Washington Law Review

Volume 16 | Number 2

4-1-1941

Old Age Assistance in Washington

Vern Countryman

WASHINGTON LAW REVIEW

and

STATE BAR JOURNAL

Published Quarterly, in January, April, July and November of Each Year by the Washington Law Review Association, at the Law School of the University of Washington. Founded by John T. Condon, First Dean of the Law School.

SUBSCRIPTON PRICE: $1.20 PER ANNUM. CURRENT COPIES 50c

CONTRIBUTORS TO THIS ISSUE

AYER, LESLIE J., B.S., Upper Iowa University, 1899; J.D. 1906, University of Chicago. Professor of Law, University of Washington.

FALKNOR, JUDSON F., B.S., University of Washington, 1917; LL.B., 1919; Dean and Professor of Law, University of Washington.

O'BRYAN, J. GRATTAN, B.A., Jesuit College; LL.D., Regis College, 1928. Professor of Law, University of Washington.

RICHARDS, JOHN W., B.A., University of Wisconsin, 1923; LL.B., 1926; LL.M., 1930; S.J.D., Harvard, 1931. Professor of Law, University of Washington.

SHATTUCK, WARREN L., B.A., LL.B., University of Washington, 1936; J.S.D., Yale, 1936. Professor of Law, University of Washington.

SHOLLEY, JOHN B., B.A., LL.B., University of Washington, 1932; J.S.D., University of Chicago, 1937. Professor of Law, University of Washington.

COMMENTS

OLD AGE ASSISTANCE IN WASHINGTON

Two decades ago, recognition of a governmental duty to care for the aged who had no means of support had gone no further than to provide for their maintenance in almshouses and poor farms. But in 1922 the American Association for Labor Legislation and the Fraternal Order of Eagles began a campaign to abolish the poorhouse system and to substitute for it a proposed Old Age Pension Act providing for monthly grants to needy aged persons from funds to be raised by county governments. Washington adopted this act in 1933[1] and by the end of the following year 28 states had enacted a similar type of old age assistance law. Two years later, Congress passed the Social Security Act, introducing another innovation. This Act contemplated a uniform system of old age assistance on a nation-wide scale, to be accomplished through state cooperation induced by a system of federal grants-in-aid. By September, 1938, a plan to comply with the requirements of the federal scheme was in effect in every state in the Union, in the District of Columbia, and in Alaska and Hawaii.[2]

The federal Act, as originally passed, provided that, within a maximum of $15 per month, the federal government would pay one half of all grants to each individual over 65 years of age and not an inmate of a public institution, made under state old age assistance plans approved by the national Social Security Board, and would also pay to each state 5% of the amount of the matching fund for administration costs.[3] The Board was required to approve any plan which provided: (1) that it was to be in effect in all political subdivisions of the state; (2) for financial participation by the state; (3) for administration or supervision of administration by a single state agency; (4) for a fair hearing before the agency on any denied claim; (5) for such methods of administration (other than those relating to personnel) as the Board should find necessary for efficiency; (6) that the state agency should comply with requirements of the Board regarding reports from the former to the latter; (7) that if the state collected anything from the estate of a deceased recipient it would remit one half to the United States; and which did not exclude, *eo nomine,* (8) persons over 65 years of age (70-year requirement permitted until January 1, 1940); (9) persons who had resided in the state 5 of the past 9 years; (10) United States citizens.[4]

In 1939 the Act was amended to provide matching funds, within a $20 maximum, for monthly payments to "each needy individual" over

---

[1] WASH LAWS 1933, c. 29.

[2] Third Annual Report of the Social Security Board (1938), p. 7.

[3] 49 STAT. 621 (1935).

[4] 49 STAT. 620 (1935). Note that it is a state *plan,* not necessarily a *statute,* which must contain these provisions.

65 years of age and not an inmate of a public institution.[5] Changes were also made in some of the requirements for state plans. Provision (7), above, was omitted;[6] provision (5) was changed to allow for establishment by the Board of a merit system of state personnel administration; and, beginning July 1, 1941, the state plan was also required to provide: (11) that the state agency should consider any other income and resources of an applicant "in determining need"; and (12) that the use of information secured by the agency would be restricted to purposes of administration of the plan.[7]

To these requirements, as construed by the Social Security Board, the states must comply in defining eligibility requirements and in providing the machinery of administration. Failure to comply, either in the content of the plan or in its administration, will result in suspension of the federal matching funds.[8] No limitation is imposed upon the amount of assistance which the state may give except the very practical one that no matching funds will be forthcoming on so much of the grant as exceeds the maximum specified in the federal Act.

ELIGIBILITY REQUIREMENTS

Several months before the enactment of the federal statute, the Washington legislature passed a bill abolishing the county old-age pension system, "accepting" the provisions of the pending Social Security bill, and setting forth a rather liberal policy for providing old age assistance.[9] Section Two of this statute provided that, subject to other provisions therein, every person "in need" "shall be entitled to old age assistance." Section Three directed payment of assistance to every United States citizen 65 years of age (or such lower age as the federal act might provide) who had resided in the state for 5 of the last 10 years, was not an inmate of a public or private institution or in need of continued institutional care, had not disposed of property to qualify for assistance, and whose income was "inadequate to provide a reasonable subsistence compatible with decency and health." No person receiving old age assistance was entitled to any other relief from the state other than medical care,[10] but mere eligibility for old age assistance would not preclude the right to other relief.[11]

Two years later the statute was amended. The previous definition of income was replaced by a specific maximum of less than $360 per year and the ineligibility of aliens and of persons in private institu-

[5] 53 STAT. 1361 (1939), 42 U.S.C.A. § 303.

[6] But the method of computing the amount which should be paid to the state was changed to allow for a deduction of "a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Board," of the net amount recovered by the state "with respect to old-age assistance furnished under the State plan," except that the state can credit against amounts recovered from the estates of deceased recipients any sums expended for funeral expenses. 53 STAT. 1361 (1939), 42 U.S.C.A. § 303.

[7] 53 STAT. 1360 (1939), 42 U.S.C.A. § 302.

[8] 49 STAT. 622 (1935), 42 U.S.C.A. § 304.

[9] WASH LAWS 1935, c. 182.

[10] *Id.*, § 9; REM. REV. STAT. (Supp. 1939) § 9998-9. Smith v. Spokane County 187 Wash. 197, 60 P. (2d) 77 (1936) (blind pension). And see WASH. LAWS 1937, c. 132, § 14; REM. REV. STAT. (Supp. 1939) § 10007-12.

[11] WASH. LAWS 1935, c. 182, § 22; REM. REV. STAT. (Supp. 1939) § 9998-22. Smith v. Spokane County, 183 Wash. 477, 48 P. (2d) 918 (1935) (blind pension).

tions was removed.[12] Another act of the same session repealed the statute requiring certain relatives to support the disabled poor.[13] Under the statute as amended, our Court decided in *Conant v. State*[14] that the particular requirements set out in Section Three constituted a definition of "need" as that term was used in Section Two, and that any person satisfying these requirements was entitled to assistance as a matter of right. Hence, willingness and financial ability of children to support the applicant, not being mentioned in Section Three, did not affect his right to assistance from the state.

The 1939 legislature evidenced a more conservative conception of economic need. It added to the existing statute a "declaration of intent" that old age assistance was not to be available as a matter of right, but was to be available only to persons who were in need.[15] A "person in need" was defined as one who does not have resources sufficient to provide himself and dependents with food, clothing, shelter and "such other items as are necessary to sustenance and health." "Resources" was defined to exclude home, household goods and personal effects of applicant, foodstuffs produced by applicant for himself and family, and cash surrender values less than $300 and loan values less than $100 under insurance policies more than 5 years old. It was defined to include the ability of a spouse or child of legal age residing in the state to contribute to support, except that if such spouse or child should refuse to contribute, it could be determined that such ability to assist did not constitute a "resource sufficient to render the applicant ineligible to assistance."[16]

With the assistance of a provision in the 1935 act that all assistance was granted and held subject to any amendment or repealing act, the Court held that the 1939 amendment would operate to support a reduction made in 1938, based on ability of children to contribute to support.[17]

But the stricter requirements imposed by the legislature were greatly liberalized at the general election of November 5, 1940, when the people passed Initiative 141,[18] providing for assistance to each 65-year-old person (or those of such lower age as Congress might thereafter provide) who has resided in the state for 5 of the last 10 years, is not an inmate of a public institution, has not disposed of property to qualify, is "without resources" and whose income is less than $40 per month (or, if federal contributions in exceess of $20 per month became available, whose income is less than twice the maximum federal contribution). Section Three (g) defines income to exclude: (1) value of use or occupancy of residence; (2) foodstuffs, livestock, fuel, light or water produced by or donated to applicant for use of applicant or his family; (3) casual gifts of cash not exceeding $100 per year; (4) casual gifts in kind of the same value; (5) proceeds

[12] WASH. LAWS 1937, c. 156, § 1; REM. REV. STAT. (Supp. 1939) § 9998-3.
[13] *Id.*, c. 180, § 22, repealing REM. REV. STAT. §§ 9981-9984, 9987-9991.
[14] 197 Wash. 21, 84 P. (2d) 378 (1938).
[15] WASH. LAWS 1939, c. 25, § 1; REM. REV. STAT. (Supp. 1939) § 9998-1a.
[16] WASH LAWS 1939, c. 25, § 3; REM. REV. STAT. (Supp. 1939) § 9998-7a, and WASH LAWS 1939, c. 216, § 17; REM. REV. STAT. (Supp. 1939) § 10007-117a.
[17] Adams v. Ernst, 1 Wn. (2d) 254, 95 P. (2d) 799 (1939).
[18] WASH. LAWS 1941, c. 1, § 1.

from the sale of property which is not a resource. In subdivision (h) of Section Three "resources" are defined to exclude: (1) ability of friends or relatives to contribute to support; (2) insurance policies of less than $500 cash surrender value; (3) homestead, home or place of residence of applicant or his spouse; (4) intangible or personal property of less than $200 value; (5) personal effects of applicant, including clothing, furniture, household equipment and motor vehicle; (6) foodstuffs, livestock, fuel, light or water produced by applicant, his spouse or family for use of applicant or his family.

The new law was submitted to the Social Security Board for approval and the Board found that subdivisions (g) and (h) of Section Three were inconsistent with the requirement in the federal Act that the state plan provide that the state agency should consider "other income and resources" of an applicant "in determining need," and that these subdivisions "may also be in violation of" the 1939 amendment, providing for federal matching funds for payments to "needy" individuals.[19] Thereafter, the state Attorney-General gave his opinion that, in view of the provision in Section Two of the initiative measure that the intent of the measure was to provide for assistance "as liberally as is possible under the terms of the Federal Social Security Act," the obvious intent of the people was "to go only so far as they could in providing grants and still remain within the requirements of the Federal Social Security Act." Hence, in view of the decision of the Social Security Board, he advised that the definitions of "income" and "resources" in the inconsistent sections be disregarded and that the terms be given their ordinary meaning, taking into consideration "all income and resources without substantial exception."[20] A revised plan, conforming to this recommendation, was approved by the Board[21] and was put into effect March 1, 1941.[22]

Support for the Attorney-General's interpretation of the intent of the people is also found in the fact that the severability clause of the 1941 act anticipates not only that a part of the act may be found unconstitutional, but also that it may be "declared" "invalid or not in accordance with the provisions of the Federal Social Security Act."[23] But, if that be the intent of the people, the execution of that intent at least suggests a constitutional question.

It seems clear that a state legislature may, subject to its particular constitutional provisions regarding legislative incorporation by reference, incorporate in its enactments the existing statutes and administrative regulations of another state or of the federal government, without raising any question of the delegation of legislative power.[24] And it appears to be established that the legislature may also enact a

[19] Minutes of Meeting of Social Security Board, Washington, D. C., November 15, 1940.

[20] Opinion No. 4428, Ops. Att'y Gen. (1940).

[21] Document No. 6164, Order of Social Security Board, January 28, 1941.

[22] Staff Memorandum No. 104, State Department of Social Security, January 30, 1941.

[23] WASH LAWS 1941, c. 1, § 21.

[24] *Ex parte* Burke, 190 Cal. 326, 212 Pac. 193 (1923); Chicago Motor Club v. Kinney, 329 Ill. 120, 160 N. E. 163 (1928); Fagg, *Incorporating Federal Law Into State Legislation* (1930), 1 J. AIR L. 199; Note (1923) 23 COL. L. REV. 674.

statute conditioned to take effect or to become inoperative upon the promulgation of a described type of statute or administrative ruling in another jurisdiction.[25] But where the statute contemplates the filling in of content by future enactments of a foreign body, most courts have found that there was a delegation of legislative power in violation of state constitutional provisions.[26] While the decisions purport to be searching for a "primary standard," as in any other delegation case, some of them also reveal that the courts consider any sort of delegation to extra-state agencies an unwarranted relinquishment of state sovereignty.[27]

It would seem that the same considerations would apply to an initiative measure, so that the construction given to Initiative 141 involves a question of delegation of power. Superficially, of course, the effect of the measure as construed is merely to incorporate the provisions of the federal Act. But, since it is the Social Security Board which is to determine the question of inconsistency between the two acts, and since any provisions in the state act which it cannot reconcile with federal requirements are not to be enforced, the ultimate effect is to clothe the Board with power to repeal irreconcilable portions of the state law. It is the only body that can finally "declare" the provisions not in accordance with federal requirements.

On the other hand, it is apparent that the local enacting body has not surrendered any more of its policy-forming power than was surrendered by Congress when it passed the federal statute. Obviously, the intent of the initiative measure was to conform with the policy which the Social Security Act is designed to effectuate. And the expression of policy in the requirements for local plans set forth in the federal law would seem to constitute standards sufficiently definite to protect the federal act against attack as an unconstitutional delegation. The same standards should sustain the state act. Certainly, the expediency of this sort of a device for insuring compliance with federal matching fund statutes should not be disregarded because of an uncritical adherence to the notion of conflicting "sovereign" interests.

[25] Gillum v. Johnson, 7 Cal. (2d) 744, 62 P. (2d) 1037 (1936); City of Pittsburg v. Robb, 143 Kan. 1, 53 P. (2d) 203 (1936); Howes Bros. Co. v. Mass. Unemployment Comp. Comm., 296 Mass. 275, 5 N. E. (2d) 720 (1936) *cert. den.*, 300 U. S. 657 (1937); State v. Andrews Bros., 144 Minn. 337, 175 N. W. 685 (1919). *Cf.* Johnson v. State, 187 Wash. 605, 60 P. (2d) 681 (1936), holding that an act providing that it was to become operative from the date of enactment of a described bill before Congress never became a law, when the bill finally passed by Congress differed materially from the one described.

[26] Scottish Union Etc. Co. v. Phoenix Title & Trust Co., 28 Ariz. 22, 235 Pac. 137 (1925); *In re* Opinion of the Justices, 239 Mass. 606, 133 N. E. 453 (1921); State v. Intoxicating Liquor, 121 Me. 438, 117 Atl. 588 (1922); State v. Webber, 125 Me. 319, 133 Atl. 738 (1926); Smithberger v. Banning, 129 Neb. 651, 262 N. W. 492 (1935); Darweger v. Staats, 243 App. Div. 380, 278 N. Y. S. 87 (1935), 20 CORN. L. Q. 504. *Contra*: *Ex parte* Laswell, 1 Cal. App. (2d) 183, 36 P. (2d) 678 (1934), 10 WASH L. REV. 56; Commonwealth v. Alderman, 275 Pa. 483, 119 Atl. 551 (1923); Johnson v. Elliott, 168 S. W. 968 (Tex. Civ. App. 1914). Warm, *The Constitutionality of Laws Providing for Incorporation of Other Laws, Rules and Regulations in Futuro.* (1934), 8 U. CIN. L. REV. 310.

[27] See *In re* Opinion of the Justices, 239 Mass. 603, 133 N. E. 453 (1921); State v. Intoxicating Liquor, 121 Me. 438, 117 Atl. 538 (1922); State v. Webber, 125 Me. 319, 133 Atl. 738 (1926).

AMOUNT AND NATURE OF ASSISTANCE

Under the 1935 Washington act, the amount and nature of assistance given was to be determined "with due regard to the conditions existing in each case; but . . . shall not exceed" $30 per month unless federal participation was increased, in which event the maximum was to be twice the amount of the federal contribution. It was expressly provided that this assistance might include, among other things, medical and surgical and hospital care and nursing.[28] The state agency was also authorized to pay reasonable funeral expenses not exceeding $100 on the death of a recipient if his estate was insufficient to pay the same.[29]

Any recipient who later acquired other property or income, or whose spouse acquired other property or income, was required to notify the state agency thereof and the agency was to make a corresponding reduction or cancellation of assistance, and any excess assistance theretofore paid was made recoverable as a debt due the state.[30] All grants could be reconsidered from time to time and changes or cancellations could be made where the circumstances so warranted.[31]

The act also contained a provision, the operation of which was conditioned on its being essential to obtain participation by the federal government, giving the state a lien upon the estate of the recipient for assistance paid, and authorizing the state agency to require a recipient to pledge all or part of his property to secure reimbursement for grants paid.[32] The following section authorized the administrative agency, when it had reason to believe that the spouse of a recipient was able to assist the recipient, to bring suit against such spouse to recover the amount he or she was able to contribute.[33] The federal Act, when passed, contained no such requirements, and the next session of the legislature expressly repealed both of these sections.[34]

The only other changes made by the 1937 legislature were alterations emphasizing a liberal trend in policy. The provision for a $30 maximum was amended to provide that the assistance granted "together with the applicant's own resources and income shall not be less than" $30 per month and the section providing that funeral expenses not exceeding $100 "may be paid" was re-worded to provide that they "shall be paid."[35] An attempt by the legislature to remove the provision for recovery of excess assistance paid before the administrative agency was apprised of an improvement in the recipient's circumstances was vetoed by the governor.[36]

In 1939, legislative reaction to the *Conant* case led to restrictive amendments, not only in the definitions of "income" and "resources" previously discussed, but also in the fixing of the maximum grant at an amount which, together with other income and resources, was "not

[28] WASH LAWS 1935, c. 182, § 4.
[29] *Id.*, § 11.
[30] *Id.*, § 13; REM. REV. STAT. (Supp. 1939) § 9998-13.
[31] *Id.*, § 15; REM. REV. STAT. (Supp. 1939) § 9998-15.
[32] *Id.*, § 18.
[33] *Id.*, § 19.
[34] WASH. LAWS 1937, c. 156, § 13.
[35] *Id.*, § 2; REM. REV. STAT. (Supp. 1939) § 9998-11.
[36] *Id.*, p. 533.

to exceed $30 per month."[37] And a general public assistance act of that year provided that upon death of a recipient the state could file a claim for all assistance granted, which should be a preferred claim against the estate, postponed in its enforcement against real estate for so long as the premises were occupied by the spouse or minor children of the decedent.[38]

Initiative 141 raises the amount of assistance to "not less than $40 per month . . . minus the income of the applicant from other sources" (or twice the amount of federal contributions, in the event that they are increased).[39] Upon the death of a recipient, "funeral expenses in the sum of $100 shall be paid by the department."[40] In addition to the assistance in cash, the state is to provide "medical, dental, surgical, optical, hospital and nursing care by a doctor of recipient's own choosing; and shall also provide artificial limbs, eyes, hearing aids and other needed appliances."[41] Assistance given under the provisions of the initiative measure is not to be recoverable as a debt due the state, except where received contrary to the provisions of the measure, or by fraud or deceit, and all claims accrued or which may accrue under the provisions of Chapters 25 [26] and 216 of the laws of 1939 are renounced and declared void.[42]

Administration

The Washington act of 1935 made the administration of old age assistance the duty of the Department of Public Welfare, and the Department was authorized to make all necessary rules and regulations.[43] Applications were to be investigated by the department and the applicant was to be given written notice of its decision, which decision was to be final.[44] This statute, supplemented by Department rules providing for a hearing for any applicant whose claim was denied,[45] was approved by the Social Security Board, January 24, 1936.[46]

At the next legislative session a general public assistance act was passed, vesting the administration of "all public assistance programs originating under the jurisdiction of the Federal government" in the Department of Social Security.[47] Each board of county commissioners was designated as the agent of the Department and directed to employ an administrator to act as chief executive officer of public assistance in the county.[48] It was also provided that any applicant dissatisfied with the decision on his application could appear before the county board and, if still dissatisfied, might appeal to the director of the Department. From the decision of the director, he could, within 30

[37] Wash Laws 1939, c. 25, § 2; Rem. Rev. Stat. (Supp. 1939) § 9998-4.
[38] *Id.*, c. 216, § 24; Rem. Rev. Stat. (Supp. 1939) § 10007-124a.
[39] Wash Laws 1941, c. 1, § 5.
[40] *Id.*, § 14.
[41] *Id.*, § 15.
[42] *Id.*, § 12.
[43] Wash. Laws 1935, c. 182, §§ 4, 6.
[44] *Id.*, §§ 7, 8.
[45] Letter from T. B. Asmundson, Examiner, State Department of Social Security, May 1, 1941.
[46] Second Annual Report of the Social Security Board (1937), p. 108.
[47] Wash. Laws 1937, c. 180, § 6.
[48] *Id.*, § 7.

days, appeal to the superior court.[49]

Another act passed at the same session amended the existing old age assistance law to provide for application to the Department of Social Security, the decision of the Department to be "subject to a fair hearing" conducted by the director in the county of the applicant's residence, with a right to appeal to the superior court within 30 days after the director's decision.[50]

The inconsistencies in these two statutes led to litigation, and the general act, requiring initial application to be made to the county administrator and varying the appellate procedure specified in the old age assistance law, was held to control because it contained an emergency clause and was approved by the governor two days after he had signed the old age assistance bill.[51]

An act of 1939 repealed the procedural provisions of the general statute of 1937[52] and provided that "upon receiving an application for any category of Federal-Aid assistance . . . the County Administrator" shall render his decision within 45 days unless a longer period is required to establish the applicant's age.[53] Additional sections providing for appeal were vetoed by the governor,[54] apparently leaving the provisions of the 1937 old age assistance act to govern appellate procedure. At the same session the old age assistance law was supplemented with a provision that "upon receiving an application for old age assistance, the officer authorized by law to consider and pass upon the same shall" render his decision within 45 days.[55] Since the general act was last approved, and contained an emergency clause, it apparently would control insofar as it conflicted with this provision. In any event, the repeal of the 1937 statute did not necessitate any change in the procedure established thereunder.[56]

The 1941 measure provides for applications to the Department "or an authorized agency" of the Department.[57] The application must be approved or denied within 30 days and the applicant notified in writing of the decision. Failure to notify within that time constitutes a denial of the application.[58] Any applicant feeling aggrieved has a right to a fair hearing before a representative of the Department in the county of his residence, upon filing notice of appeal with the director within 60 days after receiving notice of the decision. The Department must provide a hearing within 30 days thereafter and must give applicant 5 days notice of the date of the hearing, either by registered mail or by personal service. The applicant is entitled to notice of the decision on the hearing within 30 days, and failure so to notify him

[49] *Id.*, § 12.

[50] *Id.*, c. 156, §§ 3, 6; REM. REV. STAT. (Supp. 1939) §§ 9998-5, 9998-8.

[51] State *ex rel* Shoemaker v. Superior Court, 193 Wash. 465, 76 P. (2d) 306 (1938); McAvoy v. Ernst, 196 Wash. 416, 83 P. (2d) 245 (1938).

[52] WASH LAWS 1939, c. 216, § 35; REM. REV. STAT. (Supp. 1939) § 10007-135a.

[53] *Id.*, § 17; REM. REV. STAT. (Supp. 1939) § 10007-117a.

[54] *Id.*, p. 884.

[55] *Id.*, c. 25, § 3; REM. REV. STAT. (Supp. 1939) § 9998-7a.

[56] Letter from T. B. Asmundson, Examiner, State Department of Social Security, May 1, 1941.

[57] WASH LAWS 1941, c. 1, § 6.

[58] *Id.*, § 7.

constitutes an affirmation of the original decision.[59]

The applicant also has a right, within 60 days, to appeal from the decision on the hearing to the superior court, and it is provided in Section Nine of the act that both the applicant and the director "shall have the right to present any additional evidence which the court shall deem competent, relevant or material" and that the court should decide the case on the record, and on "any evidence introduced before it" and could "affirm, modify or reverse the decision of the director and fix the amount of assistance to which the applicant shall be entitled under this act."

A general act passed by the 1941 legislature disregards the system set out in the initiative measure and provides for local administration of public assistance by a "county welfare department"[60] to be established by the county commissioners, with a right in any applicant aggrieved by the county department's decision to appeal to the Department of Social Security, where he is entitled to reasonable notice and a fair hearing. From the decision of the department he may "appeal to the Superior Courts by proceedings in certiorari."[61] While this act would not seem to conflict with the general provisions in Initiative 141 for original applications, it clearly conflicts with the appellate procedure outlined therein. Since the initiative measure cannot be amended by the 1941 legislature,[62] the procedural plan of the general act will have to be construed either as not applying to old age assistance administration, or as providing an alternative method of appeal.[63]

Another innovation of Initiative 141 is the section providing that if an applicant is unable to establish proof of age or length of residence in the state by any other method, a statement under oath before any judge of the Superior or Supreme Court of the state "shall constitute sufficient proof."[64]

In examining the initiative measure, the Social Security Board decided also that the provisions of Section Nine "insofar as they provide that the court may receive additional evidence . . . as a basis for decisions . . . or that the court may . . 'fix the amount of assistance'," were inconsistent with the requirement of the Social Security Act that the state plan provide for the administration or supervision of administration by a single state agency.[65] Acting on the advice of the Attorney-General,[66] the Department then revised the plan to provide for court review to determine only whether the department had acted within its power, employed an honest judgment, and acted neither arbitrarily nor capriciously, with no power in the court to hear new evidence on the merits or to fix the amount of assistance. This revi-

[59] *Id.*, § 8.
[60] *Id.*, c. 128, § 2, discussed at pp. 79-80, *supra.*
[61] *Id.*, § 4, discussed at pp. 80-81, *supra.*
[62] WASH. CONST. AMEND. VII.
[63] See discussion at pp. 80-81, *supra.*
[64] WASH. LAWS 1941, c. 1, § 11.
[65] Minutes of Meeting of Social Security Board, Washington, D. C., November 15, 1940.
[66] Opinion No. 4428, Ops. Att'y Gen. (1940).
[67] Document No. 6164, Order of Social Security Board, January 28, 1941.

sion met with the board's approval,[67] and is now in effect.[68]

Obviously, this second alteration of the content of Initiative 141 raises again the constitutional question previously discussed. It also is indicated in the Attorney-General's opinion that the provision in the initiative measure is itself of doubtful constitutionality, since it may involve a delegation of administrative power to the courts.[69] But, in view of Washington cases under the previous acts reviewing orders of the Department and directing not only the payment of assistance, but also the amount to be paid,[70] and of the consistent enforcement of the provision in the Workmen's Compensation Act that the court, on appeal, shall hear the case *"de novo,"* on the record, to determine whether the administrative agency has "correctly . . . found the facts,"[71] the probability of our Court's holding the initiative measure unconstitutional on this point seems rather remote.

* * *

Many questions remain to be answered under Initiative 141. The measure includes the entirely superfluous provision, "All acts or parts of acts in conflict herewith are hereby repealed."[72] This adds nothing to what would have been the effect of the act without such a provision—the status of prior legislation on the subject remains for judicial determination. And what about former statutes in conflict with the unenforced sections of the initiative measure? Under the 1939 legislation, ability and willingness of certain relatives to contribute to support constitutes a resource; under Section Three (h) of Initiative 141, it does not. Apparently the 1939 statute is repealed, although the conflicting section of the 1941 act is not actually in effect.

Some of these difficulties can be surmounted by the use of the Department's power to make rules and regulations. Although this power, as granted in the initiative measure, is limited to the making of rules and regulations "not inconsistent with the provisions of this act,"[73] a regulation of the Department now embodies the substance of the 1939 legislation on the effect to be given to ability and willingness of relatives to contribute to support.[74] Apparently, the objectionable sections are not even to be given the effect of limiting the Department's rule making power.

---

[68] Staff Memorandum No. 104, State Department of Social Security, January 30, 1941.

[69] "Under constitutional provisions similar to ours, statutes of other states so construed have been held unconstitutional. *Borreson v. Dept. of Public Welfare* (Ill.) 14 N. E. (2d) 485; *Brown v. State Department of Old Age Assistance* (Ill.) 17 N. E. (2d) 221; *In re Opinion of the Justices* (N. H.) 154 Atl. 217." Opinion No. 4428, Ops. Att'y Gen. (1940).

[70] State *ex rel.* Schmidt v. Sullivan, 190 Wash. 600, 69 P. (2d) 828 (1937) (mandamus); Conant v. State, 197 Wash. 21, 84 P. (2d) 378 (1938) (appeal).

[71] REM. REV. STAT. § 7697. Cole v. Dept. of Labor & Ind., 137 Wash. 538, 243 Pac. 7 (1926); Johnston v. Dept. of Labor & Ind., 163 Wash. 549, 2 P. (2d) 67 (1931); Strmich v. Dept. of Labor & Ind., 186 Wash. 649, 59 P. (2d) 372 (1936).

[72] WASH. LAWS 1941, c. 1, § 22.

[73] *Id.*, § 10.

[74] Staff Memorandum No. 143, State Department of Social Security, March 14, 1941.

Other ambiguities may be removed by future legislation—at least the unenforced provisions may be specifically repealed. But, in view of the modifications that have been made in the content of the new act, and of the uncertainties it has created, it would seem that its adherents would have gained more had they simply worded the initiative: "Old age assistance grants, together with other income and resources of the recipient, shall be not less than $40 per month."

VERN COUNTRYMAN.

SURVIVORSHIP IN JOINT BANK ACCOUNTS, and WILSON v. IVERS

Joint bank accounts have given rise to considerable litigation, concerning a number of questions.[1] *A* deposits money in a bank, payable in any part to himself or to *B*, or to the survivor. If *A* draws upon the account, may *B* assert an interest in the money taken, or in property purchased with it? If *B* withdraws money, can *A* reclaim it?[2] If *A* dies must the bank pay *B* because the account is "payable to the survivor," though *B* has no claim of ownership?[3] If *B* is permitted to keep what remains at *A*'s death, is the account subject to estate and inheritance taxes?[4] Do *A*'s creditors have redress against *B*? These are some of the problems presented to the courts. A more common question, and the subject of this Comment, is whether *B* becomes the owner of the account at *A*'s death. Has survivorship been obtained?[5]

None of the cases consulted has held that under no conditions could *B* become the owner of the joint account at *A*'s death. They

[1] This subject is treated by Havighurst, *Gifts of Bank Deposits* (1936) 14 N. C. L. REV. 129; Hemingway, *Joint Tenancy in Bank Accounts* (1931) 10 CHI.-KENT L. REV. 37. Katzenstein, *Joint Savings Bank Accounts in Maryland* (1939) 3 MD. L. REV. 109, and Slater, *Joint Accounts and Trusts Created by Bank Deposits* (1932) 2 BROOKLYN L. REV. 27, discuss the trust theory as it applies to two-party bank accounts. Generally, see Comment (1937) 32 ILL. L. REV. 57; *In re* Edwards' Est., 140 Ore. 615, 14 P. (2d) 274 (1932). Also, PATON'S DIGEST (1926) §§ 1809 *et seq.*; BRADY, BANKING LAW JOURNAL DIGEST (4th ed. 1933) §§ 401 *et seq.*

[2] The *inter vivos* relations arising from joint bank accounts are briefly discussed in Note (1938) 13 WASH L. REV. 230.

[3] REM. REV. STAT. § 3249, authorizing the bank to pay the survivor, is similar to the draft recommended by the American Bankers Association "to clear up any legal doubt concerning the authority of the bank to pay over an account to the survivor." 2 PATON'S DIGEST (1926) § 1809 (a). Today 31 states have adopted statutes similar to this, and only Alabama, Kentucky and Tennessee have no statutes on the subject, per information supplied by the A. B. A.

[4] *Re* the Washington law on this subject, see note 39 *infra.*

[5] That the account is *payable* to the survivor (the normal provision of a joint account agreement) does not mean he may *keep* what he withdraws (a right termed survivorship). *In re* Edwards' Estate, 140 Ore. 615, 14 P. (2d) 274, 277 (1932); Smith v. Planters' Sav. Bank, 124 S. C. 100, 117 S. E. 312 (1923) (dissenting opinion).