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Federal Aid for Maternal and Child Welfare

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FEDERAL AID FOR MATERNAL AND CHILD WELFARE.—The recent trend in progressive social legislation has been manifested in many ways, and not the least satisfactory from the point of view of the student of social welfare, is the granting of federal aid for maternal and child welfare. When the Sheppard-Towner Act,[1] the first legislation of its kind in America, was passed in 1921, it was for the avowed purpose of decreasing the alarming figure of 13,000 deaths annually through maternity (of which two-thirds were held by physicians to be unnecessary) and to aid the 300,000 children throughout the country who were needy and crippled, the 1,000,000 who were tubercular and the 500,000 who suffered from diseases of the heart.[2]

This Act, regarded now as the forerunner of sections in the Social Security Act[3] containing similar provisions, provided for the creation of a federal board to be called the Children's Bureau, to supervise the enforcement of the Act. The appropriation consisted of a basic fee of $240,000 to be divided among the states and an additional amount, not to exceed $1,000,000, to be distributed to those states which complied with the requirements hereinafter mentioned. The basic fee (a portion of $240,000) was to be paid to each state which fulfilled the specified conditions in the act and each state was required to add to the appropriation by giving to her separate state agency (designated by the state to administer the Act, or newly created by the state for that purpose) that portion of $1,000,000 which the federal government granted. In other words, the state was required to match the federal appropriation with the exception of the basic fee.

In order to receive the money, however, the state had to comply with certain regulations which were named specifically in the Act. Each state desiring to come in under the provisions and receive the benefits of the Act was required to establish a state agency to administer the Act and this agency was compelled to submit its plans to the federal board for approval. The federal board was given the right to withhold further appropriations if any state failed to comply with the regulations.

The Act further provided that no official should submit a child to treatment over the objection of the child's parents. It specifically pointed out that "nothing in this chapter is meant to decrease parental authority."[4] Furthermore, the state was forbidden to use the money appropriated for the purchase, erection, repair or rental of any building or for a maternity stipend or gratuity.

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[1] 42 STAT. 224, 42 U. S. C. §§ 161–174 (1921).

[2] Sydenstricker, *Public Health Provisions of Social Security Act* (1936) 3 LAW & CONTEMP. PROB. 265.

[3] 49 STAT. 631, 5 U. S. C. §§ 501–505 (1935).

[4] 42 STAT. 224, 42 U. S. C. § 169 (1921).

The Sheppard-Towner Act was in effect from November, 1921, until its repeal in June, 1929.[5]

It is interesting to note that although the state of Massachusetts made an effort to test the constitutionality of the measure [6] the Supreme Court of the United States refused to take jurisdiction. Mr. Justice Sutherland, speaking for the court, said, "In the last analysis the complaint of Plaintiff State is brought to the naked contention that Congress has usurped the reserved powers of the several states by the mere enactment of the statute. It is plain that the question, as it is thus presented is political and not judicial in character and therefore is not a matter which admits of the exercise of judicial power." [7]

The discontinuation of the Sheppard-Towner Act in 1929 left the progress in national aid for maternal and child welfare at a standstill and it was not until the passage of the Social Security Act [8] in 1935 that a further attempt to give such aid on a national scale was made.

This Act provides for a total expenditure of $3,800,000 annually by the federal government, supervised by the Children's Bureau and the Secretary of Labor, for maternal and child welfare in rural areas and those suffering from severe economic distress. Each state which complies with the provisions of the law receives $20,000 as a basic appropriation. In addition to the basic fee the sum of $1,800,000 is to be divided among the qualifying states according to their population; each state receiving such part of $1,800,000 as the proportion of that state's total live birth-rate is to the federal birth-rate. Two other bases for the distribution of appropriations over and above the basic fees are set forth. Each state receives a portion of $980,000 according to the financial needs of the state and the remainder of the appropriation is to be used to aid in the solution of special health problems in the individual states. In order to meet the requirements of the Act each state must adopt a suitable plan for the extension and improvement of local maternal and child health centers which will be

[5] 44 STAT. 1024, c. 53, § 2 (1927) (The word repeal is not used. The Act of 1921 is declared to be of no force after June, 1929, by Act passed January, 1927).

[6] Massachusetts v. Mellon, 262 U. S. 447, 43 Sup. Ct. 597 (1923).

[7] Professor Finkelstein, in his article on *Judicial Self-Limitation* (1924) 37 HARV. L. REV. 338, points out that Mr. Justice Sutherland presented an admirable reason for declaring the law constitutional, although refusing to take jurisdiction. In his opinion the learned Justice said, "But what burden is imposed on the states, unequally or otherwise? Certainly there is none, unless it be the burden of taxation that falls on their inhabitants who are within the taxing powers of Congress as well as the states where they reside. Nor does the statute require the states to do or yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated through the simple expedient of not yielding."

[8] 49 STAT. 631, 5 U. S. C. §§ 501–505.

acceptable to the Chief of the Children's Bureau. The type of plan required is specifically indicated in the Act.[9]

The Act is designed to encourage further state spending and federal funds are not to be a replacement of state funds but are rather to supplement them. For instance, in the matter of payments to states on the basis of population, the state receives one-half of the amount when it has been matched by existing appropriations and the other half is made available to the state only when it is evenly matched by new appropriations from the state.

Certain amounts which are available are not required to be matched by state funds. Each state receives an immediate allotment of 5% of the total amount available on the basis of financial needs; the remainder is placed in an equalization fund and 15% of the total amount is distributed among the states most urgently in need of financial assistance. A total of 12% of the entire appropriation is set aside for the establishment and strengthening of suitable training centers for personnel of the agencies which administer the Act and this amount is available to the states without the addition of state funds.

On the whole, the present plan is infinitely more far-reaching than its predecessor. It provides more than twice as much money in federal funds and requires state expenditures of several times the figure expected in the Sheppard-Towner Act.[10] The present plan should, therefore, operate to reach a much larger proportion of those who are in need of such aid.

New York State has passed the legislation necessary to comply with the provisions of the Act and to reap the benefits thereof.[11] This state statute provides: that the State Department of Health is the state agency to administer the Social Security Act relating to maternal and child health services; that the State Commissioner of Health is in charge; and that the Department of Social Welfare is the agency to expend money made available for child welfare under the Federal Social Security Act.

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[9] *Id.* at § 503 (a) A state plan for maternal and child health services must (1) provide for the financial participation of the state; (2) provide for the administration of the plan by the state health agency or the supervision of the administration of the plan by the state health agency; (3) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan; (4) provide that the state health agency will make such reports in such form and containing such information as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for the extension and improvement of local maternal and child-health services administered by local child-health units; (6) provide for cooperation with medical nursing, and welfare groups and organizations; and (7) provide for the development of demonstration services in the needy areas among the groups in special need.

[10] 42 STAT. 224, 42 U. S. C. §§ 161–174 (1921).

[11] Laws of 1937, c. 15, art. 16a, 2c.

Unfortunately, the Supreme Court of the United States has not yet been given an opportunity to pass on the constitutionality of this portion of the Social Security Act,[12] for no test case has been presented to it. Taken on the basis of its action on the Sheppard-Towner Act,[13] however, it is fairly safe to say that, should the court take jurisdiction if and when a test case is presented to it, it will follow the principles laid down in the *Massachusetts* case.[14] Certainly the problem presented to the court would, in the main, be similar to the problem presented in the former case and on the basis of this previous action it would seem that the Act will be upheld.

EDYTHE R. DUCKER.

EXECUTORY ACCORD.—The legislature has enacted an amendment to the Personal Property Law and the Real Property Law in relation to the effect of an agreement to accept a stipulated performance in satisfaction at some future time of a presently existing right of action or claim held by a creditor.[1]

> "Section 33-a — Personal Property Law. — *Executory Accord.*
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> 1. * * *.
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> 2. An executory accord hereafter made shall not be denied effect as a defense or as the basis of an action or counterclaim by reason of the fact that the satisfaction or discharge of the claim, cause of action, contract obligation, lease, mortgage or other security interest which is the subject of the accord, was to occur at a time after the making of the accord provided the promise of the party against whom it is sought to enforce the accord is in writing and signed by such party.[2]
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> Section 33-b. An offer in writing, hereafter made, signed by the offeror, to accept a performance therein designated in

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[12] 49 STAT. 631, 5 U. S. C. §§ 501–505 (1935).
[13] 42 STAT. 224, 42 U. S. C. §§ 161–174 (1921).
[14] 262 U. S. 447, 43 Sup. Ct. 597 (1923).

[1] N. Y. Laws 1937, c. 77 (§ 1, Chapter forty-five of the laws of nineteen hundred and nine, entitled "An act relating to personal propery, constituting chapter forty-one of the consolidated laws" is hereby amended by inserting therein two new sections, to be sections thirty-three a and thirty-three b. § 2— Re-enacts the provisions of § 1 into §§ 280, 281 R. P. L.).

[2] 3. If an executory accord is not performed according to its terms by one party, the other party shall be entitled either to assert his rights under the claim, cause of action, contract obligation, lease, mortgage or other security interest which is the subject of the accord, or to assert his rights under the accord.