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Welfare in the 1957 Legislature†

Jacobus tenBroek*

In the field of welfare and particularly in that part of it known as public assistance, the regular 1957 session of the California Legislature was one of the most important to be held in many years. Indeed, it might well be said to have been the most important since California's acceptance of the provisions of the Federal Social Security Act in the mid-1930's.

In all, a total of 70 measures affecting welfare programs and administration were passed and signed into law, about 50 per cent more than the total during the preceding 10 years. New programs of public medical care and of aid to the permanently and totally disabled were instituted, carrying with them a chain of new program relationships among federal, state and local governments and between governmental and private or quasi-public agencies and associations. The medical care program will be reviewed in the next issue of the California Law Review. Existing categorical aid programs of assistance to the aged, blind and dependent children were significantly modified in the amount of the grant, the method of determining it and conditions of eligibility. Long prevalent rules of local settlement and county residence were uprooted. A public meeting requirement was fixed for the State Social Welfare Board.

In two areas, the Legislature moved to reverse policies resulting from two statutory decisions of the California Supreme Court. In the field of child welfare, as distinguished from public assistance, two very important bills were passed. One (S.B. 538, Cal. Stat., c. 1573) authorizes boards of supervisors to establish through a county agency or agencies services which will offer protection to children whose "rights or physical, mental or moral welfare" is "threatened by their present circumstances or environment." The other (A.B. 2449, Cal. Stat., c. 1321) provides medical care and hospitalization through private doctors and hospitals for unmarried expectant mothers who are financially unable to pay for their own care and who have requested a licensed adoption agency to study the child with a view toward adoptive placement. The cost of the service is to be financed by an increase of $100 in the fee to be paid by prospective adoptive parents on all children placed by adoption agencies. For a brief summary of 1957 welfare legislation see Gleason, Welfare Legislation Roundup, 31 Welfare News 2 (1957).

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2 Two of the 70 were in effect canceled by duplicate bills. Thirty-eight of the bills effected technical or minor changes.

3 Discussed at notes 159 and 191 infra.
Still other highly important matters were assigned to a legislative in-
terim committee and decision was thus postponed—replacement of the
present system of joint state-county administration and financing of catego-
rical aids by exclusive state financing and administration; abolition of
responsibility of relatives for the support of aid recipients; reorganiza-
tion of the administration of various services to the blind; establishment of
employee status of workers in state sheltered shops.

Of considerable importance too is what the Legislature declined to do.
Efforts by county welfare directors, the California Bar Association and the
State Division of Administrative Procedure to change the Welfare Board's
system of hearing officers were rejected. A variety of bills transferring de-
partment hearing officers or their functions to the Division of Administra-
tive Procedure, requiring that all hearing officers be lawyers with substan-
tial experience and practice and permitting the Division of Administrative
Procedure to assign hearing officers to a particular department for not
more than one year out of five failed to emerge from committee. A move
by the district attorneys to augment their role in the absent father cases
made only a little headway. A mandatory requirement was laid down that
the applicant be referred to the district attorney at the time of application
if the whereabouts of the absent parent is unknown, and specific circum-
stances were listed under which it may be found that a parent has not
cooperated with the district attorney in obtaining support from the absent
parent. A move to require that rules and regulations promulgated by the
State Social Welfare Board be submitted to the Attorney General for his
determination that they are in conformity with the law—later modified to
require submission to the legal officer of the State Department of Social
Welfare for such determination—in the end failed altogether. A similar
fate awaited perennially recurrent bills removing safeguards providing for
the confidentiality of welfare records, and rendering less stringent the
citizenship requirement in the old age assistance program.

I

THE DISABLED AID LAW

In 1950, as an answer to the long-developing pressures for a national
disability program and as an alternative to providing it through social in-

\[4\] A.B. 1582.
\[5\] S.B. 1670, A.B. 1917, A.B. 2399.
\[6\] A.B. 1234.
\[7\] A.B. 3482.
\[8\] S.B. 790, S.B. 1600, S.B. 1604, S.B. 1605.
\[11\] S.B. 1669, A.B. 3993.
\[12\] A.B. 3381.
\[13\] A.B. 239, A.B. 2469.
insurance, Congress added title XIV to the Social Security Act authorizing grants in aid "for the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled ...". The states rapidly responded to this stimulus. By 1957, federally approved programs existed in 41 states. Only Arizona, Indiana, Iowa, Kentucky, Nevada, Texas and California had not taken action. In California, this was true despite persistent and active campaigns conducted by Governor Earl Warren, the State Department of Social Welfare and others in 1950, 1951, 1953, and 1955. In each of those years the Legislature considered and rejected disabled programs.

The 1957 session of the California Legislature, therefore, had to deal with what was in effect a long pent-up pressure, with a legislative history of inaction conspicuously out of harmony with a national pattern created and supported by national financial inducements, and with California's own treatment of other groups, many of them having claims on the aid of the state far less imperative than the disabled.

Twelve bills were introduced. There was much less direct opposition and much more support than in prior years. For the first time, a private organization, The Crippled Children's Society, mounted an active campaign. Even so, the major vehicle, Assembly Bill 2468, failed to clear the necessary committees. Once again, the proposal seemed doomed to failure. But for the alert legislative strategy of Assemblyman Bruce Allen, this might well have been the case. Two days before adjournment, he revived the bill by managing to have it added on the Assembly floor, as a rider to Senate Bill 1509, a widely-supported bill increasing the aid grant to aged recipients. This strategy not only revived the disabled proposal but emphasized the inequity in treatment accorded this group of the needy. Senate Bill 1509, with its rider, was adopted by the Senate in a vote concurring with the Assembly amendments.

In most respects the twelve disability assistance bills introduced in the 1957 session of the Legislature were cut to a common pattern. They all incorporated numerous provisions found in the existing categorical aid programs. In most critical areas—the definition of disability and the standard of assistance—however, there were significant differences. In almost all of the bills, disability was defined as a major physical or mental impairment likely to continue throughout the lifetime of the individual. In one group of bills, the impairment had to be so severe as to create a need that the individual receive continuous care and attention in order to carry out the

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15 Senate Bills 92, 637, 1386, 1507, 1938, 2125; Assembly Bills 238, 589, 1915–16, 2468, 3935, 4051.
daily regimen; in another, only sufficient to prevent the individual from engaging in employment for remuneration or profit or from discharging duties as a homemaker. In one group of bills, the method of grant determination, like that in the old age and blind programs, was a set sum fixed by the Legislature to meet basic needs. In the other, it was a budget method limited either by an average grant per recipient or by a ceiling amount.

As finally passed and signed into law, the Aid to the Disabled Bill\(^\text{16}\) contains an odd combination of features selected from the aged, blind and children’s programs. In the main, the principle of selection seems to have been the restrictiveness of the feature. Inside and outside of the Legislature, the law is widely regarded as only the first step in the development of proper provision for the disabled.

The Legislature began by writing into the law a rigorously restrictive definition of disability. To qualify, the applicant must be “permanently impaired and totally disabled.”\(^\text{17}\) Lest any doubt should arise as to the meaning of these phrases, the Legislature supplied its own lexicon. “‘Permanently impaired and totally disabled’ means suffering from a major physical or a major mental impairment, not a psychosis, or a combination of both which is verifiable by medical findings and appears reasonably certain to continue throughout the lifetime of the individual without substantial improvement.”\(^\text{18}\) Moreover, even if a person is “permanently impaired and totally disabled” within the official definition thus provided, he is not qualified “unless he requires constant and continuous care.”\(^\text{19}\) Then to make trebly sure that only the most permanently impaired and the most totally disabled are eligible, the Legislature proceeded to define “constant and continuous care.” “A person needing constant and continuous care is one who is bedfast, chairbound, or in need of physical assistance without which the daily regimen could not continue or whose mental or physical impairment makes continuous supervision essential.”\(^\text{20}\) Even that, however, was not sufficient! The Legislature took one more precaution; indeed, took it twice—once negatively and once affirmatively. “The definitions of terms as provided for in this section,” it said, “shall not be liberally construed . . . but the definitions of such terms shall be strictly construed.”\(^\text{21}\)

Whether because it lacked faith in the power of language to restrict or because it possessed faith in the powers of the disabled, or for both reasons, the Legislature in the next section directed the administering department to “encourage the rehabilitation or employment” of the disabled recipient.\(^\text{22}\)

\(^{16}\) CAL. WELF. & INST. CODE §§ 4000–4192.

\(^{17}\) Id. § 4000.

\(^{18}\) Ibid.

\(^{19}\) Ibid.

\(^{20}\) Ibid.

\(^{21}\) Ibid.

\(^{22}\) Id. § 4002.
The amount of the grant and the standard of assistance are provided for in language which proved highly ambiguous: "For needy disabled persons . . . there shall be paid an amount equivalent to the actual need of the recipient, but not to exceed the maximum amount" of $105 per month. "The State Social Welfare Board shall establish a standard of assistance, within the limits set forth in this section, which will enable each recipient to maintain a standard of living compatible with decency and health."23

The conditions of eligibility unrelated to disability are, in general, those contained in the other public assistance programs, with variations in forms, amounts and other details.

As in the other three aids,24 persons owning real property, the county assessed value of which, less all encumbrances of record, exceeds $5000 are made ineligible; and real property owned below that amount is required to be "utilized to provide for the current or future needs" of the recipient.25 The personal property limit is set at $600 (less encumbrances and excluding personal effects).26 This is the amount allowed in the Aid to Needy Children program.27 The aged and blind are allowed $1200.28

Eighteen years is fixed as the lower age limit.29 No upper age limit is set, although some of the disability bills had contained a cut-off date at 65. This would have forced aged disabled persons ineligible for old age assistance to go back to general relief, thus working obvious hardships and inequities. As the law stands, disabled persons over 65, with few exceptions, are free to choose between aged and disabled aid. The great disparity in the two programs will result in most aged disabled persons going on aged aid.30

As in aged and blind aid31 a state residence requirement is fixed at 5 out of the last 9 years, including the year immediately prior to application.32

Citizenship is laid down as a condition of eligibility but with a curiously qualified exception. A disabled alien is eligible who has resided continuously in the United States since January 1, 1932 if he has not been convicted of an overt act against the Government of the United States, if he declares under oath that he desires to become a citizen of the United States, and if annually thereafter he submits evidence "that he is proceeding diligently within the limits of his ability to qualify for citizenship."33

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22 Id. § 4020.
24 Id. §§ 1520, 2164, 3047.01.
25 Id. § 4163. See also §§ 4164, 4165; State Dept. of Social Welfare, Aid to Totally Disabled Manual §§ D-131 to D-134 (hereinafter cited as SDSW, ATD Manual).
27 Id. § 1521.
28 Id. §§ 2163, 3047.2.
29 Id. § 4160; SDSW, ATD Manual §§ D-100 to D-102.
30 SDSW, ATD Manual § D-011.10.
31 Cal. Welf. & Inst. Code § 2160(c) (2), 3043.
32 Id. § 4160(c); SDSW, ATD Manual §§ D-111 to D-117.
33 Id. § 4160(b), SDSW, ATD Manual §§ D-120 to D-122.
Disabled aid recipients are not eligible for benefits under the new medical care program enacted at the same session of the Legislature. That program covers all other aid recipients, including even Aid to the Partially Self-Supporting Blind and Aid to Needy Children cases to which the federal government makes no contribution. However, the medical care bill had passed the Legislature and been sent to the Governor before the disabled aid bill was activated on the floor of the Assembly.

Patients in mental institutions are not eligible for disabled aid though some such cases are eligible for aged and blind aid.

The provisions in the aged and blind aid laws providing that proceeds from the sale of real property are to be treated as real property for a year if they are retained for the purchase of a home are not included in the disabled law.

Legal liability of financially able relatives is mentioned in two sections, one drawn from the aged law and the other from the blind law. The omission of other provisions bearing on the subject in the aged and blind laws which give the copied sections much of their meaning leaves the disabled law strikingly deficient and unclear. A person is made eligible for disabled aid if, in addition to other qualifications, he "is not receiving adequate support from a husband or wife, or parent, or child able and responsible under the laws of this State to furnish such support." A person who is "receiving adequate support" from any source, including spouse, parent, child, or other relative or non-relative, whether "able and responsible under the laws of this State to furnish such support" or not, is ineligible for disabled aid or any of the other aids. The provision thus is not a declaration of legal liability. It does not create or qualify such liability for the purposes of the program. Literally, it says nothing about the liability of relatives from whom the disabled person receives no support. It refers to liability already existing under the laws of this state, i.e., presumably under the Civil Code. The Civil Code provisions are substantially modified with respect to aged and blind aid recipients by the Welfare and Institutions Code sections dealing with those programs. Among other things, those sections incorporate relatives' contributions scales serving as maximums within which the county boards of supervisors are charged with responsibility for fixing relatives'
ability to pay. These sections are omitted from the disabled law and, as a result, that law contains no suggestion of a standard by which to make that determination. Nor does it contain any specific mention of an administrative body authorized to make it. If the disabled aid law is read as creating or recognizing relatives' responsibility for the purposes of the disabled program, the establishment of standards normally would fall to the State Social Welfare Board, or, in the absence of action by it or through delegation from it, to the administering counties. Acting on this reading of the law, the State Social Welfare Board has imposed on the counties the duty to determine whether there are relatives of the disabled person responsible for his support, to assess their ability to contribute, to inform them of their responsibilities and, if possible, to obtain from them agreements to contribute to the extent of their ability. The second section of the disabled law—this one copied from the blind law with some modifications—in part confirms and in part refutes the interpretation adopted by the State Social Welfare Board. It directs the board of supervisors of the county to request the district attorney or other civil legal officer to proceed against "a spouse, parent, or adult child" of any disabled recipient "pecuniarily able to support him, either in whole or in part, upon the failure of such kindred to perform their duty." The district attorney or other civil legal officer "may" maintain an action in the superior court against the relatives in the order named to recover such portion of the aid granted "as the courts find" the relative "pecuniarily able to pay." The reference to judicial findings as to the pecuniary ability of the relatives to pay is evocative of the Civil Code support obligation and tends to suggest, although it does not necessarily require, independence of judicial judgment from previously established administrative rules. On the other hand, the section clearly pertains to the method of enforcing the responsibility of relatives in connection with disabled aid the administration of which necessarily entails previous

41 CAL. WELF. & INST. CODE §§ 2181, 3088. The section in the aged law much more explicitly vests the county supervisors with the power and duty of fixing the relatives' responsibility to pay than does the section of the blind law.

42 In addition the disability law contains no section comparable to CAL. WELF. & INST. CODE § 2011 in the aged law forbidding county officials to "make any demand upon any person, other than a legally responsible relative, . . . to contribute a stated amount to the support of the applicant each month . . . ." Nor does it contain any section comparable to CAL. WELF. & INST. CODE § 2181.01 in the aged law that the grant shall not be "withheld pending investigation of the financial condition of responsible relatives, if the applicant has established the fact that he is not receiving support from such relatives."

43 SDSW, ATD MANUAL § D–150.10.

44 The phrase "residing within the State" which qualifies the responsible relatives under the blind aid law sections, CAL. WELF. & INST. CODE §§ 3088, 3474, does not appear in the disabled law. Apparently, responsible relatives of disabled recipients are legally liable even though outside of the state.

45 CAL. WELF. & INST. CODE § 4189, copied from §§ 3083, 3474, the blind law.
administrative findings if not rules. In such cases, there can be no doubt about the primacy of the Welfare and Institutions Code over the Civil Code. 46

The distribution of administrative authority under the disabled aid law follows, in the main, the pattern established for other aids. There are some significant variations, however.

The Governor is authorized to make all necessary agreements required by the United States Government. 47 Payments may be made to individuals under the law only so long as federal matching funds are available. 48

The State Department of Social Welfare is made the single state agency “with full power to supervise every phase of the administration . . . .” 49 The State Department of Social Welfare, i.e., the State Social Welfare Board, is vested with the rule-making power which, when exercised, is binding upon the counties. 50 Indeed, “no county shall receive any apportionment of funds from the State under the provisions of this chapter unless it is complying with all the requirements of the rules and regulations . . . .” 51 The method of enforcement used by the State Department of Social Welfare under the other aid programs is thus given express statutory sanction. Rules are specifically forbidden which discriminate against “treatment by prayer or spiritual means in the practice of the religion of any bona fide church, sect, denomination, or organization.” 52 Applicants or recipients who feel themselves aggrieved are entitled to an appeal and a fair hearing before the State Social Welfare Board. 53 Determination of one condition of eligibility—permanent impairment and total disability—in accordance with the requirements of the federal officials, 54 is to be made by the State Department of Social Welfare. 55 The only similar arrangement in other programs is in Aid for the Aged.


In the section of the aged law, Cal. Welf. & Inst. Code § 2224, comparable to § 4189, the aid to be recovered in the judicial proceeding is so much as the relative “is able to pay” without specifically vesting in the court the power to make that finding. Presumably this is because the aged law contains relatives’ contribution scale and expressly vests in the county supervisors power to determine ability to pay. Cal. Welf. & Inst. Code § 2224 also forbids recovery for any date prior to that on which the supervisors make a finding that the responsible relative was pecuniarily able to pay.

48 Id. § 4025.
49 Id. § 103.5.
50 Id. §§ 4140, 4003, 4020, 103.1.
51 Id. § 4023.
52 Id. § 4145.
53 Id. § 104.1.
54 Federal Handbook of Public Assistance Administration, Part IV § 3830, par. 4.
to the Blind where the determination of blindness must, again according to federal specifications, be made by the state agency. This is an easier determination since it involves only one type of disability and does not take into account social factors.

The counties are given the task of direct administration, as in the other three aids. They are to receive and act upon applications, provide funds in the proportions directed, and "do all other acts and things necessary for . . . carrying out" the law. These assignments are in addition to "other powers and duties in relation to the care and support of the poor." The aid provided is to be treated "as an additional method of supporting . . . the needy disabled"; and all other laws on that subject are to remain in effect, except to the extent that they are inconsistent. The federal government supplies one-half of the individual aid grant up to a maximum of $60 plus $9. The state government supplies six-sevenths and the county one-seventh of the remainder. The counties and the federal government share the cost of administration. A number of step-lively admonitions found necessary and developed in the statutory provisions of other aids, are repeated in the disabled law. Opportunity to apply for aid must be made available to all.

Applications must be investigated "promptly, without any unnecessary delay, and with all diligence." Aid must be authorized "as soon as administratively possible." Payments must be made "promptly."

Putting the disabled aid law into effect involved the staff and board of the State Social Welfare Department in protracted and intense debate. Few discussions in the last decade have seen such sharp division within the staff and the board. The new medical care statute, placed in operation during the same period, is more comprehensive in scope and involves more

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65 Federal Handbook of Public Assistance Administration, Part IV § 3320.
67 The State Social Welfare Board is directed to appoint an advisory committee to give advice to the department "on the medical and rehabilitative aspects of aid to the disabled." Cal. Welf. & Inst. Code § 4150. Appointments to this committee have been made as follows: Dr. Leon Lewis, Fairmont Hospital, Alameda County; Dr. Seymour Kolko, psychiatrist; Miss Elizabeth Payne, School of Social Work, University of Southern California; Mrs. Constance L. O'Brien, Executive Director, Visiting Nurse Assoc. of Los Angeles; Mr. Charles McGonegal, Chairman, Rehabilitation Commission, The American Legion; Mrs. Lillian Sattinger, Attorney, Los Angeles; Mr. Richard Footner, President, California Association of Nursing Homes, Sanitariums, Rest Homes and Homes for the Aged.
69 Id. § 4022.
70 Id. § 4007.
71 Id. §§ 4021, 4026.
72 Id. § 4180.
73 Id. § 4181.
74 Id. § 4181.5.
75 Id. § 4182.
far-reaching and difficult policy decisions. Yet it elicited no similar response. The basic problem arose over the feeling of the top echelons of the staff that they had committed themselves to legislative committees to keep the disabled caseload down to something roughly approaching that in blind aid, i.e., about 13,000 recipients, and to hold expenditures to the smallest possible total within that caseload. That in the end the staff overshot the mark, that the program yielded fewer hundreds of recipients than the thousands permitted by the agreement, is testimony to the zeal with which the commitments were carried out. A segment of the staff and board, which proved to be a minority, was convinced that the caseload projections of the staff were in error, that, in any event, the law should be administered reasonably as it stood, unmodified by the staff's beliefs about legislative intent, and that where policy alternatives were reasonably possible they should be selected in favor of greater numbers of recipients and greater amounts of aid to this least favored of the needy groups.

The discussion focused on five legal problems, depending basically upon the analysis of only two sections of the statute: the meaning of disability; the method of determining the amount of the grant; the standard of assistance; the consideration of special needs; and the treatment of outside income.

What are the interpretative problems left open as to the meaning of disability after the Legislature so systematically and repeatedly articulated and narrowed the definition and then capped the whole effort with a final redundant injunction to construe the terms "strictly" and not "liberally"? The four phrases, "bedfast," "chairbound," "or in need of physical assistance without which the daily regimen could not continue," "or whose mental and physical impairment makes continuous supervision essential," were used by the Legislature to define "constant and continuous care" which in turn was used to define "permanently impaired and totally disabled." These four phrases themselves have to be defined and their relationships to each other established. Further, if "permanently impaired and totally disabled" means, among other things, "suffering from a major physical or a major mental impairment ... which is verifiable by medical findings," as the disabled aid law says, how can the statutory requirement of medical verification be reconciled with the view expressed in the Federal Handbook of Public Assistance Administration that the existence of the impairment and an assessment of its likely duration is primarily a medical question whereas the totality of the disability is primarily a social question involving such considerations as "age, training, skills and work experience, and the probable functioning of the individual in his particular situation in light of his impairment." 67 Such social considerations are, of course, proper and neces-

67 Federal Handbook of Public Assistance Administration, Part IV § 3820.
sary if, as the federal officials do, one defines disability as a physical or mental disease or loss "that substantially precludes" a person "from engaging in useful occupations within his competence, such as holding a job or homemaking."68 These ideas, however—being "substantially" precluded from engaging in a "useful occupation within one's competence"—are deliberately excluded from the California statutory definition.

Confronted with these interpretative problems and possibilities, the California State Social Welfare Board went the Legislature one better and further narrowed the already excessively narrow definition of disability. The interpretative and implementive regulations adopted by the board provided that an eligible disabled person is one who "requires daily help with at least two of the three major activities of daily living," i.e., dressing, self-feeding and bodily hygiene.69 Persons who are "bedfast" or "chairbound" are eligible not simply if they are confined to bed or chair but if, in addition, they meet the daily activity criteria. The daily activity concept seems adequately to restate the statutory phrase "daily regimen." It is not an adequate restatement, however, of "bedfast" or "chairbound." In applying the daily activities concept to the bedfast and chairbound cases, the board, therefore, in effect, converts the statutory disjunctive "or" into a conjunctive "and." To do this is not only not required by strict construction but flies in the face of it. In cases of mental deficiency, senility or brain damage, the need for "protective supervision on a continuing basis" is made the determinant of eligibility. "Protective supervision" is not a strict reading of "continuous supervision" but in view of the emphasis on "physical help" in the preceding phrase, it is near enough so that it cannot be viewed as liberal construction. Confining this concept, however, to mental cases when the statute expressly includes physical as well, can only be regarded as a further narrowing of the statutory definition and a further departure from the standard of strict construction. The regulations as adopted require the counties to submit social as well as medical information for the State Department of Social Welfare determination of disability and the state review team has assigned to it a member trained in social work. The social information is deemed relevant to the daily activities and protective supervision factors. Unless medical verification can be made of non-medical factors—a hardly plausible explanation of the phrase presented in justification at the time the regulations were adopted—the use of social information is still a third violation of the strict construction mandate, though this violation may be more formal than substantial in view of the minor role such information actually plays.

68 Ibid.
69 SDSW, ATD MANUAL § D-171, prior to May 1, 1958. See text at note 76 infra for changes.
The other interpretative problems were approached by the board in a similar spirit. The method of computing the grant, fixed at a maximum of $105 per month by the statute, is well calculated to keep the average payment at a low level. The grant is made the sum of a series of items. Some of them—food, clothing, personal needs, recreation and incidentals, household operations, personal services—are fixed as to amount across the board. Others, such as rent and utilities are allowed on an as-paid basis up to specified maxima. Not only is the maximum grant fixed at $105, but the needs recognized in the standard of assistance and included in the budget may not total more than $105. This ceiling does not refer only to the budget of basic needs, i.e., needs common to all members of this particular group of recipients. Special needs, i.e., needs not common to all recipients, are recognized in the regulations but not in the same manner as in the other three aid programs. They are recognized only to the extent that the sum of basic needs plus special needs does not exceed $105 per month. Outside income of the recipient must be deducted from the total of needs recognized in the standard of assistance, from $105 if these needs reach the ceiling or from such lesser amount as they actually total. If the recipient's actual needs, basic or special, exceed $105 per month, he may not retain his outside income to meet them. In that event, too, the $105 grant is reduced by the amount of the outside income. The sole exception to this rule applies to supplemental aid granted by the county as a part of its general relief program, for the cost of care in a nursing home, board and care home or institution, or for medical care and related needs. Such supplemental aid is not to be treated as income. It is supplied pursuant to a pre-existing code section imposing a duty on the counties to "relieve and support all incompetent, poor, indigent persons and those incapacitated by age, disease, or accident . . . ." The disabled law continues that section in force and requires that disabled aid payments be treated "as an additional method of supporting . . . the needy disabled." The special treatment under the regulations of county supplementation exempting it from the normal rule with respect to outside income, however, honors only in part the statutory mandate that disabled aid payments be treated as an additional method of supporting the needy disabled. In fact, county supplementation of assistance to disabled persons is reduced because of, and frequently by the amount of, the disabled aid payments. To this extent, the new program is not additional but substitutional. In reality it effects a transfer of financial responsibility from the counties to the state and federal governments without necessarily bringing about any improvements in the situation of disabled persons.

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70 Id. §§ D–201 to D–207. County supplementation of other items of need within the standard or items outside the standard is to be treated as income.

71 CAL. WELF. & INST. CODE § 2500.

72 Id. § 4007.
The regulations governing the computation of the grant, the standard of assistance, and the treatment of special needs and outside income are rested on the statutory provision that the grant shall not exceed $105, that the standard of assistance is to be established by the State Social Welfare Board within the limits set by the section containing this maximum and that the terms defined by the act are to be strictly construed. This is certainly a possible interpretation of these provisions. Given the policy orientation of the majority of the board and the commitments to legislative committees of the top staff, it must be acknowledged that the body of regulations in this area has statutory sanction, if not statutory blessing, in a way that the regulations defining disability do not. A contrary policy, however—one bringing budgetary items into line with actual costs, recognizing actual needs whatever they may be and allowing retention of outside income to meet them—seems essential if equitable and decent treatment of the disabled is to be achieved; and the statutory language is equally and perhaps even more receptive to this purpose. The aid paid, says the statute, shall be “an amount equivalent to the actual need of the recipient, but not to exceed the maximum amount payable” to aged recipients, namely $105. “The State Social Welfare Board shall establish a standard of assistance, within the limits set forth in this section, which will enable each recipient to maintain a standard of living compatible with decency and health.” The standard of assistance, thus, is to be established “within the limits [plural] set forth in this section.” Those limits are “the actual need of the recipient but not to exceed the maximum amount” of $105. Actual need will seldom be the same as $105. Sometimes it will be less. Most often with the group concerned it will be more. Strictly read, the Legislature did not say that the standard of assistance is to be within whichever of the two limits is less. It is to be within “the limits,” i.e., both of them. This is impossible save in the rare instance when they are the same. Only when actual needs are recognized in the budget, whatever their extent, and $105 is treated as a ceiling on the amount of the grant are both “limits” given weight; and only then is any significance at all attributed to the third norm provided in the section explicitly commanding that the standard of assistance “enable each recipient to maintain a standard of living compatible with decency and health.” This reading, moreover, is generally consistent with that given in the other aid programs where the whole structure of special needs is built on the “actual need” provision, although again it must be admitted that that provision is variously augmented by other language of different degrees of compulsion.

73 Id. § 4020.  
74 Id. § 4000.  
75 Id. § 4020.
Finally, there is the question of the applicability of the strict construction mandate to this portion of the law. If it is applicable, it is only so by remote inference and indirection. The Legislature applied it specifically “to the definitions of terms as provided for in this section,” i.e., section 4000. The tenuous connection between the terms defined in section 4000 and the section of the act dealing with the standard of assistance (section 4020) is that the phrase “needy disabled person” is used in both of them. However, that phrase is not among the terms defined in section 4000. In that section “disability” is defined but not “needy.” The absence of a statutory directive to construe all portions of an act strictly, even when coupled with the presence of such a directive for specified portions of the act, does not of course preclude an administrative agency from adopting that rule of construction throughout as a chosen instrument of statutory analysis or as an adjunct to its policy convictions.

The regulations above described were those adopted when the disabled aid law was first put into effect. After the law had been in operation for a period of three months and a mere 405 cases had been admitted to the rolls, it was evident that the regulations were far more harsh and restrictive than the staff’s commitments to the Legislature required. The regulations also appeared to discriminate in favor of those with musculo-skeletal diseases. The staff, therefore, under continuous pressure from the dissenting minority of the board, agreed to a relaxation. Four changes in the regulations were adopted, effective May 1, 1958: bedfast and chairbound persons are made eligible “irrespective of the need for help with activities of daily living”; protective supervision as a criterion of “continuous supervision” is made applicable to cases of advanced physical as well as mental disease; the requirement of physical help with two out of the three activities of daily living is reduced to one out of three; the disability must “substantially preclude” the person from engaging in a useful occupation. Though not made for that purpose, the first two changes bring the regulations into conformity with the requirements of the statute, strictly or liberally construed. The fourth satisfies federal requirements without in any way changing the operative significance of the law or regulations.

As a result of these changes, it is expected that the number of disabled recipients will increase by about 800. The total anticipated caseload therefore is still less than one-tenth of the figure promised the Legislature. The staff insists, however, that the commitments to the Legislature do not work in reverse; and a promise to hold the caseload down to 13,000 is not a promise to bring it up to that number.

II

Changes in Grant Formulas

The 1957 session of the California Legislature introduced changes in the formula for determining the amount of the grant in each of the three existing aid programs. In this area, legislative changes in the past have mostly been confined to raising the monetary amount of the basic grant in the aged and blind programs and the base determining the state and federal participation with the counties in the children's program. In such changes, thus, the established method has been retained, modification being made only in amounts. This was substantially the procedure followed in 1957 with respect to the children's program. The Legislature simply changed the figures and made a number of minor changes in other particulars. With respect to the aged and blind, however, the system itself was changed. The character of this departure is a matter of major significance in these programs, veering as it does somewhat from the fixed grant principle to all members of the group and toward the individual needs basis, and narrowing as it does somewhat the gap between the so-called have-nots and have-nots among the aid recipients. Moreover, the change made in the aged program is different from the change made in the blind program. These two programs, therefore, now have different grant formulas, whereas, in the past, though the amounts were different, the method was the same. Since the children's program in the past has had and still retains a third method, and since still a fourth method has been added in the disabled program, new complexities have been introduced into already complex categorical aid administration. Due to the character of the formula changes, the aid grant is increased in some cases, remains the same in others, and, in a few, is reduced.

In the past, the grant in the aged and blind programs has been an amount fixed by the Legislature, reduced by whatever amount, if any, a recipient's outside income exceeded his total needs. Before the 1957 legislation became effective, the legislatively set figures were $89 for the aged, $99 for the blind. These figures were established as sufficient to meet basic needs. In administration, basic needs were itemized and a money value attached to each item in such a way that the sum of the money amounts equaled the figure set by the Legislature. This system of items and money values is, of course, a budget of needs and amounts and this budgetary computation is made necessary by federal requirements. Since the sum of the money values, under state law, could not be less than the legislative figure and, under federal regulations, could not be more, the money value attached to some budgeted items of need has been notoriously out of touch with actual cost. In nearly all such cases, the disharmony has been to the dis-
advantage of the recipient, the money value attached to the item being less than the actual cost. The actual needs of the recipient above the legislative figure are called excess or special needs. If the recipient has had income of his own, he has been allowed to retain it for the purpose of meeting these needs. To the extent that he has had income beyond these needs, his basic grant has been reduced thereby.\(^7\) The statutory language encompassing this system reads as follows: "The amount of aid to which any applicant shall be entitled shall be, when added to the income . . . of the applicant from all other sources," $89 per month. "If, however, in any case it is found the actual need of an applicant exceeds [$89] per month, such applicant shall be entitled to receive aid in an amount not to exceed [$89] per inmonth, which, when added to his income . . . from all other sources, shall equal his actual need."\(^8\)

In the children's program, all actual needs of the family are budgeted. Money amounts are attached to the items of the budget according to the cost of such items in the community, as nearly as that can be determined by actual survey of prices, on a minimum adequate basis as to quantity and quality. The budgetary deficiency resulting after the family's income is applied to the total is met by the aid payment up to a ceiling set by the Legislature—called the participating base since the county may pay above that amount out of its own funds if it wishes—and varying according to the size of the family.\(^9\)

As indicated above, the 1957 session of the Legislature retained this method of determining the grant in the children's program. However, it effected three changes in ceilings and forbade a previously permitted pooling arrangement. The participating base in the one-child family cases was raised from $115 to $145,\(^0\) to the benefit of an estimated 2,600 out of the roughly 14,000 one-child families in the caseload. The participating base


\(^8\) Cal. Welf. & Inst. Code § 2020. § 3084(a) contains identical language but different amounts for the blind program. The difference between the figure $85 presently appearing in § 2020 and the basic $89 figure mentioned in brackets above represents added federal funds made available under 1956 amendments to the Social Security Act and passed on to the recipients pursuant to Cal. Welf. & Inst. Code § 2025. A similar variation with respect to blind aid from the figure appearing in § 3084(a) is pursuant to § 3084.1.


\(^0\) Cal. Welf. & Inst. Code § 1511(a), SDSW, ANC Manual § C-221.2; State Dept. of Social Welfare, Fiscal Manual § F-560. The difference between the base figure mentioned above, $145, and the figure appearing in § 1511(a), $155, represents added federal funds made available under the 1956 amendments to the Social Security Act and passed on to recipients pursuant to Cal. Welf. & Inst. Code § 1511(a).
was lowered for families with more than nine children,\textsuperscript{81} to the disadvantage of an estimated 135 families. The Legislature removed what has been an anomaly within the children's (ANC) program, namely, a specific ceiling on a particular group of items in the budget, that including household operations, education, incidentals, recreation, personal needs and insurance.\textsuperscript{82} Increases of from $5 to $7, or more, will result for about 5,000 families with two adults in the budget and of smaller amounts for the larger group of families with one adult in the budget. In addition, about 5,000 families carrying life insurance will benefit in some amount up to $4 per family.\textsuperscript{83}

Finally, the Legislature declared that the income and grant of an aged recipient may "not be construed as income to any person other than the recipient."\textsuperscript{84} Before this declaration, aged recipients living with ANC families were permitted to pool their income and grant with that of the family, and, if anything remained after deducting their expenses, it was treated as income to the family. Now such aged recipients will pay board and room to the ANC family or, alternatively, will pay their share of rent, utilities and other items. They will not add their monthly checks to the common fund.\textsuperscript{85}

According to the new formula adopted for the aged program, the basic grant structure and amount of $89 remain the same, provided, however, that a recipient whose basic aid grant and outside income amount to less than $105 is entitled to an additional grant of aid up to $16 a month if this is necessary to meet his actual need. To this general statement, a proviso is added: "In no event shall the sum of his grant and income exceed $105 per month, except as provided by Section 2020 of this chapter," quoted above.\textsuperscript{86} Thus, beyond the basic $89 grant, three elements must be juggled: actual need; outside income; and additional aid grant up to $16. The various relationships of the three elements are spelled out in the regulations as follows: If the recipient has no outside income or less than $16 in outside income, the amount of such income is subtracted from his total need or $105, whichever is less, and the resulting figure is the amount of the grant. If the recipient's outside income is $16 or more, the amount of the income is subtracted from the amount of his total needs and the resulting figure or $89, whichever is less, is the amount of the aid grant.\textsuperscript{87}

A number of examples may perhaps make the method clear. A recipient

\begin{footnotes}
\item[81] Ibid. Before the change the amount was $371 for nine children plus $8 for each additional ANC child in the family budget unit, not to exceed a maximum of $419.
\item[82] CAL. WELF. & INST. CODE § 1511.5(e).
\item[83] Potts, Aid to Needy Children Changes, 31 WELFARE NEWS 6 (1957).
\item[84] CAL. WELF. & INST. CODE § 2017.
\item[85] SDSW, ANC MANUAL § C-212.65.
\item[86] CAL. WELF. & INST. CODE § 2020.002.
\item[87] SDSW, OAS MANUAL § A-221.
\end{footnotes}
who has no outside income and: (a) has no special needs receives the basic grant of $89; (b) has special needs of any amount up to $16 receives $89 plus the amount of his special needs; (c) has special needs of more than $16 receives $89 plus $16. A recipient who has $10 outside income and $15 excess needs receives a grant of $94. A recipient who has $15 outside income and $10 excess needs receives a grant of $84. A recipient who has $10 outside income and $20 excess needs receives a grant of $95 (the outside income is deducted from $105, not from total needs). A recipient who has $20 outside income and $35 excess need receives $89, (if income is more than $16 and needs total more than $105, $16 income is deducted from $105 and the remainder may be applied to excess needs).\(^{88}\)

The principal effect of the new grant formula in the aged program, as interpreted in the regulations, is to assure that all recipients will have income in addition to the basic $89 grant if they have actual needs beyond that amount. Only those recipients who have less than $16 outside income are affected and they only if they have needs above $89. All other recipients are in the same situation they occupied before the 1957 legislation. Put in another way, the 1957 legislation held fast the situation of all recipients having $16 or more outside income, regardless of whether they had needs in excess of the $89 grant, and improved the money situation of recipients with no outside income or less than $16 outside income if their needs above $89 are greater than their income. The additional grant is thus conditioned on discovery of individual needs, need being determined on a group rather than an individual basis for the $89 grant. This result is permitted but is not required by the 1957 legislation. Since "actual need" in the absence of income wherewith to meet it is the test of the added grant, there would be no legal obstacle to the State Social Welfare Board finding that the "actual need" of all aged recipients consisting of their basic needs reaches any dollar amount from the present $89 to $105. The actual need for the group might be determined by actual cost. The State Social Welfare Board has indeed directed that a study be made to determine that very question. Were the cost of basic needs set at $105, then all recipients would be entitled to that amount in grant or in combined grant and outside income. In that event, the first $16 of outside income would have to be applied to meet basic needs.

The new grant formula in the blind program provides that a recipient whose outside income from all other sources and aid grant, as computed under the old formula, total less than $110 "shall be granted an additional amount of aid not to exceed $11 per month or so much thereof as is neces-

sary to bring the sum of his grant and income to $110 per month."\textsuperscript{88} Pursuant to this formula, the regulations have changed the money values attached to the various budgeted items of need so as to equal $110 per month instead of $99 as formerly. The increase was assigned to housing and transportation thus bringing those items nearer actual cost and thus, also, saving the maximum advantage to recipients with excess needs and income to meet them.\textsuperscript{90} In effect, then, the new grant formula in the blind program assures to every recipient an income of $110 per month. If he has no income of his own, or less than $11 income, he receives whatever is necessary to bring him up to $110. The first $11 of outside income must be applied to meet the basic needs in the $110 standard. Thereafter, any additional income may be applied to meet excess needs as under the old formula. The new grant formula in the blind program decreases the disparity between recipients with income and recipients without income by increasing the grant for the latter group while making no change in the situation of the former group.\textsuperscript{91}

Fifty dollars per month of net earned income of blind aid recipients, as required by federal law, is, under the new formula as under the old, exempt from consideration as income for any purpose.\textsuperscript{92} The full incentive value of this exemption to self-care and self-support activity is, accordingly, preserved.

Much has been made of the formula changes, especially that in the aged program, as a long and desirable step in the direction of equalizing treatment and closing the gap between the so-called "haves" and "have-nots" among aid recipients, i.e., between recipients with and recipients without income in addition to the grant.\textsuperscript{93} To some extent, the enthusiasm is merited. Few would deny that the formula changes—that in the blind program more than that in the aged—represent a step, perhaps only a very small step, in the right direction; but whether for the reason given is another matter. In dealing with welfare, legislatures and courts have always ignored the constitutional standards and goals implicit in state and federal due process and equal protection clauses.\textsuperscript{94} To talk about the doctrine of equality in this context and in this way, however, is to reduce to a misapplied cliche a standard the historic and present day significance of which can hardly be overestimated. Neither as a constitutional imperative nor as a goal of

\textsuperscript{88} CAL. WELF. & INST. CODE § 3084.
\textsuperscript{90} SDSW, ANB MANUAL § B–202.
\textsuperscript{91} Id. §§ B–221 to B–229.40.
\textsuperscript{92} Federal Social Security Act, § 1002(a) (8), 49 STAT. 645 (1935), as amended, 42 U.S.C. § 1212(a) (8) (Supp. V, 1957); CAL. WELF. & INST. CODE § 3084.3; SDSW, ANB MANUAL § B–212.10.
\textsuperscript{93} See generally 31 WELFARE NEWS (1957).
legislative policy does the doctrine of equality require that the differences
in the degree of destitution among the needy be brought to a single level
of poverty. Equalizing disadvantages among the destitute is a curious ideal
in a land of abundance. In this context, it's not that the “haves” have so
much; it's that the “have-nots” have less. To be a recipient of public assist-
ance at all, a person must be unable to meet socially and medically estab-
lished standards of living out of his own resources. He must be in need and
the test of need is a minimum adequate standard of decency and health.
The purpose of public assistance legislation is to provide the assistance of
the public to those in need. What needs should be identified to be met
publicly and by what standards they should be met, may, for this discus-
sion, be set on one side, since in neither respect are we yet approaching
the minimum. Also to be set on one side as conceded by all is the idea that
private income should be used first. The controversy swirling around this
subject, and dealing with exempt income and resources of recipients, in
any event, deals more with the needs to which such income and resources
should be applied than with the requirement that they be utilized. Once
the purpose of the public assistance programs is brought to mind and ac-
cepted, the test of progress and the test of equal protection are both at
hand for they are one and the same—steps and classifications which tend
to effectuate the purpose. To do this, income should be subtracted from
needs—whether determined individually or on a group basis is not here at
issue—and the public should provide the difference. Where the outside
income and the aid grant combined are sufficient to meet needs, the pur-
pose is achieved. If income and grant do not meet needs, then the grant
should be increased to that point. If this cannot be done for all, generally
speaking those who are in the greatest need should be cared for first. The
test, then, is not whether the gap is being closed between “haves” and
“have-nots.” It is whether the gap is being closed between need and
income. There is no automatic reason, consequently, for holding the treat-
ment of the “haves” steady while improving the lot of the “have-nots.” If
choice must be made between the two, of course, the “have-nots” should be
selected. The disparity between the “haves” and the “have-nots” may be
diminished as an incident of increasing the grant to the “have-nots” but
the incident is not the object and should not control the character of the
provision.

The new aged and blind formulas, in different ways and to different
degrees, both increase the grant to the “have-nots.” This is all to the good.
They go a step further, however, and say that for aged persons with $16
or more of income and for blind persons with $11 or more, there shall be
no increase no matter how great the gap between need and income. In part
at least, the spirit and motivation behind this move was to equalize the
situation of the two groups rather than to distribute inadequate funds first to those most in need.

Besides improving the lot of the "have-nots," there is, of course, one other method of narrowing the difference between the "haves" and the "have-nots" and of bringing about what the proponents call "equal treatment": that is, by diminishing what the "haves" have. This in effect was the course pursued and the justification offered in the standard of assistance for the disabled. In a memorandum to the State Social Welfare Board, a part of the department staff argued: "The standard of assistance should not be based on whether income may be added to the maximum grant for income cases, but rather should be based upon the establishment of a standard which can be fully paid without regard to whether the recipient has outside income or not. Such a standard is the only one which guarantees that recipients in like circumstances shall be treated alike. Otherwise we will be creating a whole new category of inequity between the 'haves' and the 'have-nots'—something the Legislature acted to reduce in aged and blind aid."95 In other words, the standard of assistance must be within the permissible amount of the grant no matter how much actual need, including basic needs, may exceed it; and those who have outside income may not be allowed to retain it to meet those needs because, if this were done, recipients in like circumstances would not be treated alike and "a whole new category of inequity" would be created between the "haves" and the "have-nots." The standard of assistance adopted in the disabled program fulfilled this prescription. It narrowed the gap between the "haves" and the "have-nots." It did so by artificially enlarging the gap between needs and total income. It did so by denying to those who have some outside income and who have unmet needs the use of that income to meet those needs. Is this really treating alike those in like circumstances? Or is it altering the circumstances to see that those who are unlike become alike? Is not a whole new category of inequity created by this treatment of those who have outside income? And what is the purpose? Is this rule of any advantage to the "have-nots"? They get exactly the same amount in either case. The only object seems to be to close the gap as an end in itself as if there is something about gaps which calls for them to be closed. The program objective of meeting the needs of those concededly in need—in fact, in more need than any other group—is retarded since the "haves" are made less able to meet their needs and the "have-nots" are not thereby made more able. By what test is this either welfare or equal protection?

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III

Open Meetings

In 1957, the Legislature passed some 66 separate bills each applying an "open meeting" requirement to a specified agency of the State government. One of these applies to the State Social Welfare Board. "All meetings of the board," it commands, "shall be open and public." 66

Short and apparently clear as this legislative directive seems to be, it yet gives rise to and leaves unanswered many questions: What are "meetings of the board," "all" of which must be open and public? Do they include all gatherings of so much as a quorum of the board at which any business is discussed—four out of the seven members eating lunch together between public sessions and occasionally mentioning or ardently discussing subjects already discussed or to be discussed in the public sessions? Meetings of the committees of the board consisting of four or three members, the committee having no power of final decision but only power to make recommendations to the board? Meetings of the whole board with department staff for purposes of receiving information? Meetings of the whole board in which appeals of individual applicants or recipients are heard or discussed involving information forbidden to be "open to examination for any purpose not directly connected with the administration of such provision of this code"; 67 board meetings hearing the appeals of persons dissatisfied with their rating on merit system examinations? Moreover, what is the meaning of "open and public"? Is it the same as "open to the public," or does the form of language used imply that the meeting is "open" so that the public may attend, and it is "public" so that the public may participate? Is the conception that of the Kentucky Court of Appeals that "a public meeting presupposes the right of the public freely to attend... with the concurrent right freely to express any approval or disapproval of any action or course about to be taken?" 68 If a public meeting is one in which the public has a right of participation, to what extent may the board require at the time or in advance identification of members of the public who wish to participate and disclosure of their interest and connection? Do employees of state and local government involved in the administration of welfare programs stand upon the same footing with respect to participation as members of the public not so related? May applicants and recipients whose appeals are being heard by the board on review from hearing officers insist on speaking as to the fact and law in their cases? May appellants or administering counties add facts to the record closed by the hearing officer and regardless of whether

66 CAL. WELP. & INST. CODE § 102.1.
67 Id. § 118.
68 City of Lexington v. Davis, 310 Ky. 751, 221 S.W.2d 659 (1949).
all interested parties are present? May hearing officers appear and demand the right to speak in support of their findings and recommended orders and perhaps add facts and impressions not hitherto placed in the record of individual cases? The statute draws no line of distinction between meetings devoted to quasi-judicial and quasi-legislative functions of the board.

The 1957 measures were the result of work begun in 1952 by the Assembly Interim Committee on the Judiciary headed by Assemblyman Ralph Brown. They were the counterpart for state agencies of the so-called "secret-meeting" law enacted in 1953 governing agencies of local government which also emerged from the Interim Committee on the Judiciary. In contrast with the specificity and brevity of the 1957 directive to the State Social Welfare Board, the 1953 law is a blanket provision covering all agencies of local government and is contained in nine sections of the California Government Code. A preamble declares with respect to public commissions, boards and councils that "it is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." The requirement that "all meetings . . . shall be open and public" is expressly applied only to the "legislative body of a local agency." "Legislative body" is defined as meaning "the governing board, commission, directors or body of a local agency, or any board or commission thereof." It is expressly provided that "all persons shall be permitted to attend any meeting of the legislative body of a local agency . . . ." No mention is made of participation. Local legislative bodies are given permission to go into executive session when handling personnel matters and to exclude witnesses under certain conditions. Public notice of meetings is required.

The State Social Welfare Board, in considering what alterations in its habits and procedures were made necessary by the new law, concluded, on the informal advice of the Attorney General and of its own Administrative Advisor, that the common background and relatively similar language of the provisions affecting state and local agencies reflected a common purpose. The State Social Welfare Board therefore gave special weight to the interpretations of the earlier law in determining the meaning of the 1957 requirements. Available for this purpose were the written report of the Interim Committee on the Judiciary and opinions of the Attorney General,

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99 Pickerell and Feder, Open Public Meetings of Legislative Bodies—California’s Brown Act (Bureau of Pub. Administration, Univ. of Calif., 1957).
101 Id. § 54950.
102 Id. § 54953.
103 Id. § 54952.
104 Id. § 54953.
105 Id. § 54957.
106 Id. §§ 54954–56.
the Legislative Counsel, the Los Angeles County Counsel and the Los Angeles Superior Court.

In its report, the Judiciary Committee set forth the evils to be remedied. It characterized as "commonly used subterfuges" evading public meeting requirements "meetings generally held before the official public meeting, under the guise of a variety of names, such as executive sessions, meetings of the committee of the whole, work sessions, and others . . . ." "At gatherings such as these," the Committee stated, "deliberations and determinations regarding matters affecting the public [are] made. The subsequent public meetings [are] a mockery, a mere formality and a repetition of matters already decided at the prepublic meetings."

The opinion of the Legislative Counsel advised that "under the 1953 law, it would be illegal for a City Council to limit attendance at premeeting conferences and that the City Council could not exclude the public from its meetings by sitting as a committee of the whole." The Los Angeles County Counsel advised the Los Angeles County Board of Supervisors that its deliberations as a committee of the whole would only be within the law if the public were admitted to the meetings.

The Attorney General found in conflict with the state law and therefore invalid a resolution of the San Diego City Council requiring citizens, before attending so-called Council Conferences, to register with the City Clerk, to give their names, ages, occupations, the groups, if any, they represent, the item on the agenda in which they are interested, and whether they seek its passage or defeat. Persons registering had to agree to remain silent unless requested to speak. Exempt from registration were accredited representatives of newspapers, radio or television stations and officers or employees of city, county, state and federal governments. Without particularly addressing himself to the reasonableness or unreasonableness of the specific items of information asked in connection with the registration or to the question whether the ban against secret meetings assures a right of public participation as well as attendance, the Attorney General simply concluded that "to bar or restrict, to 'cabin, crib or confine' the public from free access to those meetings of the city council in which deliberations and determinations affecting the public are made, is to bar them from the very heart and core of the council meetings." In 1957 the Legislature translated this


\footnotesize{108} Letter to Assemblyman Frank Luckel from the Legislative Counsel, January 6, 1956.

\footnotesize{109} Opinion of Los Angeles County Counsel to Los Angeles County Bd. of Sups., October 21, 1953.

opinion of the Attorney General into a Government Code section.\textsuperscript{111} The Los Angeles Superior Court held violative of the state law meetings of the Santa Monica City Council resolved into executive session to receive information from various city officials and others. "The term meeting," said the court, "is not as a matter of law limited to those sessions of a public body at which action of record is taken, but includes those in fact considering and deliberating public business." These are "public meetings at which all members of the public are entitled to hear and to be heard . . . ." "It is obvious that if by caucus or otherwise, the members of the council walk into the council chambers for a formal session already having determined in their own minds the issues to be resolved, that any public hearing or pretense of public discussion is a mockery." The secrecy law was "designed specifically to inhibit and prohibit the disposition of official business, tentatively or otherwise, by caucus at which the public was excluded."\textsuperscript{112}

The State Social Welfare Board, after a great deal of discussion and some travail, resolved to hew strictly to the line of these pronouncements as expository of the statute. As a result, a number of changes in procedure have been made. Most important of these has been the abolition of the closed meetings of the board with the staff of the department. Customarily, these had been held just prior to each public meeting of the board. In the early 1950's, they were called executive sessions of the board and a verbatim transcript was taken. After the impact of the 1953 open meeting law had begun to make itself felt in the counties and the Legislature was considering the application of a similar requirement to state agencies, these pre-public meetings were designated board-staff conferences and the verbatim transcript was discontinued. At these conferences, the public meetings which were to follow were planned in detail. The time, and place on the agenda to be assigned to persons known to wish to make appearances, the likely disposition of various items of anticipated business (whether to be given further study, taken under submission for the preparation of a written opinion by staff, classified as no action required, settled immediately by vote of the board), what announcements or committee reports should be made by the board or individual members—provision was made for these and any other matters of like character, most of them minor and procedural, some substantive or having public relations bearing. Much more important, at these conferences all controversial items on the agenda of the public meeting to follow, prepared by the staff and distributed to board

\textsuperscript{111} \textbf{CAL.} \textbf{GOVT. CODE} \textsection{54953.3:} "A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance."

\textsuperscript{112} Judge David in Minter v. Santa Monica, L.A. County Superior Ct. Opinion No. 666,318, Sept. 6, 1956.
members in advance, were thoroughly discussed, including proposed decisions in fair hearing appeals as well as proposed rules and regulations. Sense polls were often taken and in any event the likely voting lineup was made clear. The staff joined in the discussion fully, presenting facts, background materials, legal analyses, policy arguments and whatever else seemed relevant to decision by the board. Though at various times, depending on the personality of the director of the department and other personnel involved, there was a tendency to present to the board a unified staff point of view through a single spokesman, generally differences among the bureau chiefs and other staff members in attitude and judgment were candidly revealed. Board members bared their insights, analyses and policy judgments, and, it must be said, their predilections, misconceptions and ignorances usually without shame and certainly without reservation. Board members did not necessarily feel committed to a position once taken or a sentiment once uttered. Retraction, correction and persuasion were reasonably possible.

At the public meeting which followed, the formal vote of the board was taken and spread upon the record. The differences among board members which had been discovered, clarified and matured in the closed session were revealed in speeches that were thought out and in effect rehearsed. Sometimes, in the course of debate, minority members, through interrogating the staff or by direct statement, brought out matters which had been freely spoken at the informal closed session but which otherwise would have been publicly disclosed, if at all, only with reluctance and qualification. Seldom did the public meeting produce any facts, ideas or points of view not already known to the board. Most of the persons in attendance were county workers and representatives. Their views had already been presented in an earlier closed meeting between county and state staffs. For them, the public meetings of the board did little more than afford an opportunity to repeat in their own way information and stands already conveyed to the board by the state staff. Other persons in the audience—applicants or recipients of aid, representatives of various welfare groups, or persons with a chance interest in one item or another on the agenda—mostly were present as interested observers not asking to participate. Occasionally, of course, they presented a fresh viewpoint, new facts, or added strength and impetus to viewpoints already expressed. Now and then, also, some new factor did emerge at the public meetings of the board, the product of added reflection, over-night developments, or of witnesses on issues deliberately held open until their appearance. When the new medical program was being put into effect in the summer and fall of 1957, entirely new groups were added to the audience and list of witnesses—representatives of associations of practitioners, medical suppliers and related individuals and establishments—whose contribution at the public meetings to the knowledge and under-
standing of the board inaugurating a wholly new program cannot be overestimated. When fresh facts and views were elicited at the public meetings, the board sometimes changed a predetermined stand. Occasionally the matter was held over for final action at a future meeting. On the whole, however, with exceptions for unpredictable developments and for issues deliberately held open for further information or appearances made voluntarily or at the request of the board, the public meetings were, in truth, a “formality and a repetition of matters already decided at the pre-public meetings.”

Another change of considerable importance resulting from the new open meeting requirement was the abolition of the policy committee of the board. Presumably, the law which applies in terms only to “meetings of the board” does not prevent the use of committees. The emphasis by the Assembly Judiciary Committee and the various other sources of interpretation, however, on making public all “deliberations” as well as “determinations,” and all actions which tentatively or otherwise dispose of public business, casts in doubt the secret meetings of any committee which has anything substantial to be considered or members of any influence in the larger body. The deliberations and recommendations of a committee to the parent body might well be regarded as a tentative disposition of the business at hand since, in more cases than not, the committee deliberations will shape the outcome and the recommendations will be approved by the parent body. Were this not so, there would be little point to having the committee. In any event, the policy committee of the State Social Welfare Board did not fall into the narrow area of possible doubt. It consisted of all of the members of the board; many of its tentative conclusions often substantially influenced, if they did not immediately direct, the course of further policy development; and some of its deliberations ended in a decision as to policy formally taken and announced then or later at a public meeting of the board. At all times, the drift of sentiment among the members of the board at policy committee meetings served as guide if not instructions to the staff. In short, the policy committee did deliberate and determine public business; it did dispose of public business tentatively and otherwise; it was the board sitting under another name.

The choice of abolishing the policy committee rather than throwing its meetings open to the public was taken because a majority of the members of the board felt that the peculiar advantages of the policy committee would be lost in open sessions. The committee had been created in order to enable the board to devote time and attention to overall policies and long-range considerations in circumstances permitting and an atmosphere conducive to reflection and exploration. These are neither the circumstances nor the atmosphere of a public board meeting at which the presence of an audience, the need to dispose of all items on an always crowded agenda and the dis-
tractions of the various other functions of the board—all impel to performance. The policy committee consequently met at a time and place different from the public meetings of the board, sat under a different chairman, largely eliminated formal agendas and items requiring immediate action, forgathered with books, articles and general memoranda from the staff before it and with selected relevant members of the staff present augmented sometimes by outside scholars and officials. At their best, meetings of the policy committee resembled a university graduate seminar—at its best—much more than a typical functioning occasion of an administrative agency. The policy committee originally met as only three or four members of the board. It was soon apparent, however, that the knowledge and experience were necessary for all members of the board and could not be imparted through a committee report and that decisions were evolved which demanded the participation of all members.

Curiously enough, the board has not found it necessary to make any change in the area in which at first blush the greatest difficulty could be anticipated: i.e., reconciling the public meeting requirement with the requirement of confidentiality of data relating to individual applicants and recipients having appeals before the board. Departmental staff and board members generally assume that where the two statutes conflict, that dealing with confidentiality will prevail. It was on the books at the time of the enactment of the public meeting requirement and there was no suggestion, let alone explicit command that it was intended to be repealed. There is also the cardinal rule of statutory interpretation that constructions which give rise to a federal conformity question are to be avoided as the plague. The board, however, has always freely discussed in the public meetings the facts and policies involved in appeals brought by individuals. It has done so, moreover, referring to the cases by name as well as by number. Moreover, since the audience is largely composed of representatives of the administering counties to whom the board rulings in individual cases become governing law in their administrative work, the reports of the hearing officers containing proposed findings of fact, analysis of issues and orders are generally distributed. In view of the predominant character of the audience, the size of the state and the general disinterest in the cases, this procedure has been regarded as within the bounds of the requirements of confidentiality.

The meetings of the board generally rotate among Los Angeles,

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113 These were the reasons for creating and continuing the policy committee. They may be distinguished from the occasion for its creation: namely, a squabble inside the board over the vice-chairmanship, the chairmanship of the policy committee being established to serve as a consolation prize to the loser.

114 CAL. WELF. & INST. CODE § 113 makes "all records" taken in connection with an applicant for or recipient of public assistance, and the names of such applicants and recipients, confidential. Breach of confidentiality is a misdemeanor. The records are, of course, available for purposes "directly connected with the administration" of the public assistance laws.
San Francisco and Sacramento. The chance that anybody will be present other than officials who will connect names and data given with persons known to them is very small indeed. In this respect, the State Social Welfare Board occupies quite a different position from the boards of supervisors or other local agencies as to which the Attorney General has held that suitable precautions must be taken to prevent breach of confidentiality in meetings which the 1953 law makes public.\textsuperscript{115} The press is seldom in attendance at social welfare board meetings and, in any event, has not focused on individual cases. As to appearance before the hearing officers of the board which are held in the community where the applicant or recipient lives and where in some spectacular cases the local press has demanded access, the board has held that confidentiality requires that such hearings be private at the election of the appellant.\textsuperscript{116}

The board also has made no change in the conduct of its public meetings based on the possibility that the public meeting statute may be read as assuring opportunity for audience participation. The board has always accorded such opportunity to any person present who wishes to speak on any policy or procedural matter on the agenda. Even as to the individual cases on appeal it allows audience discussion of the regulations and their applicability, sometimes before and sometimes after the decision has been reached and announced. Since the county officials make up most of the audience and their administrative decisions are being reviewed in these appeals, lawyers might reasonably raise questions as to the propriety of such discussion without formal notice to the appellant and equal opportunity to present his views. As to the facts, the record is made by the hearing officer at the initial stage of the proceedings. It can only be added to or subtracted from by remand to the hearing officer. Findings of course may be changed by the board, all members reading the transcript of record which is not available to the audience at public sessions. Neither appellants, counties or others in the audience are permitted to offer testimony as to the facts. To permit additional evidence to be put in at this stage of review would be to denature the fair hearing process and strip it of a fundamental element of fairness.

In the past, Merit System hearings have always been conducted privately by the board. Present were the appellants and their witnesses and representatives of the state and departmental personnel staffs. Though the hearing is in fact de novo, it is in form a review of the determination of a personnel appraisal board with respect to a score awarded on oral examination. Lacking the comparative basis of the original appraisal board and lacking also anything like reasonable standards for judgment, the State

\textsuperscript{116} SDSW, OAS Manual §§ A-022 to A-022.50.
Social Welfare Board has long sought some better method of handling these cases. Before the adoption of the open meeting statute, the board had directed the staff to prepare a plan under which Merit System cases would be referred to a hearing panel for findings and recommended order. The plan has now been developed, adopted and put into effect. But for that fact, the open meeting statute would have operated to change the traditional procedure.\footnote{State Social Welfare Board, \textit{Agenda}, April, 1958.}

As an auxiliary to the open meeting requirement, amendments to the Administrative Procedure Act particularize and tighten the public notice provisions. Section 11424 of the act as contained in the California Government Code has been amended to provide that the published notice of board meetings to act upon proposed regulations must contain a reference to the particular code sections or other provisions of law which are being implemented, interpreted or made specific. For some years the act has required that notice of meetings to adopt regulations be published in a newspaper at least 30 days before the meeting.\footnote{Cal. Govt. Code § 11423.} The notice was required to include either the text of the regulations or an informative summary. In compliance with the new provisions, public notice of the board meetings must include a brief summary of the proposed regulations and mention the code sections which they implement.\footnote{Cal. Govt. Code § 11424.} Under the old system in view of the generality of the notice it was possible to add new items before or during the board meeting. Under the new system this is not possible. The agenda becomes fixed about 35 days before the meeting. Emergency regulations may be adopted but under another 1957 amendment to the California Government Code, section 11422.1, such emergency regulations will automatically become ineffective 120 days after adoption unless during that period they have been included in the notice of a subsequent board meeting and have been re-adopted by the board at the public hearing for which the notice was given.

It is perhaps early to attempt to state the overall effect of the open meeting requirement on the work of the State Social Welfare Board and the extent of public knowledge about it and public participation in its proceedings and determinations. A number of tentative conclusions, however, are beginning to suggest themselves.

These can perhaps be summarized in the generalization that increased public knowledge and participation simply has not come about.

The character of the audience at public meetings of the board both as county welfare directors, employees and supervisors. In this aspect, the public meeting of the board is a conference of persons engaged in the to size and makeup has not changed. It consists largely of state staff and
administration of welfare programs over which the board has jurisdiction. Presumably this is not the public to which the statute refers. In addition, there are a few aid recipients who live in the community, an observer from the League of Women Voters, now and then representatives of various professional groups, suppliers and licensees interested in a particular item on the agenda, and, occasionally, the press. The participation of these groups has not been increased since full opportunity was already provided as to policy matters and no greater opportunity can be provided as to quasi-judicial matters without violation of rights to privacy and fair hearing.

As to public knowledge, the public meetings of the board are less informative and revealing than they were before. Not having met with the staff in advance, board members are less certain of their ground, less knowledgeable as to the background, precise language, and objective of proposals in the agenda. The arguments pro and con are not so likely to be presented because board members do not have them in hand and are less prepared to extract them publicly from the staff. The voluntary contributions of the staff are governed by the restraints and proprieties of a public gathering. Often, they can not say publicly what they were willing to communicate privately. The board members, too, are subdued and inhibited in their inquiry and discussion, a circumstance doubtless affected by the lay character of the board but not wholly explained by it.

To the extent that this is true, the board is correspondingly less able to make informed and intelligent judgments.

To a noticeable degree, the board has tended to become more of a rubber stamp for the staff. Its inclination is to rely more automatically on staff recommendations. Since discussion and inquiry are inhibited, minority members of the board are less able to find out what majority members are thinking and hence less able to bring to bear the force of argument.

The joint meetings of the state and county staffs continue to be held in private before the board meetings. Even more than before, these tend to be the forum of real argument and actual decision. The abolition of the policy committee of the board contributes to the withdrawal of the board as an active agent in policy determinations.

It is easy to overstate these conclusions and to be displeased with them. It may be, however, that the open meeting requirement, aimed at an unquestionably highly desirable objective, is not necessarily well adapted in every respect to its achievement.

IV

Residence

The 1957 session of the California Legislature made one major and one minor change in the residence provisions of the various aid programs. These
were followed in turn by a third change made administratively and at the insistence of federal officials. The Legislature uprooted county residence, an anachronism in the law, and liberalized the provision dealing with out-of-state recipients. The State Social Welfare Board gave added weight to physical presence as against intent in determining state residence.

In the early days of statehood, notwithstanding strongly entrenched Anglo-American poor law traditions to the contrary, California had neither state nor county residence requirements for the receipt of public welfare. Indeed, the state, through a program of direct aid, reached out to provide help to the sick and destitute immigrant while he was still in Nevada on the other side of the mountains. It was not until 1901, half a century after the organization of state government, that a comprehensive state law on the subject was placed on the books. Long prior to that time, there were scattered and casual references to residence in various aid programs. The term was not defined and seemed not to fit into any systematic pattern of administration. Occasionally it was embodied in statutory provisions copied verbatim from the laws of other states and having little applicability to conditions in California. The statute of 1901 was a general poor law. It imposed on the counties the duty (the power had been conferred earlier) to relieve and support “all pauper, incompetent, poor, indigent persons and those incapacitated by age, disease, or accident lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, or by their own means, or by state hospitals, or by other state or private institutions.” Residence was defined by the statute as “actual residence” of the person, or the place where the person “was employed,” or “in case such person was in no employment,” then the place where the person made his home or his headquarters. The statute did not lay down a flat rule about the length of time necessary to establish residence. However, it did provide that a person who did not have three months of residence as thus defined, in the county, and who did have such residence in the county from which he came was to be cared for and removed by the old county. Anyone bringing a poor person into a county not his lawful residence or settlement, knowing him to be a pauper, was made guilty of a misdemeanor. Thus, when comprehensive residence provisions were finally adopted in California by the law of 1901, they were linked with other features of the Elizabethan poor law system: local responsibility for the relief of the poor and legal liability of relatives. Though the word settlement was used in one


passage of the law, residence was quite different from that conception. It could be established simply, easily, and without restriction merely by having a home, headquarters or "actual residence" within the county or gaining employment there; this is a little more than physical presence though not much.

In the following decades, three months was increased to one year as the length of time required to establish county residence and the simple concept of the place where one works, lives, or has his headquarters was transformed into a complex construct of physical presence and intent.123

In 1957, the Legislature wiped out the developments of the years intervening since the turn of the century, eliminated any reference to length of time, and focused on the idea that people are where they live and public responsibilities attach to them in that place. In short, county residence was abolished as a condition of eligibility for public assistance in aged, blind, disabled and children's aid.124 While this action is of great doctrinal and administrative importance, it is ironically true that recipients are not affected in the slightest. They receive their grants in any event from one county or another, the one to which they went or the one from which they came, or from the state alone where county residence could not be established.

Under the new provisions, county responsibility for accepting applications and making aid payments is determined by the place where the person lives. Responsibility for making payments to a person who has become a recipient of aid from one county and who removes to another county "to make his home," transfers to the second county as soon as administratively possible but not later than the first day of the month following 60 days after notification to the second county.125 In the case of children, responsibility falls on the county where the parents, relative or person in loco parentis providing a home for the child lives. If a child is placed in a boarding home or institution by a public or private agency, the county where the agency is located must conduct the investigation and make the payment.126

Inevitably, problems of interpretation still remain under the new law. Even "intent" has not been banished entirely though virtually so. The regulations define "county where the . . . person lives" as the county in which he is physically present at time of application. Three exceptions, however, to the rule of physical presence are set forth. When a living place in another county is being maintained to which the applicant plans to return within

123 SDSW, OAS Manual §§ A-117.5 to A-118.30, prior to October 1, 1957.
45 days, he is considered to live in that county. Accordingly, a person does not live where he is only visiting for a short period. An applicant who is at the time in a state hospital but about to leave it is considered to live in the county in which he will be physically present upon release. If that is undetermined, he is considered to live in the county from which he was committed to the institution. When the county in which an applicant lives does not have adequate facilities to care for him, and, as a result, places him in a nursing home or hospital in another county, he is considered to continue to live in the county making the placement "for as long as circumstances beyond his control require that he stay outside the county."\[127\]

The administrative and legislative changes in state residence are less sweeping. They do not abolish or in the slightest reduce the length of residence required, which in aged, blind and disabled aid stands at the maximum period allowed by the Federal Social Security Act, 5 out of the last 9 years, including the year immediately preceding application. The changes do, however, modify the balance of the elements by which residence is established and maintained, reducing the significance of affirmative intent on the part of persons physically present in the state and of failure to return on the part of persons who are elsewhere. Unlike the changes with respect to county residence, these are of direct benefit to applicants and recipients.

In 1945, the Attorney General of California, pointing to the purpose of California's aged aid law, the object of the Legislature to gain federal money in achieving that purpose, and the identity of the residence language in the state and federal laws, concluded that the California Legislature "intended to prescribe residence qualifications for recipients of old age assistance in exact conformity" with the residence requirements of the federal act. Accordingly, he said, "when the Social Security Board has defined the term 'residence' and that definition is one reasonably calculated to accomplish the purposes of the Social Security Act and the state laws enacted in conformity therewith such interpretation must be applied to the identical terms written into the state law."\[128\] The Social Security Board has defined the term residence: "Every individual should be held to live or reside somewhere, that is, he should not be adjudged to be without a residence. He shall be considered to have his residence at the place where he is living, if he is found to be living there voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom."\[129\]

The State Social Welfare Board did not accept this view or follow this

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128 5 Ops. Att'y Gen. 138, 141, 142.

opinion of the Attorney General. Rather its regulations and individual rulings embodied a definition of residence as physical presence in the state for the requisite 5 years plus positive intent to remain. The difference between the presence of affirmative intent to remain and the absence of affirmative intent to leave was thus the central difference between the federal interpretation of residence and that of the State Social Welfare Board. In the period between 1945 and 1957, the federal officials continually reminded California that it was out of conformity but never pressed the matter to the point of threatening to withhold federal funds. In 1957, when California submitted its aid to the disabled plan to the federal officials for approval, they indicated that their approval would be conditioned upon incorporation of their definition of residence. Compliance by the State Social Welfare Board was immediate. At the time, the State Social Welfare Board persisted in its refusal to accept the federal definition of residence in the aged and blind programs. Presently, the attitude of the federal officials stiffened and the state board capitulated. By March, 1958, therefore, the state definition was brought into line with the view of the State Attorney General and federal officials in all aid programs.

The legislative change dealing with out-of-state recipients amended an existing section of the California Welfare and Institutions Code, creating a prima facie presumption from a recipient’s absence from the state for a year or more that he intended to change his residence to a place outside the state. The amendment provided that if the recipient is prevented “by illness or other good cause” from returning to the state at the end of a year, “and has not by act or intent, established residence elsewhere,” he is not deemed to have lost his residence in California. The regulation given impetus by this provision in effect reverses a course of decisions of the State Social Welfare Board holding that recipients prevented by illness or other good cause from returning and believing that they would be prevented from returning by the same cause in the indefinite future lost California residence. These decisions parallel another series holding that intention to remain in California may be inferred from such circumstances as infirmity, senility, loss of mental competence, lasting illness, or family situation which in fact would prevent the removal of the recipient from California, no matter how posi-

130 SDSW, OAS MANUAL §§ A-117.5 to A-118.30; ANC MANUAL §§ C-112.1 to C-119.30; ANB MANUAL §§ B-117.5 to B-118.30, all prior to March, 1958.
132 Ibid.
134 S.B. 1983, Cal. Stat. 1957, c.2361, CAL. WELF. & INST. CODE § 103.4. Though it is printed in the Welfare and Institutions Code, this provision cannot be regarded as binding law. The section containing it was reenacted by the Legislature in the same session without it. Cal. Stat. 1957, c. 2411. Administrative regulation set in motion by it, however, remains in effect.
tive his oral expressions of intention to go elsewhere as soon as he found it possible. The latter series will of course be sustained by the change in definition of intention. Contrariwise, but for the change in the language of the presumption, the first series would have been given added strength by it.

V

OTHER CHANGES

The major enactments of the 1957 session of the California Legislature thus instituted the new programs of medical care and aid to the disabled, made basic changes in the amount of the grant and method of determining it, imposed an open meeting requirement on the State Social Welfare Board, and eliminated county residence as a condition of eligibility for aid. In addition to these sweeping programs and provisions, the 1957 session substantially altered the categorical aid programs with respect to the resources and income of applicants and recipients, responsibility of relatives, administrative provisions and a number of miscellaneous items. Individually considered, many of these enactments were minor but in the aggregate they mark some fairly clear-cut trends and have a considerable impact.

Resources and income. The amount of real property a recipient of aged or blind aid may have and still qualify for assistance was increased from $3500 to $5000 county assessed valuation less all encumbrances of record. In the children's program the amount was increased from $3000 to $5000.135 These increases were rushed through early in the session and immediately put into effect due to the fact that the generally higher assessments resulting from a reappraisal of property values by counties throughout the state automatically rendered many recipients ineligible for aid. Under the new provisions, as under the old, real property owned but not occupied as a home by the recipient must be utilized to meet his needs.136

The limitation to one year of the time during which proceeds from the sale of real property would continue to be treated as real property if retained for the purchase of a home was removed. Now proceeds from the sale may be held indefinitely as trust deeds, promissory notes, or mortgages if "all" payments received are applied on the balance due on the home, the purchase of which was made within one year after the sale of the real property.137 The State Social Welfare Board has held that current recipients are entitled to the benefit of the statute even though the conversion of real property occurred before application for aid.138

136 Ibid.
Uniform language was enacted for aged, blind and children's programs regarding the items excluded from consideration as personal property in determining whether the amount of personal property possessed by the individual exceeds the allowable ceiling. The language effected no substantive change in the aged and blind programs. In the children's program it added musical instruments and recreational items to the list of personal property exemptions and eliminated the word “essential” as characterizing the only household furniture and equipment exempted. Television sets, which hitherto could be allowed or disallowed at the option of the counties and which have been a source of considerable controversy, were thus exempted from consideration as personal property by state law.130 By another amendment to the children's program, personal property belonging to an absent parent and not available to the family is not to be counted in determining the amount of personal property held by the family.140 In all three programs, a provision was added that gifts of money shall be deemed personal property to the extent that they do not cause the amount of personal property holdings to exceed the ceiling. The excess above the ceiling is to be considered income to the recipient. The provision does not apply to gifts of money regularly received and likely to be continued in the future. They are to be treated as income whether above or below the personal property ceiling.141 By regulation the provision does not apply also when the recipient has a legal right to the money received, e.g., cash received as beneficiary of an insurance policy whether the premiums were paid by the beneficiary or by another without obligation to him.142

Finally, the Legislature prohibited the counties from establishing liens against the personal property, personal effects and interment plots of aged and blind aid recipients for the cost of hospitalization furnished by the county.143

In the aid to the partially self-supporting blind program, the property increase from $3500 to $5000 included personal property and a similar increase was made in the additional amount of property a recipient might retain as a part of a program of self-support.144 As additional assistance in

142 SDSW, OAS Manual § A-136, Item (a) (b); ANB Manual § B-136; ANC Manual § C-136.
143 A.B. 1918, Cal. Stat. 1957, c. 828, Cal. Welf. & Inst. Code §§ 2226, 3009, 3408. Passed by the Legislature but not signed by the Governor was a bill, S.B. 2388, defining real property occupied by the recipient, and therefore not subject to utilization requirements, as including street frontage, a home garden, a home orchard.
the self-support effort, expenditures incurred by recipients of aid to the partially self-supporting blind, not exceeding $100 in effecting a plan to become self-supporting, including payments made for the purchase of material for fixtures and equipment needed in effecting the plan, are to be deducted from gross income in determining net income. A provision already in the partially self-supporting blind program exempting educational scholarships from consideration was amended to include exemption of readers' funds and a like section exempting both was added to the needy blind program. Without exception, the 1957 legislative changes in the aged, blind and children's aid laws having to do with resources and income were prohibitions or liberalizations in favor of the recipient.

Relatives. As indicated earlier, proposals to abolish legal liability of pecuniarily able responsible relatives were shunted into the jurisdiction of a legislative interim committee. One measure substantially liberalizing the relatives' contribution scale, raising the minimum, for example, from $201 to $301 passed the Legislature but did not receive the Governor's signature. A few minor alterations in the relatives' responsibility system, all but one of which limit or reduce liability, did become law. By one of these the Legislature made explicit what otherwise was implied with varying degrees of clarity in the different programs, namely, that judicial enforcement may not antedate a finding by the county supervisors that the relative is pecuniarily able to support. By another, persons, who as children under the age of 16 were abandoned by a parent then physically and mentally able to support them but now receiving public assistance, are directed to apply first to the county supervisors before petitioning a court when seeking an order freeing them from responsibility for support of the parent. The period of abandonment which would justify such an order from the county supervisors or the court was shortened from three to two years. Whenever the board of supervisors or the court frees a relative from liability because the parent deserted such relative during his childhood, the freeing action shall be retroactive to include all unpaid demands. Finally, the 1957 session of the Legislature provided that a blind

147 Id. § 3084.4.
148 S.B. 1391.
recipient's share of his wife's community income is to be determined by the relative's contribution scale, 163 a considerably more generous arrangement than had existed under the regulations. 164

A number of amendments clarify without substantially altering the relative roles of the county welfare departments and district attorneys in securing support from absent parents of recipient children and the obligation of the person with whom the child is living to participate in the enforcement process. The boards of supervisors are required to refer the applicant to the district attorney or other prosecuting officials in all cases "in which the whereabouts of the parent is unknown ... irrespective of whether or not it is definitely established that the parent is financially incapable of supporting the child . . . ." 156 If the child is being considered for adoption, the district attorney is directed to delay action. 156 The failure of the parent with whom the child is living to supply reasonable assistance to the district attorney, earlier made a condition of the child's eligibility for aid, was defined as including any one of four particulars: refusal to be interviewed by the district attorney, refusal to sign a complaint against the absent parent, a request to dismiss the complaint, and concealment of the identity or whereabouts of the absent parent. 167

Still other legislative changes affected the relationship of recipients to their relatives but not in terms of the relatives' responsibility or liability. The practice of considering aged aid paid to a recipient in determining the amount of county general relief or public assistance under other aid programs to be paid to dependent relatives of the aged recipient was forbidden. "All money paid to a recipient," the law now reads, "is intended to help him meet his individual needs and is not for the benefit of any other person. Aid granted under this chapter shall not be construed as income to any person other than the recipient." 168 In effect, these provisions reverse the ruling of the California Supreme Court in County of Los Angeles v. State Social Welfare Department 159 upholding the legality of a Los Angeles County policy treating old age assistance payments as income to the needy spouses of recipients in determining the amount of county indigent aid the spouses

164 SDSW, ANB MANUAL § B-212.51 prior to 1957.
166 Ibid.
167 S.B. 569, Cal. Stat. 1957, c. 1576, Cal. WELF. & INST. CODE § 1523. All state, county, and local agencies were directed to cooperate in the location of parents who have abandoned or deserted children. Under the law as it stood before, this duty applied only with respect to children who were receiving public assistance. S.B. 370, Cal. Stat. 1957, c. 1577, Cal. WELF. & INST. CODE § 1552.6.
169 41 Cal. 2d 455, 260 P.2d 41 (1953).
were to receive.\textsuperscript{100} A provision was also added concerning the purchase by
the recipient of items in the budget from relatives. His grant may not be
reduced solely on the ground that goods and services are being purchased
from a relative but the allowance to the recipient \textquotedblleft shall not exceed the cost
of such goods and services to the relative.\textquotedblright\textsuperscript{101} The Legislature confirmed a
much controverted regulation of the State Social Welfare Board, upheld
against county attack by the district court of appeal\textsuperscript{102} providing that in
determining the aid to be given to a needy child, the needs of those ineligibles who are members of the family group in the home in which the eligible
child resides shall be taken into consideration. Payments are to be made in
terms of the needs of the family, not just those of the child.\textsuperscript{103}

\textit{Administration.} None of the administrative changes effected by the
1957 Legislature is of major importance. Most clarify or confirm existing
practices. Many deal with state-county relationships. Some bear on state
procedures affecting clients. A number affect private individuals and institu-
tions.

The authority of the State Department of Social Welfare, long exercised
in practice, to secure prompt and proper compliance by the counties with
the laws and standards prescribed by the State Social Welfare Board
through withholding grants in aid was given explicit legislative sanction.\textsuperscript{104}
An existing regulation was in effect put into the law by the provision that
aged recipients shall be given an itemized report of their grants, deductions
and budget items within ten days after a request therefore or after any
change in the grant unless made by statute.\textsuperscript{105} In the aged and blind pro-
grams, the Legislature clarified its intention that restitution for illegally
obtained aid should be sought by \textquotedblleft request, civil action, or other suitable
means prior to the bringing of a criminal action.\textquotedblright\textsuperscript{106}

As a means of better carrying out the new self-care and self-support

\textsuperscript{100} tenBroek and Wilson, \textit{County of Los Angeles v. State Social Welfare Department—A Criticism}, 41 \textit{Calif. L. Rev.} 499 (1953). A partial step in this direction was taken by the
Legislature in 1955 when it provided that \textquotedblleft that portion of the old age security grant as deter-
mined by the rules of the State Social Welfare Board to be necessary to meet the recipient's
need for food is intended to help him meet his individual needs and is not paid for the benefit
of, or to be construed as income to, any other person.\textquotedblright\textsuperscript{107} Cal. Stat. 1955, c. 1647, \textit{Cal. Welf. & Inst. Code} \textsection 2009. In addition to broadening the prohibition from the food allowance in the
budget to the entire aid payment, the 1957 amendment explicitly provided that: \textquoteleft The State
Department of Social Welfare may take all action necessary to enforce this section.\textquoteright\textsuperscript{108} A.B. 29,


\textsuperscript{102} Merced County v. Department of Social Welfare, 148 Cal. App. 2d 540, 307 P.2d 46
(1957).


purposes of the blind aid program, the 1957 Legislature provided that the annual eligibility review shall include "consideration in detail of the work capacity of the recipient and employment opportunities in the county." The State Department of Social Welfare is to "establish and maintain procedures to insure" that county determinations are based upon "accurate appraisals of the work capacity of the recipient and employment opportunities in the county." 107

Aged, blind and disabled recipients are to be issued identification cards to facilitate the entrance of the bearer into a hospital, clinic or first aid station. The card does not establish eligibility. 108

The maximum time allowed counties for the initial investigation of aid applications is reduced from 60 to 45 days in the aged, blind, and children's programs. 109 The transfer of recipients from one aid program to another shall be effected promptly, so that there is no interruption in payments to the recipient. 170

In a new provision designed to correct a long-standing and widespread malpractice, the county supervisors are directed in the administration of their general relief programs to adopt "standards of aid and care" and make them "open to public inspection." 171

The 1957 session of the Legislature took a hand in a few of the numerous problems arising from arrangements to provide life care to recipients or potential recipients of public assistance. Such arrangements, complete or partial, are often made in connection with a transfer of property by or on behalf of the applicant or recipient or result from membership in lodges and associations. Policies governing the relationship of such arrangements to public assistance programs in many areas still remain to be worked out. The amendments of 1957 extend regulations designed to insure the bona fides, financial ability and performance of individuals, organizations and institutions supplying such care. Each person or organization offering life care is required to have an annual audit by a CPA which shall include full detail of per capita costs of operation and reserves. Funds received as advance payments for maintenance of transferors are to be reported separately from membership fees, donations and other funds available for capital expansion. 172 Any representations or solicitations to induce persons "to enter into any agreement providing for transfer of property, conditioned upon an agreement to furnish life care or care for a period of more than one year" must, under penalty of a misdemeanor, show the financial respon-

sibilities assumed by the interested persons in the fulfillment of the contract.\textsuperscript{178} Forms used by persons and organizations certified, having a certificate, to receive property transfers must be filed with and approved by the State Department of Social Welfare. The State Department of Social Welfare is authorized to contract with the Department of Insurance to evaluate such forms.\textsuperscript{179} As a condition for a license to operate a facility to care for aged persons, all contracts for care for one year or more must be in writing on forms approved by the State Department of Social Welfare.\textsuperscript{175} Organizations or persons furnishing care “exclusively under agreements which may be canceled by either party without cause,”\textsuperscript{17} exempted from certificate of authority requirements in 1955, are now subjected to them.\textsuperscript{176} Exemptions of charitable, religious, benevolent, fraternal, educational or other nonprofit organizations from liability of liens of surety bond requirements to secure performance of obligations are repealed.\textsuperscript{177} Modifications were made in the items, details, and relationships with the Department of Insurance regarding the reserves required to be maintained by certificate holders to cover obligations assumed under agreements.\textsuperscript{178}

A much discussed and frequently reconsidered regulation of the State Social Welfare Board that a right of appeal is personal and cannot be exercised on behalf of the estate of a deceased applicant or recipient was repealed in part or fully by a provision that “nothing in this section shall prevent the filing of an appeal . . . in behalf of the decedent’s estate, to the end that rights already vested but not determined at the time of death shall accrue to the estate of the applicant or recipient.”\textsuperscript{170} The regulations adopted by the State Social Welfare Board to implement this section limit the appeal right on behalf of estates to cases in which the counties had not determined rights prior to death. These include cases of special need reported after the grant was computed, cases of delay by the counties in determining eligibility or in computing the grant. “Not determined,” consequently is read as meaning “not determined by the county,” and the statute therefore as only repealing in part the pre-existing regulations.\textsuperscript{179}

Another regulation of the State Social Welfare Board, this one much more necessarily a product of pre-existing legislation, was reversed by the Legislature in language which, again, resulted in a vigorous debate over

\textsuperscript{176} A.B. 2459, Cal. Stat. 1957, c. 1326, CAL. WELF. & INST. CODE § 2360.
\textsuperscript{175} A.B. 2460, Cal. Stat. 1957, c. 1328, CAL. WELF. & INST. CODE § 2350.
\textsuperscript{177} A.B. 2461, Cal. Stat. 1957, c. 1329, CAL. WELF. & INST. CODE §§ 2350.1, 2350.5.
\textsuperscript{180} Ibid. SDSW, all aid manuals, Appeals Chapter, § 052.
CAL. WELF. & INST. CODE § 104.5(a) was amended to extend the period in which an appeal might be filed from 90 to 120 days after the action complained of.
interpretation. It had to do with retroactive aid for underpayments. "When an underpayment of aid occurs," the new amendment provides, "because of an administrative error or inadvertence on the part of a county, and as a result the recipient receives a lesser amount than that to which he is entitled, the county shall pay aid equal to the full amount of the underpayment which occurred during the period of four years immediately preceding the date the error or inadvertence is discovered."\footnote{181 S.B. 1870, c. 388, Cal. Stat. 1957, c. 2041, \textit{Cal. Welf. \\ & Inst. Code} \textsection 103.3(f).} This provision arose out of a fair hearing appeal before the State Social Welfare Board by a blind aid recipient who had been passed over in a general statutory increase. Under the existing regulations, the appellant's current grant could be adjusted but no award could be made for the mistaken underpayment in the past. One member of the board was so incensed by what he regarded as the flagrant injustice that he procured the introduction of a bill in the Legislature which was passed without opposition and signed by the Governor. The case which had given rise to the bill was then used in argument to limit the scope of the bill's coverage. The new implementive regulations define "administrative error or inadvertence" as including misfiling of documents, errors in typing or copying, mathematical errors, failure to pay aid in the correct amount when all information essential to require such a payment was in the county record and failure to make prompt changes in the grant following amendment to statutes and regulations requiring such changes. Excluded are mistakes involving the exercise of discretion in the determination of facts or the application of a statute or regulation to the facts or which depend upon the existence of evidence not in possession of the county at the time the mistake was made. The exclusions are justified on the ground that otherwise too much administrative time and energy would be spent on redeterminations based on needs and income long since gone. No doubt the excluded errors are administrative, too, and literally within the statute. But, in the administrator's view, administrative error is bad but not so bad as further administrative inconvenience.\footnote{182 SDSW, OAS \textit{MANUAL} \textsection A-227.51; ANB \textit{MANUAL} \textsection B-227.51; ANC \textit{MANUAL} \textsection 227.51.}

\textit{Miscellaneous.} Miscellaneous provisions handled scattered other problems. The fourteen month period allowed by the regulations was extended to twenty-four months during which an old age security recipient is permitted to receive special need allowances to repay a debt incurred for physician services, medical needs and hospitalization.\footnote{183 A.B. 1684, Cal. Stat. 1957, c. 895, \textit{Cal. Welf. \\ & Inst. Code} \textsection 2142.5.} Aid is required to be suspended, as indeed it had been under the rulings of the State Social Welfare Board, when a recipient leaves the United States for more than thirty days and his needs cannot be determined.\footnote{184 S.B. 1120, Cal. Stat. 1957, c. 1907, \textit{Cal. Welf. \\ & Inst. Code} \textsection 103.7.} Repealed was a provision...
placed in the Welfare and Institutions Code in 1937 to the effect that "A county may transport needy children to proper homes without the State, when such homes are offered, and the State shall pay one-half of the total expense necessarily incurred in effecting such transportation." Allowance was made available to old age security recipients for a telephone as "a special need" when a telephone is not readily available on the premises in which they reside.

In order to rectify injustices against the Japanese Americans, the Legislature had earlier provided that aliens who were ineligible to citizenship prior to 1952, who had lived "continuously" in the United States for 25 years prior to making application and who had not "committed" an overt act against the government of the United States would be eligible for aged aid if otherwise qualified. In 1957 the word "continuously" was removed from the requirement that the alien have lived in the United States for 25 years—an effect already accomplished by the rulings of the State Social Welfare Board—and the word "convicted" was substituted for the word "committed" in the clause dealing with overt acts against the United States. The Legislature passed but the Governor failed to sign a more general provision making aliens eligible for aged aid. It provided that non-citizens who are otherwise qualified shall receive old age security if they have resided in the United States since January 1, 1932, if they declare under oath that they desire to become citizens, and if annually thereafter they submit evidence that they are proceeding diligently within the limits of their ability to qualify for citizenship.

Amid all its other welfare accomplishments, the 1957 session of the California Legislature wrote finis to a celebrated series of cases which began a tortured and stormy process in 1950 through county administration, the State Social Welfare Department and Board, the courts of the state and the Federal Department of Health, Education and Welfare. The cases involve the so-called Christ Church of the Golden Rule, a communal society with religious aspects in which the members contributed their goods and services and received board, room and some minimum maintenance. Were the members eligible for aged aid and, if so, how much? These questions were answered by the Legislature in a way to bring California into conformity with federal requirements.

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188 S.B. 1698, Cal. Stat. 1957, c. 2330, CAL. WELF. & INST. CODE § 2160(b). Although § 2160.4 was not repealed it was in effect superseded by § 2160(b).
189 A.B. 1738.
back into conformity with the federal requirement from which the ruling of the state courts had withdrawn it: "Notwithstanding any other provision of this chapter, free board, lodging and other items of need furnished free to a recipient of aid under this chapter shall constitute income to the recipient in computing the grant of assistance provided for in this chapter. However, such free items shall not be evaluated at an amount higher than specified for such items in the assistance standard established by the State Social Welfare Board." In other words, the members are eligible for aged aid and the amount of the grant is to be reduced to the extent that budgeted items are received from the church.

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