

073-445—November 28, 1973

WELFARE

DELEGATION OF STATE AUTHORITY TO FEDERAL GOVERNMENT

To: O. J. Keller, Secretary, Department of Health and Rehabilitative Services,
Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Is there any illegal delegation of state authority involved in the disbursement of funds by the Florida Department of Health and Rehabilitative Services to the U.S. Department of Health, Education and Welfare for distribution to welfare recipients in this state, as provided by the Federal Social Security Amendments of 1972?

SUMMARY:

No unlawful delegation of state authority is involved in the disbursement of funds by the Florida Department of Health and Rehabilitative Services to the Social Security Administration of the U.S. Department of Health, Education and Welfare to be paid over to aged, blind, and disabled residents of this state, together with aid payable from federal funds, in a single welfare check, in accordance with a contract executed by the state and federal governments under state and federal statutory authority.

Section 301 of the Social Security Amendments of 1972 (Public Law 92-603) repealed the existing joint federal-state programs of aid to the aged, blind, and disabled and created a new, totally federal, program—the Supplemental Security Income program—effective January 1, 1974, to be administered by the Social Security Administration of the Department of Health, Education and Welfare through its existing administrative framework and facilities. As noted in the legislative history of the law appearing on page 4992 of U.S. Code Congressional and Administrative News, Volume 3, of the 92nd Congress, Second Session, 1972, the purpose of the new law is to improve the effectiveness of the adult assistance programs for the aged, blind, and disabled by replacing the three present state-administered programs with one combined adult assistance program to be federally administered under nationally uniform requirements and at the same basic rate—one hundred thirty dollars per month during fiscal year 1973, to be increased to one hundred forty dollars, beginning July 1, 1974—with the cost of maintaining this basic benefit level to be borne entirely by the federal government.

As originally adopted, the 1972 amendments merely authorized the states to supplement the basic federal one hundred thirty dollar payment with additional state payments to aged, blind, and disabled residents of the state who are eligible for federal benefits. However, as amended in 1973 (Public Law 93-66), the federal act “grandfathers in” to the federal program existing state welfare recipients at the same level of benefits that they were receiving, as of December 1973, under the then existing joint federal-state program in a particular state, and requires the states to “foot the bill” for the supplementary payments over and above the one hundred thirty dollar basic federal benefits. States who fail to do so are ineligible for federal funds under the Medicaid program, Title XIX of the Social Security Act. (An exception is made for states whose constitutions make it impossible for them to enter into and commence carrying out such agreements as of January 1, 1974.)

I am advised that the Florida recipients of aid to the aged, blind or disabled have been receiving a basic benefit of one hundred thirty-two dollars per month under the joint state-federal program; and that some of these recipients have been

receiving aid of the type referred to as "special needs"—for room and board, housekeeper services, and foster care—in addition to the basic benefit. To save the cost of administration, the Department of Health and Rehabilitative Services of this state desires to take advantage of the offer of the federal government to disburse these additional benefits to the welfare recipients of this state, without cost, along with the federal government's basic one hundred thirty dollar monthly payment. It is contemplated that the state's supplement will be forwarded to the federal government fifteen days in advance of the date that the welfare payment is to be made to the recipient, so that it may be added to the federal payment and included in a single welfare check made payable to the recipient.

The 1973 law here in question—Public Law 93-66, *supra*—was not adopted until after the 1973 Florida Legislature had adjourned; thus, our legislature had no opportunity to provide specifically for the payment of these supplementary funds through the federal government to the ultimate beneficiary. However, the existing law relating to the powers of the Department of Health and Rehabilitative Services in carrying out its duties and responsibilities in aiding the aged, blind, and disabled residents of this state—Ch. 409, F. S.—provides in broad terms that the department may:

(6)(a) Accept such duties in respect to public assistance or family services as may be delegated to it by any agency of the federal government . . . ;

(b) Act as agent of, or contract with, the federal government . . . in the conduct and administration of public assistance and family services activities in securing the benefits of any public assistance that is available from the federal government or any of its agencies and in the disbursement of funds received from the federal government, state government . . . for family services purposes within the state . . . [Section 409.026(6).]

See also §409.075, authorizing the comptroller to withdraw funds from the department's separate account upon a warrant made payable to "the Department or to its order or its agent." (Emphasis supplied.)

I am advised that the funds appropriated to the department for the fiscal year ending June 30, 1974, for financing its family services program will amply provide for the supplementary payments required by the new federal program and for the state's "special needs" program for the period January 1-June 30, 1974. I understand, also, that the applicable statutes and appropriations act have been administratively interpreted as authorizing the department to make the supplementary payments from the funds appropriated to the department for the fiscal year ending June 30, 1974, by disbursing the same to the federal government for distribution by it to each welfare recipient in a single check. It is well settled that the administrative interpretation of an act by the administrative body charged with its enforcement is entitled to great weight and will not be overturned by the courts except for the most cogent reasons and where clearly erroneous. *Gay v. Canada Dry Bottling Co.*, 59 So.2d 788 (Fla. 1952). And the only question presented to this office for determination is whether the statutes, as so interpreted, constitute an unlawful delegation of power by the department to the federal government. The general rule in this respect is stated in 73 C.J.S. *Public Administrative Bodies and Procedures* §57, as follows:

Administrative officers and bodies cannot alienate, surrender, or abridge their powers and duties, or delegate authority and functions which under the law may be exercised only by them; and, although they may delegate merely ministerial functions, in the absence of statute or organic act permitting it, they cannot delegate powers and functions which are discretionary or quasi-judicial in character, or which require the exercise of judgment.

Accord: 2 Am. Jur.2d *Administrative Law* §22, p. 52.

The decisions of the Florida courts are in accord with this general rule. *See* *State v. Inter-American Center Authority*, 84 So.2d 9 (Fla. 1955), recognizing the rule that, in the absence of statutory authority, a public officer cannot delegate discretionary powers but holding that a trust indenture provision requiring the approval of consulting engineers for action by or on behalf of a state agency did not go further than necessary to carry out the objectives of the statute governing the agency and did not constitute an unlawful delegation of power; *Peters v. Hansen*, 157 So.2d 103 (2 D.C.A. Fla., 1963), upholding a contract between the county tax assessor and a private firm for the reappraisal of taxable property in the county; *State ex rel. Wolyn v. Apalachicola Northern R. Co.*, 88 So. 310 (Fla. 1921), striking down a rule of the State Plant Board delegating its authority to the State Plant Commissioner; *Laundry Board v. Economy Cash & Carry Cleaners*, 197 So. 550 (Fla. 1940), striking down the board's delegation of authority to a supervisory employee; *State v. Lee*, 7 So.2d 110 (Fla. 1942), invalidating a printing contract because it was with an out-of-state firm but apparently upholding the Citrus Commission's delegation of authority to its agent, an advertising firm, to execute the printing contract; *Cassady v. Consolidated Naval Stores Co.*, 119 So.2d 35 (Fla. 1960), striking down a statutory provision authorizing the property owner to initiate proceedings looking toward the tax assessment of the subsurface rights owned by another; and *Mahon v. County of Sarasota*, 177 So.2d 665 (Fla. 1966), striking down a statutory provision relating to the abatement of nuisances on similar grounds. *Cf. O'Malley v. Florida Insurance Guaranty Ass'n*, 257 So.2d 9 (Fla. 1971), upholding a statute authorizing payment of certain claims against insolvent insurers through a statutory non-profit corporation.

For decisions of courts of other jurisdictions on this question, *see* *Anderson v. Grand River Dam Authority*, 446 P.2d 814 (Okla. 1968); *Schechter v. County of Los Angeles*, 65 Cal. 739 (1968); *Park Building Corp. v. Industrial Comm.*, 100 N.W.2d 571 (Wis. 1960); *Moody v. Texas Water Comm.*, 373 S.W.2d 793 (Tex. App. 1964); *State v. Imperatore*, 223 A.2d 498, 500 (N.J. Super. App. Div. 1966); *R. H. Macy & Co., Inc. v. Director, Division of Taxation*, 185 A.2d 682 (N.J. 1962), *aff'd* 194 A.2d 457; *Krug v. Lincoln Nat. Life Ins. Co.*, 245 F.2d 848 (C.A. Tex.); *Hellman v. Northern Wasco County People's Util. Dist.*, 323 P.2d 664 (Ore. 1957); and *Voth v. Fisher*, 407 P.2d 848 (Ore. 1965).

Here, the proposed administrative contract with the federal government will involve the delegation of clerical or ministerial duties only. In essence, the federal government will be acting as the agent of the state in disbursing the state's funds to those of its residents who are aged, blind, or disabled and who qualify for federal aid under the SSI program, in accordance with a contract entered into by the state and federal governments under state and federal statutory authority. The federal government will, of course, determine which of the residents of this state qualify for the basic federal benefits under its SSI program. However, the two dollar supplemental payments necessary to maintain the basic level of state support (one hundred thirty-two dollars) for those welfare recipients of this state who have been grandfathered in to the federal program for the period January 1, 1974, to June 30, 1974 (at which time the basic federal payment will be increased to one hundred forty dollars per month so that no further supplementation will be required in this state), and the supplemental special needs payments which will continue to be provided from state funds, have been or will be made upon the basis of a determination made by the responsible state official as to each individual recipient; and the list of recipients so entitled will be updated from month to month to reflect changes in the status of beneficiaries, deaths, and other appropriate information. In these circumstances, it seems clear that there will be no unlawful delegation of authority by the state to the federal government under the general rule referred to above.

It might be noted that there is no question here of a violation of Art. VII, §10, State Const., prohibiting the state from lending its credit. As noted in AGO 072-382,

the federal government is not a "corporation" within the purview of that constitutional prohibition; and, in any event, state funds will merely be disbursed through the federal government, as the agent of the state, and paid in due course to the ultimate beneficiary—the recipient of state and federal aid to the blind, aged or disabled—at the time when he is entitled to receive such payments and not before. By the same token, state funds will not be paid in advance of services rendered or goods delivered, contrary to the rule which is customarily followed by the comptroller in disbursing state funds. (*See, e.g.*, §215.42, F. S., authorizing the comptroller to require proof "as he deems necessary, of delivery and receipt of purchases" before honoring any voucher for payment.) As noted above, the federal government, acting as the agent of the state, will disburse the state's welfare payments to the recipients at the time they are entitled to receive them and not before.

As soon as the program gets under way, the comptroller will be provided with substantially the same information concerning welfare recipients as he now receives. I understand that the Department of Health and Rehabilitative Services will furnish him each month an up-to-date list of the recipients of state and federal benefits, showing the disposition of state funds as to each recipient, which list will serve as the basis for the estimate of funds needed for the state's payments during the ensuing month and for the department's requisition of such funds for disbursement to the federal government for payment to the state's welfare recipients; and that the contract with the federal government will provide for an adjustment of the funds to be advanced to reflect either an over-advancement or an under-advancement of funds for a particular month. Presumably, other provisions necessary to satisfy the "bookkeeping" requirements of the comptroller and the auditor general will be included in the contract. However, as noted above, the only question presented here for determination is whether the disbursement of funds to the state's welfare recipients through the federal government constitutes an unlawful delegation of power. For the reasons stated, no such unlawful delegation has been found.

Accordingly, your question is answered in the negative.

073-446—November 29, 1973

MUNICIPAL HOME RULE POWERS ACT

POWER TO BORROW MONEY INCONSISTENT WITH CHARTER ACT POWER

To: Denis L. Fontaine, Mulberry City Attorney, Lakeland

Prepared by: Jan Dunn, Assistant Attorney General

QUESTIONS:

1. May a city finance a municipal civic center by the issuance of revenue bonds under Ch. 73-129, Laws of Florida, despite restrictions on borrowing in the city's charter?
2. Is a referendum of the electorate required for the passage of a bond issue not secured by a pledge of ad valorem taxes?

SUMMARY:

A city may finance a municipal civic center by the issuance of revenue bonds under Ch. 73-129, Laws of Florida, despite restrictions on borrowing in the city's charter.

AS TO QUESTION 1:

Sections 48 and 49 of the Mulberry Charter Act, Ch. 63-1665, Laws of Florida,