

# MAINE STATE LEGISLATURE

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January 5, 1966

Dean Fisher, M. D., Commissioner

Health and Welfare

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Health and Welfare

**Opinion on Release of Information Regarding Federally Donated Commodities**

**FACTS:**

The United States Department of Agriculture is supplying Federally Donated Commodities to the Division of General Assistance for distribution to eligible indigent persons by municipal officials. By United States Department of Agriculture criteria any recipient of public assistance is potentially eligible to receive such commodities. At the time a person is granted Aid to the Aged, Blind or Disabled or Aid to Dependent Children and at the beginning of each calendar year thereafter, the following letter is sent to the recipient by the Division of Family Services which administers these public assistance programs:

"The records of the Department of Health and Welfare indicate that one or more ~~MEMBERS~~ of your household are receiving Public Assistance; that your household has cooking facilities, and you may be eligible to receive Federally Donated Commodities.

You may, if you so desire, contact your local distribution official and present to him this letter as an indication of your desire to apply for Donated Commodities.

If your Public Assistance grant has been closed, present this letter to him and he will determine whether or not your income is such that you may continue to be eligible to receive these commodities.

In any event, if you contact your local official regarding your eligibility for Donated Commodities you must present this letter to him. If you are receiving Public Assistance, receipt of these commodities will not affect your grant."

Recently the United States Department of Agriculture has requested that a copy of all such letters be routinely sent to the officials of the town or city in which the recipient would receive such commodities, together with information concerning the type of public assistance being received, the number of persons included in the grant and the number of persons in the household. The request is also made that local officials be kept informed by the Department on an ongoing basis of the current status of all recipients -- that is, discontinuance of assistance, increase in assistance grant, changes in household group, changes of address, etc.

**QUESTION:**

Would it be a breach of statutes to disclose the information about public assistance recipient, status of grants, and other information to municipal officials without the consent or approval of the recipient or any indication on his part that Donated Commodities are desired?

ANSWER:

Yes.

OPINION:

The law which applies to this situation is Section 42 of Title 22 which provides as follows:

"The department (of Health and Welfare) shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department, and especially those which pertain to the granting of public assistance. The use of such records, papers, files and communications by any other agency or department of government to which they are furnished shall be limited to the purposes for which they may be furnished and by the law under which they may be furnished. It shall be unlawful for any person, except for purposes directly connected with the administration of public assistance and in accordance with the rules and regulations of the department, to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving such assistance, directly or indirectly derived from the records, papers, files or communications of the State subdivisions or agencies thereof, or acquired in the course of the performance of official duties."

This statute clearly states that no information about applicants for or recipients of public assistance which in this statute refers to Aid to the Aged, Blind or Disabled and Aid to Dependent Children) shall be received or used by any person except for purposes directly connected with the administration of public assistance.

A question similar in scope was asked of the Attorney General by the Sub-Committee on Health and Welfare of the Legislative Research Committee in 1974, and as part of that opinion it was stated as follows:

"The administration of the public assistance program is entrusted entirely with the State Department of Health and Welfare. The local overseers of the poor are not directly concerned with the administration of public assistance, even in individual cases in their own communities. Therefore, it does not seem that the legislature ever intended for any local official to be entitled to a list of names of persons receiving public assistance through the State Department of Health and Welfare."

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The procedure prescribed for sending copies of Federally Donated Commodities letters routinely to municipal officials whenever public assistance is granted is in effect giving a list of recipients of public assistance to the local officials and the Attorney General's opinion above cited is therefore applicable.

Section 42 of Title 22 is a safeguard given to the applicants for and recipients of public assistance that their names and information recorded concerning themselves and their circumstances shall be confidential. To divulge the names of and information about such recipients is not only a breach of public policy, but a violation of the law itself. Obviously, this law was intended as a protection to individuals who find it necessary to seek assistance in the form of Aid to the Aged, Blind or Disabled or Aid to Dependent Children, and no such should be strictly construed.

The Department of Health and Welfare, in formulating its rules and regulations, has been conscientious in maintaining this safeguard but at the same time has not been unkind that certain information relating to individual recipients of public assistance may be released to municipal officials to assist them in the administration of general relief in their respective municipalities. By statute it is required that municipalities be notified of all Aid to Dependent Children applications received by the Department (Title 22, Section 3746). To this end the Department has promulgated exceptions to the general rule of confidentiality, one of which is as follows:

"Lists of public assistance recipients or other records relating to individuals receiving public assistance must be confined to purposes directly related to the administration of the public assistance program. Information may be released to another agency or individual if the client has requested service and if the object of such agency or individual is the protection and advancement of the applicant.

Agencies to which information is released must assure preservation of the confidential character of information, and must use such information only for the purpose for which it was made available.

Such agencies must have established standards of protection equal in every respect to those established by the department itself."

In the case of Federally Donated Commodities, this would appear to be a service offered to the recipient but not a matter directly related to the administration of the public assistance program. As a service offered to the recipient, such person has the option of accepting or rejecting same. If a recipient wishes to avail himself of these commodities and thereby identify himself to the municipal officials as a recipient of public assistance, this is his voluntary choice and there would seem to be consent implied, if not expressed, for the Department to keep such municipal officials advised as to the status of this individual case. This would be in accordance with the regulation above cited.

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In the event that such information, with the expressed or implied consent of the recipient, is supplied to municipal officials, such officials are bound by the departmental regulations to maintain the same confidentiality as established by the Department, and by statute to use such information only for the purpose for which it is furnished.

In the final analysis, it must be concluded that local officials can not be routinely notified of a person's receiving public assistance by means of a copy of a letter advising the recipient of his potential eligibility for Federally Donated Commodities which in effect constitutes a list of public assistance recipients, without violating both the statute and departmental regulations. If such commodities are offered as an optional service to recipients and the recipients choose to avail themselves of this additional service which is not part of the direct administration of public assistance, then with the expressed or implied consent of such recipients the municipal officials may be informed of the status of such cases on an individualized basis.

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