County of Los Angeles v. State Social Welfare Department – A Criticism

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HOW ARE federal, state and county governments related within the Social Security System? What is the relationship of federal, state and county Old Age Security to County Indigent Aid? What is the scope and character of judicial review of the determinations of the State Social Welfare Board?

In *County of Los Angeles v. State Social Welfare Department*[1] the Supreme Court of California decided a case involving these questions. The unanimous opinion of the court, however, is of little or no help in answering these questions. The opinion is remarkable no less for its dearth of analysis than for the error of its final conclusion.

A number of recipients under the federal-state-county Old Age Assistance program complained to the State Social Welfare Board, in a formal appeal proceeding, that their Old Age Security payments were being treated by Los Angeles County as income to their spouses in determining the amount of County Indigent Aid the spouses were to receive. The problem arose because county indigent aid payments, amounting to $43 or $44 a month, were far below the $75 monthly Old Age Security (hereinafter referred to as OAS) payments. By considering OAS payments as income to the family and attributing half to the recipient's indigent spouse, the county was able to reduce its indigent aid to the spouse to $5 or $6 a month. The complainants asked the board for relief from this county practice, contending that it compelled them to divert a portion of their OAS payments to the support of their needy spouses in violation of the Welfare and Institutions Code and rules issued thereunder. After protracted hearings, the board entertained jurisdiction of the complaint, prepared elaborate findings of fact and conclusions of law, and ordered the county to discontinue the practice under penalty of withholding reimbursement of state and federal funds.[2] The county then sought a writ of mandate in the Superior Court of Los Angeles County requiring the board to set aside orders and refrain from their enforcement. The Superior Court issued the writ concluding that prohibition of the county practice was beyond the jurisdiction of the board, even though the practice was wrongful and illegal and subject to preven-

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[1] 41 A.C. 463, ...P.2d..... (1953).
[2] Minutes, State Board of Social Welfare, Nov. 24, 1950.

tive action in suitable judicial proceedings brought by the complainants.[3] The District Court of Appeals[4] and the Supreme Court affirmed.

In answering the questions posed, the court practically ignored the general relationship among federal, state and county governments within the Social Security System. The specific relationship between the federal-state-county Old Age Security program and the county indigent aid program was dismissed with these flat assertions: that the county practice of treating OAS payments as family income was "directed to a determination" of eligibility for, and the amount of, county indigent aid, a matter exclusively within the power of the county; that each of the complainants received the maximum amount of OAS to which he was entitled under the law; that "no conditions or limitations were placed by the county on such payments," the recipient being free "to use them for the support of his spouse as well as himself if he so desires"; that the use of a part of them for the support of the spouse "does not constitute an alienation of the payment to him nor does it result in any diversion of federal or state funds."[5] Finally, the court failed to accord even passing notice to the findings of fact upon which the Social Welfare Board established its jurisdiction. It is implied that since the Social Welfare Board's jurisdiction over county indigent aid is exclusively a question of law, no attention need be given to the hearing record. Thus, the court fails to give proper consideration to those significant issues concerning the scope and character of California's welfare system and of judicial review of administrative findings. The consequences may be far-reaching and disquieting.

In this case more clearly than in others, choice and statement of the issue is of utmost importance. Does the State Social Welfare Department have power to supervise and control the administration of county aid or to consider complaints relating to the adequacy of such aid? The answer is plainly—no. Does the county have power to interfere with the administration of OAS by bringing about its alienation and diversion from the intended beneficiaries? Equally plainly, the answer is—no. The selection, not the settlement, of the issues presents the real problem. Which of these is the issue, if either? How will the determination be made? The Supreme Court does not favor the reader with any disclosure of the technique employed by it. It simply states that the State Social Welfare Department had no jurisdiction over county aid. It might at the same time have declared, with identical lack of force and pertinence, that the county cannot divert OAS payments.

Before reaching, let alone applying, any such legal conclusions, it is

[3] County of Los Angeles v. State Social Welfare Board, Sup. Ct., L.A. No. 582759 (1953).
[4] County of Los Angeles v. State Social Welfare Board, 114 A.C.A. 530, 250 P.2d 708 (1953).
[5] *Supra* note 1, at 467.

necessary to decide whether there was attempted state interference with county aid or county diversion of OAS, *i.e.*, whether there was a collision of the two jurisdictions. Only after this dominantly factual question is answered, is it necessary to determine whether either or both agencies were acting within their authority, and, if both were, which should prevail.

The county practice of treating OAS as family income was begun in 1949.[6] Prior to that time, the county, in determining eligibility for, and the amount of, indigent aid, considered OAS payments the separate income of the recipient and not legally available to the spouse. The new practice was adopted not in an overall revision of the indigent aid program or accompanying other changes, but as a single proposal and for a single purpose. Its purpose, according to the frank avowal of the County Welfare Director who proposed, and the County Supervisors who adopted it, was to reduce the total amount of expenditures made by the county for indigent aid.[7] It was confidently anticipated that OAS recipients would share their payments with their indigent spouses. Applicants for and recipients of indigent aid were notified that county grants were being denied because there was OAS income in the household.[8] The reason for the denial of indigent aid and the source of income which was expected to take its place were thus made clear to the needy families. Nor was Los Angeles County disappointed in its reliance on the promptings of family ties and humanity. The State Social Welfare Board after a full investigation found, in a formal proceeding, that the OAS recipients did in fact divert a portion of their payment to the support of their needy spouses; and, moreover, that as a result they denied themselves necessities of life.[9]

The Los Angeles County practice was thus a deliberate device to divert a portion of OAS payments from recipients to their spouses to take the place of county indigent aid previously granted and thereafter withheld so as to reduce county indigent aid expenditures. It was specifically designed and avowedly adopted for that purpose. It was administered in the way best calculated to achieve that purpose. It was based upon and took account of elements in human nature which rendered the result virtually inevitable. Recipients thereafter were about as free to refrain from supporting their spouses out of their OAS payments as they were to ignore the force of gravity. The practice did in fact have the intended effect. Thereafter recipients of OAS in Los Angeles County were able to and did apply only about half of the OAS payments to meet their own needs. The bearing of the practice on OAS consequently was far from trivial. Had the county divided the OAS

[6] Special Notice #257, June 30, 1949, Dep't. of Charities, Bureau of Public Assistance, Los Angeles County.

[7] Minutes, State Social Welfare Board, Nov. 24, 1950, pp. 6, 7.

[8] *Id.* at 8, 9.

[9] *Ibid.*

grant into two equal parts and delivered one to each of the spouses, the aim and effect could not have been more certain or different. In these circumstances, to say, as did the Supreme Court, that "no conditions or limitations" were placed by the county on the OAS grant is to mistake form for substance.

Once the fact and character of the collision between the federal-state-county OAS program and the County Indigent Aid program are established, an examination of the legal character of the two programs and their relationship is necessary.

The respective roles of federal, state and county governments within the Social Security System have been fixed by a vast network of statutes, rules, policies and procedures, the capstone of which is the federal Social Security Act.[10] Titles I, IV and X of that Act authorize federal financial participation in state assistance programs for the aged, dependent children and the blind. These provisions (and the federal administrators acting under them) also spell out certain conditions to be met by the state before federal funds will be forthcoming. Among these are the requirements: (1) that the assistance programs shall be in effect in all subdivisions of the state;[11] (2) that there be a single state agency to administer or supervise the administration of the program;[12] (3) that payments be in cash for the free and unrestricted use of the recipient;[13] (4) that payments be made to recipients to meet their individual needs, determined on an individual basis, and after consideration of actually available resources.[14]

These, and many additional federal standards, are incorporated and implemented in California's assistance programs for the aged, blind and needy children. These programs are embodied in a few constitutional provisions,[15] in a lengthy and detailed statute constituting a large part of the Welfare and Institutions Code, in three ponderous manuals of policies and procedures issued by the State Social Welfare Board, and in numerous administrative regulations and practices. The programs are made mandatory throughout the state. The State Department of Social Welfare is the single agency with responsibility for supervising administration.[16] It makes rules and regulations.[17] It hears appeals by applicants or recipients who feel themselves aggrieved by county action.[18] It operates a field service for the continuing inspection and review of the work of the counties through ex-

[10] 42 U.S.C. § 301 *et seq.* (Supp. 1952).
[11] *Id.* §§ 2(a), 1002(a), 402(a).
[12] *Id.* §§ 2(a)(3), 1002(a)(3), 402(a)(3).
[13] *Id.* §§ 6, 1006, 406.
[14] *Id.* § 101 (2, a, 8).
[15] CAL. CONST. Art. XXVII, §§ 3(b), 4, 5.
[16] CAL. WELF. & INST. CODE § 103.5.
[17] *Id.* § 103.
[18] *Id.* § 104.5.

amination of individual case records and home visits to the recipients.[19] It maintains a procedure for denying to the county reimbursement of state and federal funds in individual cases in which the grant is improperly computed or is otherwise incorrect.[20] In extreme cases, it may and does withhold all federal and state assistance funds of any county violating the law or the rules.[21] Provisions are legion in the Welfare and Institutions Code directing that payments be made in cash, on an individual basis to meet personal needs, and that they are "absolutely inalienable."[22]

In this arrangement, the counties are the agencies of direct administration. They provide case workers, approve applications and issue warrants. They do so, however, only in accordance with the rules and procedures laid down by the state.[22a] The counties supply approximately one-seventh of the money, the remainder coming from the state and federal government.[23] In addition, the counties are under a state-created obligation to supply indigent aid to persons not eligible for assistance under these programs and not otherwise supported.[24] In March, 1953, all of California's counties expended $1,463,609 for indigent aid. During the same period approximately $26 million was expended on the federal-state-county programs.

From this brief survey, a number of conclusions emerge: (1) the Social Security System is a tightly knit structure of federal, state and county agencies with authority flowing generally from top to bottom; (2) in this structure, the counties are little more than mechanical agents of the state, disbursing federal and state funds according to statutes and rules promulgated by federal and state organs and under the direct supervision of the State Social Welfare Department; (3) the county indigent aid program is subsidiary and residual, designed to meet the needs of persons who do not qualify under the social security programs and the social security programs are of vastly superior substantive importance; (4) in this context, as in others, the counties possess no independent constitutional jurisdiction which can be interposed against the state but are instead mere political subdivisions and governmental agencies of the state, exercising powers which the state may at any time assume or resume;[25] (5) therefore, if the social security program and the County Indigent Aid program, each operating within its own sphere, collide, the county program must give way. Even

[19] *Id.* §§ 112, 115, 119.

[20] County of Los Angeles v. Schottland, Sup. Ct., L.A. No. 61170 (1953).

[21] *Ibid.*

[22] CAL. WELF. & INST. CODE §§ 19, 2006, 2020; Manual of Policies and Procedure §§ 102-40, 155-30, 610-80; State Social Welfare Dept. Bulletin 359.

[22a] CALI WELF. & INST. CODE §§ 114-a, 2021, 2186, 2187.

[23] *Id.* §§ 2021, 3025, 1511.

[24] *Id.* § 2500.

[25] Dineen v. City and County of San Francisco, 38 Cal. App. 2d 486, 101 P.2d 736 (1940); Los Angeles City v. Riley, 6 Cal. 2d 621, 59 P.2d 137 (1936); *Ex parte* Lacey, 105 Cal. 326, 41 Pac. 411 (1895); *Ex parte* Roach, 104 Cal. 272, 37 Pac. 1044 (1894).

more is this the case, if, through the use of the county program, there is a deliberate invasion of the federal-state-county system.

In the present case, the complaints of which the State Social Welfare Board took notice were made by OAS recipients, not by indigent aid recipients. They complained that Los Angeles County was bringing about a diversion of their OAS payments. Consequently, both the parties and the subject matter were within the jurisdiction of the board. Moreover, the order issued by the board did not direct the counties to pay indigent aid to any person, nor did it fix the amount of indigent aid to be paid to any person. It ordered the county to discontinue a practice the aim and effect of which was to divert OAS payments from the recipients. So far as the jurisdiction of the board is concerned, the county could stop indigent aid payments altogether. It could decline to grant them for no reason whatsoever. It could not, however, withhold them for this reason—a reason which was a part of an integrated course of conduct having the design and consequence of diverting OAS grants. Moreover, the board threatened a sanction equally within its competence, namely, the withholding of state and federal reimbursement with respect to the individuals whose payments were diverted and whose appeals were before the board in due course of law.[20]

The board's action rested on further explicit statutory authority: the authority and the duty to maintain the integrity and uniform statewide character of the OAS program;[27] to insure that OAS payments are made to meet the individual needs of the recipients;[28] to make certain that payments are made in cash for the free and unrestricted use of the recipient and are "absolutely inalienable."[29] For the county to divide the OAS grant into two separate checks, one for the proper recipient and the other for the indigent spouse, would be palpably illegal as a forbidden diversion or alienation and would be subject to State Department preventive action. In immunizing the present county inroad upon OAS against the jurisdiction of the State Department, the court has permitted the county to do indirectly what it could not possibly do directly; has sanctioned an impairment of the mandatory statewide nature of the social security system and of important welfare principles; has authorized the county aid tail to wag the OAS dog and, in effect, has let the county get away with a scheme to appropriate state and federal monies to discharge a county duty.

Unsound in terms of welfare law and policy, the opinion is equally questionable for its indifference to problems of judicial review and the administrative record. The court did not deign to evaluate the findings of fact of

[20] *Supra* note 3, at 15.

[27] *Supra* note 12 and 42 U.S.C. §§ 2(a), 402(a), 2(a)(3), 402(a)(3), 1002(a)(3) (Supp. 1952).

[28] *Supra* note 22.

[29] *Supra* note 22.

the State Social Welfare Board. It simply ignored them. By asserting that the State Social Welfare Board has no power over county indigent aid, the court disposed of the case on the ground that the board had exceeded its jurisdiction.[30] The court implied that jurisdictional questions are questions of law with respect to which, presumably, administrative officers in the field could offer no help. Other courts have thought that the interpretations of statutes by those responsible for administering them are at least worthy of respectful consideration and have even attributed "great weight" to them.[31]

But is the question at issue only a question of law? The answer must be returned in the negative. The jurisdictional issue here is actually a mixed question of law and fact, the dominant element being a question of fact. If in fact the Los Angeles County practice was designed to bring about a diversion of OAS payments from recipients to their spouses, and hence to render such payments unavailable to the recipients, then the recipients could not meet their personal needs with such payments, and they were alienated from them. Would such diversion, though it existed in fact, constitue a breach of the statutory provisions requiring that OAS payments be made to meet the individual needs of the recipients and forbidding alienation? If such a diversion were not recognized in fact as a breach of the statutory provisions, the whole object of those provisions would be frustrated. The legal conclusion therefore follows almost automatically from the factual conclusion. The State Social Welfare Board found that the diversion did occur in fact and that there was a breach of the statutory provisions. How should such factual-legal determinations be treated by the courts?

Section 2182 of the Welfare and Institutions Code provides that appeal may be taken to the courts from the board's conclusions of law. The courts have construed this to mean that the board's conclusions of fact are final.[32] The code section draws no distinction between jurisdictional law and ordi-

[30] The weakest argument was that on which the court placed heaviest reliance, namely, the legislature had adopted an amendment explicitly forbidding the Los Angeles County practice in the case of blind assistance. It had declined to adopt a similar amendment with respect to the aged. Therefore, the court attributed the present meaning to the OAS law. The inference from the legislature's action is one case and failure to act in the other, aside from its general infirmity, is refuted by the legislative history. Since the aged amendment eventually passed the Assembly, the inference can only be drawn, if at all, with respect to the Senate. Furthermore, failure of the amendment in the Senate resulted more from the relative strength of the lobbyists before it than from an objective consideration of the merits or legal implications. The critical decision was made by the Senate Social Welfare Committee. The lobby for the County Supervisors' and County Welfare Directors' Associations (at the time, Art Will, who was then also Los Angeles County Welfare Director) was very influential with that committee at the time and George H. McLain, the principal backer of the amendment, was very uninfluencial.

[31] For a discussion of the United States Supreme Court cases dealing with this subject see tenBroek, *Interpretive Administrative Action and the Law Maker's Will*, 20 ORE. L. REV. 206 (1941).

[32] Bila v. Yonng, 20 Cal.2d 865, 129 P.2d 364 (1942); Kelley v. State Social Welfare Board, 82 Cal. App.2d 627, 186 P.2d 429 (1947).

nary law. Until the present case, the California courts have had no opportunity to apply administrative conclusiveness in fact finding to jurisdictional facts.

As to other agencies, mainly dealing with vested rights, jurisdictional fact finding has been held proof against judicial review on collateral but not on direct attack.[33] In the latter case, plenary review has been accorded and the court independently evaluated the work of the tribunal.[34] Contrary to established practice with respect to other agencies and contrary to the need for serious consideration before deciding a leading case with respect to the State Social Welfare Board, the court did not so much as recognize the existence of the board's determinations, let alone weigh the reasons and evidence for them.

Jurisdictional issues—whether of fact, of fact and law, or of law—probably ought to be reviewable by the courts, regardless of whether the agencies deal with vested rights or mere matters of privilege.[35] But judicial review should not be the same as judicial disregard. The reasons of knowledge, experience, concentrated effort and administrative expertise which justify administrative finality in ordinary fact finding argue equally strongly for requiring some judicial attention to the administrative record in the case of jurisdictional fact finding. Perhaps this should be accomplished by some such device as the substantial basis rule, especially with respect to review of the work of an agency dealing with matters of privilege or the right to OAS within the rules. Certainly the performance of the court and the outcome of the present case stand as a striking example of the need for greater judicial deference to the evidence and conclusions of the operative agency.

[33] Nelson v. Oro Loma Sanitary District, 101 Cal. App. 2d 349, 225 P.2d 573 (1951); People *ex rel.* Skelton v. Los Angeles, 133 Cal. 338, 65 Pac. 749 (1901); Spaulding v. North San Francisco Homestead & Railroad Ass'n, 87 Cal. 40, 25 Pac. 248 (1891); People v. Hagar, 52 Cal. 171 (1877).

[34] Miller & Lux v. Board of Supervisors, 189 Cal. 254, 208 Pac. 304 (1922); Miller & Lux v. Industrial Accident Comm., 179 Cal. 764, 178 Pac. 960 (1919); Allen v. Railroad Comm., 179 Cal. 68, 175 Pac. 466 (1918).

[35] For the distinction between judicial review of agencies dealing with matters of vested right and those dealing with matters of privilege see Kleps, *Certiorarified Mandamus*, 2 STAN. L. REV. 285 (1949).