

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-08

Date issued: March 23, 1990
Requested by: Jeffrey J. Peterson
Burke County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a county is required to continue funding poor relief at a level established before a reduction in revenues which support that program.

II.

Whether a county may continue to fund programs and services at current levels for persons now receiving poor relief benefits, and deny those benefits to similarly situated persons who apply in the future.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a county is not required to continue funding poor relief at a level established before a reduction in revenues which support that program.

II.

It is my further opinion that a county may not continue to fund programs and services at current levels for persons now receiving poor relief benefits, and deny those benefits to similarly situated persons who apply in the future.

- ANALYSES -

The questions arise because of disruptions in the funding of poor relief occasioned by the successful referral of revenue generating measures passed by the 1989 Legislative Assembly. The moneys otherwise appropriated to the Department of Human Services for allocation to counties for poor relief expenditures, pursuant to N.D.C.C. ' 50-01-09.2, were eliminated as a consequence of actions taken pursuant to N.D.C.C. ' 54-44.1-13.1. Section 54-44.1-13.1 authorizes the reduction of moneys available to all departments, agencies, and institutions, if, as a result of voter rejection of a legislative act, the moneys available in the state general fund are or will be reduced.

I.

The administration of county poor relief programs is governed by N.D.C.C. ch.

50-01. The county's obligation is set forth in N.D.C.C. ' 50-01-01, which provides, in relevant part:

Within the limits of the county poor relief appropriation therefor, and utilizing reimbursement under section 50-01-09.2, each county in this state is obligated, upon receipt of a written application on a form prescribed by the department of human services, to relieve and support persons who are residents of the county and who are in need of poor relief.

(Emphasis added). As a consequence of the referral, no reimbursement is available under Section 50-01-09.2.

An applicant becomes eligible for poor relief benefits by complying with the requirements of N.D.C.C. ' 50-01-01(1) and (2). Subsection 2 requires that the applicant "comply with the written eligibility standards for county poor relief established by the county social service board." There is no requirement that those written eligibility standards be or remain at any particular level. The prefatory language of N.D.C.C. ' 50-01-01 limits the county obligation to the amount of the county poor relief appropriation. If a board of county commissioners should elect to appropriate less than the amount appropriated in previous fiscal periods, it is free to do so. While the county is obligated to provide "poor relief" to county residents in need, this obligation is not limitless. It only extends so far as the county has funds appropriated or available.

II.

So long as county poor relief appropriations exist, county residents may apply to be relieved and supported by those funds. If a person applying has conformed to the requirements of N.D.C.C. ' 50-01-01, that person is eligible.

If the county were to treat a person as eligible because an application had been made and eligibility established prior to a reduction in the county poor relief appropriation, it could only be because that person continued to meet the written eligibility standards for county poor relief. If a similarly situated person applied after the reduction in appropriation, that person could be denied benefits only by applying more restrictive eligibility standards. The statute makes no provision for applying different eligibility standards for groups based solely on the date upon which the person applied or was found eligible.

A county may legally respond to a shortfall in appropriations in one of three ways:

1. The county may continue to furnish benefits to all eligible applicants based upon the existing standards, and discontinue benefits to all applicants at the point the poor relief appropriation is exhausted;
2. The county may establish more restrictive written eligibility

standards to reduce outlays for benefits to the appropriation available;
or

3. The board of county commissioners may, pursuant to N. D. C. C. ' 50-03-04, transfer the unexpended balance in any fund or funds of the county to the county poor relief fund or, if such transfer or transfers would be insufficient to meet an emergency created by unusual and unanticipated demands for the relief of the poor, may, pursuant to N. D. C. C. ' 50-03-05, authorize the expenditure of an amount in excess of budget appropriations and obligate the county in excess of such appropriations for the purpose of replenishing the poor relief fund.

The first of these three options, while legal, would be widely criticized. The second may be accomplished within the discretion of the county social service board, and the third may be accomplished within the discretion of the county commission.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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