senate concurring, that the joint standing committee on judiciary be, and hereby is, authorized to study federal laws relating to health and welfare programs in the state which deal with old age assistance, aid to dependent children, aid to the blind, maternal and child health services, child welfare services and crippled children services to determine whether such services may be rendered, in whole or in part, by the towns for more efficient administration of available state and federal funds; and be it further
>
> ORDERED, that the result of such study be reported to the legislature together with any recommended legislation by Monday, April 23,1951.
>
> The joint standing committee on judiciary, having acted pursuant to the provisions of joint order (HP #1686) authorizing a study of the federal laws relating to health and welfare programs in the state which deal with old age assistance, aid to dependent children, aid to the blind, maternal and child health services and crippled children services to determine whether such services may be rendered, in whole or in part, by the towns for more efficient administration of available state and federal funds; begs leave to report as follows:
>
> That adequate opportunity not being available to the committee at this regular legislative session, for a full and complete study of the items covered by the order;
>
> The committee recommends, if the legislature deems it advisable, that the subject matters covered by the ORDER be referred to the legislative research committee.

In making a study of federal laws relating to health and welfare programs in the state which deal with public assistance, the committee has concerned itself primarily with the provisions of Title IV of the federal social security act, which title relates to the aid to dependent children program. The provisions of Title IV are

fundamentally the same as the provisions of other titles which cover the types of public assistance listed for study in the above order.

Inasmuch as the order calls for a study to determine whether such services may be rendered, in whole or in part, by the towns for more efficient administration of available stato and federal funds, the committee is confining its report to a study of Title IV - grants to states for aid to dependent children, with an interpretation of the provisions of this title, and the conditions under which the program could be administered at the local level.

In the following statement the citation of section numbers are all taken from Title IV - grants to states for aid to dependent children from the compilation of the social security laws including the social security act, as amended, and related enactments through December 31, 1951.

Section 402 (a) provides: "A state plan for aid to dependent children must (1) provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them;"

This means that if a state is to have an aid to dependent children program it must be in effect

in every city, town, plantation, or any other political subdivision within the state. If the aid to dependent children program is to be administered at the local level it is mandatory that each of the political subdivisions of the state be in the program, and persons residing in each of the political subdivisions of the state have an opportunity, if eligible, to receive aid to dependent children. In other words, every community must grant aid to dependent children to those eligible in order for other communities to have the program.

"(2) provides for financial participation by the state;"

This means that no matter how the program is administered the state, as a political subdivision, must participate financially in the program.

"(3) either provide for the establishment or designation of a single state agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;"

The above section gives two alternatives. The first is for the establishment of a state-administered program of aid to dependent children. This is the present program as operated in the State of Maine. The second alternative is to provide for the establishment of a state agency to supervise the administration

of the plan. In this type of situation the plan would be administered either at the local or county level but supervised by a state agency. This would mean that your administering agency would be the agency to receive applications, determine eligibility, make grants, discontinue, decrease of increase grants, and make the payments to the individuals found eligible. All of this activity of administering the program would be supervised by the designated state agency. It would further mean that the state agency would set up methods of determining eligibility, standards for allowances of various items, and periodically review the activities of the local administering agency.

From the state level of supervising the local administration of the program such a program would require a staff which would perform the following functions:

1. Writing policy and rules and regulations governing the activities of the local persons administering the program. This is because the federal government would deal with the state agency and not directly with the local groups.
2. A staff of persons who would be travelling from one community to another reading case records, checking determinations of eligibility, budgets and grants.
3. A staff of auditors travelling from one

community to another checking the local fiscal procedures and the amounts granted.

4. A staff making statistical reports to the federal government, who would also have to check the local records to see that the statistical reports required to be submitted by the local agencies were properly functioning.

5. On an overall basis it would mean that every function performed by your local agency would have to be rechecked periodically by the state agency supervising the administration of the program.

At the local level it would mean the hiring of sufficient staff to receive applications, investigate them, determine eligibility, make the grants, and do periodic reviews of the needs and eligibility of recipients. It would also require persons able to make proper statistical reports and accounting reports to the State agency. It would require further that the local agency have a sufficient financial setup to make the grants from its own funds, with reimbursement from the state and federal government at periodic intervals, and be in a position to issue checks to the persons eligible at regular stated periods, as determined by the legislature. In other words,

each community would have to have a complete department of welfare set up to run the aid to dependent children program on its own, subject to supervision from the state level.

> "(4) provide for granting an opportunity for a fair hearing before the state agency to any individual whose claim for aid to dependent children is denied or is not acted upon with reasonable promptness;"

This means that every individual who applies for or receives aid to dependent children is entitled to a fair hearing before the state agency if they are not satisfied with the activity of the local agency. The state agency must make a decision at the fair hearing on the basis of the rules and regulations as promulgated by the state agency then, of course, the state agency must order the local agency to make the appropriate change in the grant.

It should be noted here that the federal security administration has ruled that reasonable promptness means that the grant must be made if eligible to the applicant within thirty-one days from the date the application is received by the administering agency.

"(5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the administrator shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the administrator to be necessary for the proper and efficient operation of the plan;"

This provision means that each agency administering, whether local or state, must have a civil service provision for the selection, retention and compensation of any individual employed in administering this program. The present state personnel law has been accepted by the federal security agency as meeting this requirement. If a system of local administration were set up it would mean that each community would have to hire people on the basis of a civil service setup. This would mean that in most instances selectmen or elected city or town officials would not be eligible to administer the program. It would necessitate the local community hiring personnel necessary to administer such a program.

"(6) provide that the state agency will make such reports, in such form and containing such information, as the administrator may from time to time require, and comply with such provisions as the administrator may from time to time find necessary to assure the correctness and verification of such reports;"

This means that the state agency does have to make certain statistical and financial reports to the federal security agency as the agency requires. If a locally-administered program were in force it would mean that the local agency would have to make certain statistical and financial reports to the state agency in order that the state agency could in turn make its reports to the federal security agency.

"(7) provide that the state agency shall, in determining need, take into consideration any other income and resources of any child claiming aid to dependent children;"

This means that the agency administering the program will take into consideration all income and resources of the children in determining the amount to be granted in a particular case. The same provision, of course, would apply whether the program is administered at the state or local level.

"(8) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to dependent children;"

This is the provision which provides for the confidentiality of records and must be complied with whether administration is at the state or local level.

"(9) provide, effective July 1, 1951, that all individuals wishing to make application for aid to dependent children shall have opportunity to do so, and that aid to dependent children shall be furnished with reasonable promptness to all eligible individuals;"

This provision recognizes the right of all persons to make an application for aid to dependent children and requires that the administering agency furnish this aid to all eligible persons with reasonable promptness. As stated above, the federal security agency has interpreted reasonable promptness to mean that a grant will be made if the person is eligible within thirty-one days from the time the application is received.

"(10) effective July 1, 1952, provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid to dependent children in respect of a child who has been deserted or

abandoned by a parent;"

This provision, which is just going into effect, requires the referral to law-enforcement officials of the furnishing of aid to all children who have been deserted or abandoned by a parent. If the program was administered locally it would mean that each community would have to set up a system whereby such referrals could be made promptly to the local law-enforcement officials, with the consequent following up by the local agency of the activities of the enforcement officials on this matter.

"(11) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old age assistance under the state plan approved under section 2 of this act."

This provision is to prevent duplication of assistance by being certain that an individual is not receiving both old age assistance and aid as a relative with whom the child is living in aid to dependent children.

Section 402 (b) provides: "The administrator shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall

not approve any plan which imposes as a condition of eligibility for aid to dependent children a residence requirement which denies aid with respect to any child residing in the state (1) who has resided in the state for one year immediately preceding the application for such aid, or (2) who was born within the state within one year immediately preceding the application, if its mother has resided in the state for one year immediately preceding the birth;

> (2) "effective July 1, 1952 who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the state for one year immediately preceding the birth."

This section sets up the minimum residence requirements by which a child is eligible for aid within the state. This, of course, would be binding on the agency administering the program, whether locally administered or administered at the state level.

OPERATION OF STATE PLANS

Section 404. In the case of any state plan for aid to dependent children which has been approved by the administrator, if the administrator, after

reasonable notice and opportunity for hearing to the state agency administering or supervising the administration of such plan finds ---

(1) that the plan has been so changed as to impose any residence requirements prohibited by section 402(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such state agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402(a) to be included in the plan; the administrator shall notify such state agency that further payments will not be made to the state until he is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until the administrator is so satisfied he shall make no further certification to the secretary of the treasury with respect to such state.

This section means that if the federal security administrator advises that in a substantial number of cases there has been granting of aid in violation of the state plan, which has been approved by the federal security agency, then after notice to

the state agency and an opportunity for a hearing, the administrator has the right to refuse any further payments to the state until the administrator is satisfied that the state agency is no longer in violation of its own plan. This is the authority whereby the federal government may withhold federal funds if the state does not live up to the plan which it has submitted to the federal government. If a system of local administration were in effect and the local administering agency refused to abide by the plan submitted by the state, under the provisions of this section the federal security administrator could withhold all federal funds.

Section 406. When used in this title--
(a) The term "dependent child"means a needy child under the age of sixteen, or under the age of eighteen if found by the state agency to be regularly attending school, who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, in a place of residence maintained by one or more of such

relatives as his or their own home;

(b) The term "aid to dependent children" means money payments with respect to, or medical care in behalf of or any type of remedial care recognized under state law in behalf of, a dependent child or dependent children, and (except when used in clause (2) of section 403(a)) includes money payments or medical care or any type of remedial care recognized under state law for any month to meet the needs of a relative with whom any dependent child is living if money payments have been made under the state plan with respect to such child for such month;

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

This section defines certain terms; to wit, "dependent child", "aid to dependent children" and "relative with whom any dependent child is living." These same definitions appear in the state law as Section 226, Chapter 22, R. S. of 1944, as amended by P. L. 1951, Chapter 270, Section 1.

These definitions are binding on the state and would be binding upon the local agency if local administration were in effect provided federal money is to be obtained. Any deviation from these definitions would, in all probability, prevent the obtaining of federal funds for this program.

The foregoing applies, as indicated, to Title IV, grants to states for aid to dependent children. The social security act also has Title I, grants to states for old age assistance; Title X, grants to states for aid to the blind. The provisions of these two titles are substantially similar to the sections quoted above. The only changes are in those matters which would not lend themselves to the substantial distinction between aid to dependent children, old age assistance, and aid to the blind. As an example in Title I under old age assistance there is no provision for sending a notice to law-enforcement officials for the furnishing of aid to a child who has been deserted or abandoned by a parent. This, of course, could not apply in old age assistance or aid to the blind. Naturally, also the definitions appearing in Section 406 would be different in Title X; otherwise they are substantially the

same and any comments made relative to Title IV would be the same for items under Title I and Title X.

No attempt has been made to analyze the provisions of the state law, Revised Statutes 1944, Chapter 22, Sections 226 to 235-B, as amended. The reason for this is that these sections are simply the vehicle whereby the state operates the aid to dependent children program in conformity with the social security act. There are certain things in the state law that do not appear in the federal law, such as effect of aid to dependent children on pauper settlements and financial participation by the towns of settlement. However, in substance the state law is written to provide a means of administering the social security act. Any change in the method of administering the federal law would require a corresponding change in the state law. By the same token there can be no change made in the state law which would be contrary to the provisions of the social security act..

In summarizing the provisions of Title IV of the federal social security act, which relates to the aid to dependent children program and

the effect these provisions have on the administering of the program in Maine, the research committee has kept in mind that part of the order directing a study "to determine whether such services may be rendered, in whole or in part, by the towns for more efficient administration of available and federal funds."

In considering a change whereby the present state-administered program would be discontinued, and a locally-administered program was authorized, serious consideration was given to the following:

1. A separate department of public welfare in every city, town and plantation in Maine, of which there are approximately 450. Each department of public welfare would be responsible for the administration of the aid to dependent children program and presumably would also carry the responsibility for the administration of old age assistance and aid to the blind.

2. All employees engaged in the administration of these programs would have to be selected under the program. This would mean that before any persons could be hired it would be necessary for them to pass an examination and be certified by the civil

service agency as eligible for employment. This could mean that few municipal officials would be able to qualify due to the fact that they would probably not be inclined to take the examination and, if they did, the examination would be of such a nature based on elements of sociology and psychology and other allied subjects that the number that would receive a passing grade would be fairly limited. Furthermore, those persons who are employed in connection with public assistance, either at the state or local level, are, of course, subject to the provisions of the federal government Hatch Act prohibiting political activity. No doubt, each of the 450 departments of public welfare would be called upon to employ persons as caseworkers and, in some instances, supervisors who would not be residents of the municipality involved.

3. Each department of public welfare would have the responsibility of accepting applications from those persons desiring assistance under the aid to dependent children, old age assistance, and aid to the blind programs, investigating the applicants, determining eligibility, and authorizing grants. These

procedures in other words, determining eligibility and authorizing grants - would have to be carried on in accordance with rules, regulations, and instructions issued by the department of health and welfare of the state of Maine. This is necessary due to the fact that the social security act makes it mandatory that the federal social security agency hold one single agency in the state responsible for the administration of these programs. Consequently, there would not be an opportunity for each town to formulate its own policies and programs; there would not be an opportunity for discretion, so called. In other words, regardless of whether or not the state-administered program is continued or a locally-administered program is authorized, it will still be necessary for grants to be made in accordance with instructions and policies laid down by the department of health and welfare.

4. If a municipality should attempt to exercise discretion to the point where grants were made not in accordance with regulations and instructions issued by the department of health and welfare, then it would be necessary for the state to withdraw funds from those

grants improperly authorized, and if this practice continued all federal funds would be withdrawn from the state of Maine.

5. Because the federal security agency would be holding the state of Maine, department of health and welfare responsible for the administration of these programs, it would be necessary for the state to maintain a group of field supervisors who would be constantly supervising the local employees. The state would also be required to read case records in order to ascertain if all eligibility factors in every case have been properly proven. The state would also be required to maintain a group of auditors who would audit fiscal procedures. All these functions plus the compiling of statistical information would have to be carried on in order to satisfy the legal requirements of the social security act. Tentative estimates would indicate that the number of employees in the programs at the state level would not decrease to any extent and, in addition, the municipalities would be required to maintain a comparatively large group of caseworkers, supervisors, and clerical employees.

6. Probably one of the most important features

which should be considered in connection with the locally-administered program would be the requirement that the municipality finance the aid to dependent children, old age assistance, and aid to the blind grants. In other words, the authorizations as approved by the local caseworkers would go to the municipal treasury where checks would be issued once a month to recipients in these programs. The municipality would then, by means of fiscal reports, claim reimbursement from the state for state and federal moneys. This would mean that municipalities would have considerable sums of money tied up in the programs pending reimbursement from the state. In those instances where irregularities were discovered by the state field forces, funds would be withheld from the municipality until such time as those irregularities were corrected.

7. If a locally-administered program is to be placed in effect in the state of Maine it will be necessary to completely rewrite the state laws relating to aid to dependent children, old age assistance, and aid to the blind. This will, of course, lead to a considerable amount of confusion and uncertainty, at least for a period of time.

The above conditions were given serious thought by the committee in attempting to arrive at a definite conclusion in making its report and recommendations to the 96th legislature. The report of a special investigator, employed to make a study of so-called inequalities and illegal grants in the aid to dependent children program, stated "In short this report cannot find grounds for criticism of the administration or execution of the program under the existing statutes and appropriations."

Consideration was also given to the possibility that municipalities should be allowed to participate to a degree in the administration of the program, but the method of payment should continue as it is now in force. To the committee it did not seem feasible to try to mix a state-administered program such as is now in effect with a locally-administered program. It was felt the program should either be state-administered or a locally-administered program should be placed in effect. To attempt to combine the state-administered and locally-administered programs into a single plan would cause that plan to be in non-conformity with federal requirements and federal funds would be withheld.

It is the feeling of the committee that if Maine is to continue to seek and accept federal funds for this program it would be unwise to make a change from the state-administered program to a locally-administered program. To do so would seriously jeopardize the successful administration of the intent of the program.