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Department of Health and Welfare

STATE HOUSE, AUGUSTA, MAINE

Date February 14, 1974

To Dean Fisher, M.D., Commissioner, Department of Health and Welfare

From Joseph M. Kozak, Assistant Attorney General

Subject Formal Opinion Relative to Public Laws of 1973, Chapter 470

SYLLABUS:

For the purposes of Public Laws of 1973, Chapter 470 a person in a facility such as a hospital, boarding home, nursing home or State Institution is present in the municipality in which the facility is located. Consequently the municipality in which the facility is located, rather than the municipality from which the person entered the facility, is responsible for the relief of such a person, when on account of poverty, he needs relief.

Public Laws of 1973, Chapter 470 has no retroactive effect. Only general relief furnished after October 3, 1973, the effective date of the statute, is subject to the reimbursement provisions outlined therein. Liability for relief furnished prior to October 3, 1973 is subject to the provisions of 22 M.R.S.A. § 4451, et. seq.

FACTS:

Public Laws of 1973, Chapter 470 repealed most of Maine's prior law relating to the municipal support of poor persons as set out in 22 M.R.S.A. §4451, et. seq. Public Laws of 1973, Chapter 470 states that,

"Overseers of poor or some person or persons designated by them to act in their behalf shall have the care of all persons dependent upon the municipality for their support present in their municipality and shall cause them to be relieved at the expense of the municipality."

The responsibility for providing general assistance to persons in need of relief who have entered a municipality for the purpose of obtaining service in a facility such as a hospital, nursing home, boarding home or State Institution located in that municipality is uncertain.

Pursuant to a formula set out in Public Laws of 1973, Chapter 470 the Department of Health and Welfare shall reimburse municipalities for a portion of the expenses they incur in furnishing general assistance. Some municipalities have sought reimbursement for general assistance which they furnished prior to the effective date of Public Laws of 1973, Chapter 470 but which they paid for after the effective date.

QUESTIONS:

1. Would the municipality from which a person entered a facility, such as a hospital, nursing home, boarding home, or State Institution, or the municipality in which such a facility is located be responsible for providing general relief to such a person, when on account of poverty, he needs relief?

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QUESTIONS: (con't.)

2. Would the Department of Health and Welfare be in conformance with Public Laws of 1973, Chapter 470 by reimbursing municipalities for expenses incurred in furnishing general relief prior to October 3, 1973, the effective date of the statute, where the bills for such expenses were neither received nor paid by the municipality until after the effective date of the statute?

3. Would the municipality of settlement, referring to the old law (22 M.R.S.A. §4451, et seq), be responsible for the expenses of general relief furnished by the municipality of residence, prior to October 3, 1973, for which bills were not received and paid until after October 3, 1973?

4. Prior to October 3, 1973, where a hospital admitted an indigent person and pursuant to 22 M.R.S.A. §4452A applied for, but was denied authorization for such hospitalization by the person's municipality of residence, would the Department of Health and Welfare be in conformance with Public Laws of 1973, Chapter 470 if it reimbursed the indigent person's municipality of residence for paying the hospital for services furnished to that indigent person prior to October 3, 1973?

ANSWERS:

1. The municipality in which a facility such as a hospital, nursing home, boarding home, or State Institution is located is responsible for providing general relief to a person in such a facility, when on account of poverty he needs relief.

2. No.

3. No opinion rendered.

4. No.

REASONS:

1. Two conditions of eligibility for general assistance are prescribed in P.L. 1973, C. 470 (22 M.R.S.A. §4497). The first condition is that persons be "dependent upon the municipality for their support." The meaning of "dependent upon the municipality for their support" can be ascertained by referring to another section of P.L. 1973, C. 470 (22 M.R.S.A. §4459-A) which requires municipalities to promulgate rules and regulations governing the administration of the program for municipal support of the poor. It states that, "(s)uch rules and regulations shall include standards of eligibility, governing need and amount of assistance, for the receipt of general assistance." Notably, no mention is made of residency as a basis of eligibility under 22 M.R.S.A. §4459-A, rather "need" is described as the basis of eligibility. Therefore a person dependent upon the municipality for his support would be a person exhibiting a specific "need" as outlined in the municipal rules and regulations.

The second condition for general assistance eligibility is that the person be "present" in the municipality. Since the word "present" is unambiguous, the intent of the Legislature can be derived by giving "present" its ordinary meaning. Corpus Juris Secundum, Volume 72, Page 491 defines present as "...being in a certain place and not elsewhere...(also)...(p)resent in none of its applications is synonymous, under any circumstances, with resident."

Further evidence of legislative intent may be implied from the fact that P.L. 1973, C. 470 repealed a considerable part of Maine's prior law dealing with the municipal support of poor persons. That law (22 M.R.S.A. §4451, et seq) imposed liability for general assistance upon the town in which the person in need of relief had his settlement. Settlement was based, in part, on having a home in a town for five successive years (22 M.R.S.A. §4451(6)). By repealing 22 M.R.S.A. §4451(6) and not including such residency requirements in P.L. 1973, C. 470 it would seem that the Legislature intended to remove residency as a condition of eligibility for general assistance.

Consequently, the municipality in which a person is present, rather than his municipality of residence, is primarily liable for providing him with general assistance under P.L. 1973, C. 470.


2. P.L. 1973, C. 470 (22 M.R.S.A. §4499) which provides that the Department of Health and Welfare shall partially reimburse municipalities "(w)hen a municipality incurs net costs for furnishing such general relief..." is in derogation of the common law, since no public liability for the support of poor persons existed at common law. Applying the principle that statutes in derogation of the common law should be strictly construed, the Department of Health and Welfare can only reimburse municipalities for net costs incurred in "furnishing such general relief." Following the principle of strict construction the words "such general relief" should be given their narrowest meaning. Viewing that language in the context of the new program for municipal support of the poor, set up in P.L. 1973, C. 470, the intent of the Legislature would appear to only require reimbursement for the net costs of general relief furnished pursuant to P.L. 1973, C. 470.

Statutes are deemed to operate prospectively rather than retroactively, unless a legislative intent to the contrary is clearly expressed. No mention of retroactive applicability is made in P.L. 1973, C. 470 nor, under the rule of strict construction, can one be implied. The effective date of P.L. 1973, C. 470 is October 3, 1973. Therefore only general relief furnished after the effective date of P.L. 1973, C. 470 is subject to its reimbursement provisions.

3. The liability of municipalities vis-a-vis one another for the support of poor persons prior to the effective date of P.L. 1973, C. 470 is an issue of local concern. Since the question does not reflect upon the liability of the State Department of Health and Welfare, it is not subject to resolution in this opinion requested by the Department of Health and Welfare.

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4. Reference is again made to the assertion that P.L. 1973, C. 470 is not deemed to operate retroactively. The relief in question was furnished prior to the effective date of P.L. 1973, C. 470 and is therefore not subject to its reimbursement provisions.



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