

by Act 282, P.A. 1965, M.S.A. 1960 Rev. Vol. § 17.454(10.4)]. In the absence of such adverse decision, we are not free to conclude that the classification established by the civil service commission is not the determining factor in defining the appropriate unit for bargaining.

Were there to be such a conflict, the statute would control since the provisions of relevant state statutes amend all conflicting city charter provisions. See, for example, *City of Hazel Park v. Municipal Finance Commission*, 317 Mich. 582 (1947); *Hall v. Ira Township*, 348 Mich. 402 (1957); *Brimmer v. Village of Elk Rapids*, 365 Mich. 6 (1961).

Public employees dissatisfied with the appropriateness of the collective bargaining unit may petition the labor mediation board in accordance with Section 12 of Act 336, P.A. 1947, as amended, *supra*, to determine an appropriate unit for the purposes of collective bargaining.

In the event of a petition filed with the labor mediation board, if the civil service classification and the bargaining unit established by the labor mediation board coincide, there will be no conflict.

If, however, the employees wish to assert a conflict and thus to challenge the right of the civil service commission to establish classifications for wage levels and other purposes under the city charter, a means for making such challenge has been suggested hereinabove.

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**SOCIAL SERVICES, DEPARTMENT OF:
STATE EMPLOYEES:
COUNTIES:
WELFARE:**

Status of merged county departments of social services and bureaus of social aid under Michigan social welfare act as modified by Act 401, P.A. 1965, providing for mandatory merger of county and state welfare functions discussed and construed with reference to various state-county relationships affected by the merger act.

No. 4607

February 6, 1968.

Honorable James N. Callahan
State Representative
The Capitol
Lansing, Michigan

You ask for clarification of several questions related to the administrative responsibility for operation of the merged welfare department resulting from mandatory merger of the Genesee County department of social services and the Genesee County bureau of social aid required by the provisions of Act 401, P.A. 1965, which amended various sections of the Michigan social welfare act (Act 280, P.A. 1939 as amended, being C.L. '48 and C.L.S. 1961 § 400.1 et seq; M.S.A. 1960 Rev. Vol., 1965 Cum. Supp. and Cur. Mat. § 16.401 et seq).

Section 100 of the social welfare act, as added by Act 401, P.A. 1965 (M.S.A. Cur. Mat. § 16.490(10) p. 47) protects retirement benefits of former county employees who become state employees upon merger of county welfare departments with the state department of social services. Section 101 of the social welfare act as added by Act 401, P.A. 1965, requires distribution of state funds provided under Section 18¹ to be effective October 1, 1965, and further requires the director and all employees and assistants in which section 23a is not applicable to become members of the state civil service system on or before July 1, 1967.²

It is also necessary to refer to Section 45 of the social welfare act, as amended by Act 401, P.A. 1965, which was in turn thereafter amended by Act 74, P.A. 1966, and which currently provides as follows:

"There is created a county department of social services, hereinafter called the county department, in each county of this state, which shall possess the powers granted and perform the duties imposed in this act. The county department shall consist of a county social services board and the director of the county department, together with such assistants and employees as may be necessary to operate the county department. The board of supervisors in each county shall provide suitable office accommodations. The state department shall make all administrative disbursements for integrated services but the county shall reimburse the state for the portion of administrative expenses earned in respect to county functions.

"The salary and expenses of each individual member of the county board shall be fixed by the county board of supervisors according to the amount of time necessary he shall devote to the performance of his duties. A member of the county board may not serve as the director or an employee of the county department. The members of the county boards shall be appointed at the annual October session of supervisors, and they shall qualify by taking and filing the oath of office with the county clerk and assume their duties as prescribed by this act not later than November 1 of the year appointed.

"The director, employees and assistants of the county department shall be appointed by the state department as recommended by the county or city board from among persons certified as qualified by the state civil service commission, section 48 notwithstanding, and in accordance with the staffing requirements of the state and county departments." (M.S.A. Cur. Mat. § 16.445, p. 157).

¹ M.S.A. Cur. Mat. § 16.418 p. 28. This section provides for distribution by the state department of social services of moneys appropriated by the legislature for public welfare grants in respect to general relief, including medical care and care in the county medical care facility and the burial of deceased indigents. It also provides for the allocation and distribution of moneys appropriated by the legislature or received by the federal government for old age assistance, aid to dependent children, aid to the permanently and totally disabled, and aid to the blind.

² M.S.A. Cur. Mat. § 16.423(1) p. 30, applicable only to Wayne and Oakland Counties, provides an alternative merger program effective only in event no voluntary merger occurred. Both Wayne and Oakland merged voluntarily. Therefore section 23a is not currently relevant.

Having in mind the structural changes effected in all counties by the 1965 act, it will be well to point out that voluntary merger in Oakland and Wayne Counties, the two counties of over 600,000 population, has been implemented by agreement as provided by Section 23 of the social welfare act as amended (M.S.A. Cur. Mat. § 16.423, p. 809), so that merger is now an accomplished fact in all 83 counties.

Turning now to your questions I will state and answer each in turn.

"1. Is the County Department a part of the State Department of Social Services, or does it stand alone as a separate entity with specific duties and authority?"

Answering this question, I advise you that as now provided by Section 45 of the social welfare act, as amended, *supra*, the county welfare department or county department of social services, as it is now called, has been made structurally a part of the state department of social services insofar as all programs financed with federally aided funds are concerned. I further advise you, however, that the county department of social services must also be regarded as a separate legal entity having its own specific duties and authorities with respect to general relief and other programs, such as hospitalization for the afflicted, as to which no state-federal participation is currently available. Therefore the county department is both a part of the state department of social services with respect to certain functions, but continues as a separate entity with respect to those functions as to which its duties and authority remain exclusive—namely, those which do not participate in federally aided programs.

Thus, for example, Section 55 of the social welfare act, as amended, confers authority in the county social services department to administer a public welfare program, including general relief and various other diversified services, including operation of the county infirmary and medical care facility, and the furnishing of hospitalization to afflicted adults, as to which functions the prerogatives and authority of the county department is still exclusive (M.S.A. Cur. Mat. § 16.455, pp. 439 et seq.).

Further, Section 46 of the social welfare act as last amended by Act 60, P.A. 1967, provides for the administration of the powers and duties of the county department and a county social services board of three members appointed from persons within the county to hold meetings as set forth in that section, to be reimbursed for travel and other expenses by the board of supervisors, and to organize and operate as therein provided (M.S.A. Cur. Mat. § 16.446, p. 810). Section 49 of the social welfare act, *supra*, provides that any county social services board shall employ a director who shall be executive officer and secretary of the board and shall be responsible to the board for the performance of his duties (M.S.A. Cur. Mat. § 16.449, p. 226).

Reference should also be made to Section 45 of the social welfare act, as last amended by Act 74, P.A. 1966, *supra*, creating a county department of social services consisting, in part, of a county board of social services to function in the manner therein set forth, as quoted above. (M.S.A. Cur. Mat. § 16.445, p. 157)

It is clear from these sections last referred to that the implanting within the county social services department of a statutory function therein to act as a local entity of the state department of social services is not intended by the legislature to terminate the status of the county social services board as a separate legal entity continuing to have certain exclusive duties and functions other than those performed by it as a local agent of the state department of social services, even though such exclusive county functions are now comparatively negligible.

Turning now to your question two, you ask:

"2. Is the County Director an employee of the County Board of Social Services rather than the State Department of Social Services?"

Under Section 49 of the social welfare act, supra, as last amended by Act 143, P.A. 1966, we find the following pertinent language:

"Any county or district board shall employ a director, who shall be the executive officer and secretary of the board, and shall be responsible to the board for the performance of his duties. The director and his assistants shall hold no elective office, shall devote their entire time to the performance of the duties of their office, and shall receive such compensation as shall be fixed by the state civil service commission, together with their actual and necessary traveling and other expenses incurred in the discharge of their official duties. Unless disapproved by the state civil service commission, the county board, with the approval of the board of supervisors, may provide a supplementary salary to that fixed by the state civil service commission in remuneration for those duties of the director and his assistants if deemed justifiable, associated with the administration of those forms of relief or other welfare programs not wholly or in part financed by federal funds. The cost shall be deemed for all purposes a proper county expense." (M.S.A. Cur. Mat. § 16.449, p. 226)

It is therefore clear that to the extent, however small, that the county social services director functions on behalf of the exclusive county functions of the social services department he is in the employ of the county department, but at the same time he is, as provided by statute, an employee of the state compensated and qualified by the civil service commission as are other state employees. It is necessary here to turn again to the provisions of Section 45 as quoted hereinabove which provides that the director is to be appointed by the state department as recommended by the county board from among persons certified as qualified by the state civil service commission, and in accordance with staffing requirements of the state and county departments.

It will be useful here to keep in mind that the amendment to Section 23 and the addition of Section 23a to the social welfare act by Act 401, P.A. 1965, had the effect of eliminating the bureau of social aid which formerly existed within each county department of social services,³ the special mission of which was to allocate and distribute moneys appropriated by the legislature or receive moneys from the federal government for the relief of

³ See footnote 2.

destitution, unemployment relief, old age assistance, aid to dependent children, aid to the blind and otherwise handicapped, for medical, dental, optometric, nursing, pharmaceutical and burial relief, for child welfare programs and for other state operated programs as set forth at Section 14 of the social welfare act (M.S.A. Cur. Mat. § 16.414, p. 375 et seq.).

I therefore answer your second question by advising you that the county director is an employee of the county board of social services as to the few remaining exclusive county functions of the county board and is, as well, an employee of the state department of social services for the purpose of exercising state functions as hereinabove referred to.

Your third question is as follows:

"3. Does the State Department of Social Services have the authority to regulate such actions as purchase of equipment, authority to travel, attend meetings, conventions, etc., particularly when such actions are at the direction of the County Board? Are such County Boards' authorized expenditures subject to permissive authorization by the State Department of Social Services prior to incurring or effecting such expenditures?"

Reference to the currently amended Section 45 of the social welfare act, supra, (M.S.A. Cur. Mat. § 16.455, pp. 157-158) provides in pertinent part that:

"The salary and expenses of each individual member of the county board shall be fixed by the county board of supervisors according to the amount of time necessary he shall devote to the performance of his duties. . . ."

It is also provided by the same section that the state department will make all administrative disbursements for integrated services, but the county shall reimburse the state for the portion of administrative expenses earned in respect to county functions.

Reading these two provisions together the answer to your question is clear. The state department of social services has authority to regulate purchase of equipment, authority to travel, attend meetings and conventions when such activities are carried on in connection with the integrated functions, such as the categorical assistance programs. The county board has authority exclusive of the state to fix the expenses of members of the county board according to the time devoted to the performance of duties exclusively those of the county board, but these are now so limited that for practical purposes they are without much impact. (See Section 51; C.L. '48 § 400.51; M.S.A. 1960 Rev. Vol. § 16.451.) With respect to activities which are merged the county board of supervisors has the authority to authorize the expenditure. But since the state department is to make administrative disbursements for integrated services, it is clear that the state will have effective control of the services for which it is willing to make such disbursements. It must maintain such control in order to meet the requirements of the United States Department of Health, Education and Welfare for conformity with programs financed in part with federal funds. As a practical matter, the state department must have authority to make administrative decisions with respect to staffing as well

as purchase of equipment and supplies as such decisions relate to all federally aided state programs or the state would be powerless to assure the United States Department of Health, Education and Welfare of compliance by the State of Michigan with respect to programs requiring compliance to obtain federal matched state funds. (Section 10 of the social welfare act, C.L.S. '61 § 400.10; M.S.A. 1960 Rev. Vol. § 16.410.) Section 18 of the social welfare act provides the state department with sufficient authority to define administrative expenses for which the state department will match county funds (M.S.A. Cur. Mat. § 16.418, p. 28).

Finally, it appears that the county board can request approval from the state to provide staff, equipment, etc. for special projects not related to either federally aided state programs or the normal functions of the county social service board, for disbursement by the state and full charge on county funds on a reimbursement basis.

Turning now to your question four, you ask:

"4. Does the State Department of Social Services possess the authority to directly employ a person and assign him to specific duties in a County Department without the approval or recommendation of the County Board of Social Services?"

Section 45 of the social welfare act, *supra*, specifically mandates the state department to appoint director, employees, and assistants of the county department:

" . . . as recommended by the county or city board from among persons certified as qualified by the state civil service commission, . . ."
(M.S.A. Cur. Mat. § 16.445, p. 157)

This clearly contemplates that appointments will be made only from a panel or list of persons recommended by the county.

I have contacted the department of social services and was advised that it is the policy of the state department not to employ or assign staff directly to any county department without first obtaining a recommendation. However, it is pointed out by the staff of the state department that if the county board fails to recommend an appointment or recommends a person not qualified by state standards, the director of the state department can and must make an emergency appointment, so as not to place in jeopardy the state eligibility to receive federal funds available on condition that the state continues to remain in compliances with federal rules.

I believe that the above and foregoing has answered your questions.

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