11-14-1983

Colorado Dep't of Social Servs. v. Board of County Comm'rs

SUPREME COURT, STATE OF COLORADO

Case No. 83 SA 316

APPEAL FROM THE DISTRICT COURT, PUEBLO COUNTY
(Case No. 81 CV 837, Div. C, The Honorable Jack F. Seavy)

OPENING BRIEF OF DEFENDANT-APPELLANT AND CROSS-APPELLEE THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO

THE COLORADO DEPARTMENT OF SOCIAL SERVICES,
Plaintiff-Appellee
and Cross-Appellant,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO,
Defendant-Appellant
and Cross-Appellee,

and

SAMUEL J. CORSENTINO,
Intervenor-Appellant
and Cross-Appellee.

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I.

PREFATORY STATEMENT

The Defendant-Appellant and Cross-Appellee, Board of County Commissioners of the County of Pueblo, will be referred to as "The County".

Plaintiff-Appellee and Cross-Appellant, Colorado Department of Social Services, will be referred to as "The State".

Samual J. Corsentino, Intervenor-Appellant and Cross-Appellee, will be referred to as "The Taxpayer".

Such designations have been agreed upon by the parties pursuant to C.A.R. 28(h).

The various services and benefits provided under the Colorado Social Services Code, Title 26 of C.R.S., hereinafter referred to as "the Code," as well as their administration will be generally referred to as "social services".

II.

STATEMENT OF THE ISSUES

1. Whether the County is entitled to limit it's local funding for social services to 2.5 mills under the provisions of §26-1-125, C.R.S.

2. Whether the trial court erred in ruling inadmissable the testimony of the legislators who had sponsored bills which critically changed statutes relevant to this action offered to prove legislative intent.

3. Whether the trial court erred in ruling the County is not entitled to reimbursement for foster care expenditures incurred in

excess of the amount of funds allocated therefor under §19-3-120, C.R.S.

4. Whether the State is properly determining the 80% State/20% County funding division under §26-1-122, C.R.S.

5. Whether the trial court erred in ruling the County is entitled to reimbursement of all amounts "earned" under §26-1-126, C.R.S. and whether the State is required to fully fund the "county contingency fund" provided for in that section.

6. Whether the funding provision of the Code are unconstitutional.

III.

STATEMENT OF THE CASE

This action is a dispute over social services funding. The action was brought by the State against the County to require the County to provide funding for social services in excess of the 2.5 mill levy limitation of §26-1-125, C.R.S., and in excess of the 6.3 mills appropriated therefor by the County for 1981. It further sought to require the County to alter it's 1981 budget in order to provide additional County funds as demanded by the State. The Taxpayer intervened alleging the funding provisions of the Code are in violation of the state and federal constitutions.

The following relevant facts were established at trial:

Pursuant to the Local Government Budget Law of Colorado, (Part 1, Article 1, Title 29, C.R.S.) the 1981 County budget was prepared and approved by the County in late 1980. [Vol.5,p.415, LL19-21] That budget resulted in an increase of 1.44 mills over the prior

year.

The County requested the State grant it permission for an "excess levy" for 1981, i.e. a levy in excess of the 107% limitation provided in §29-1-301, C.R.S. as well as an increase in the social services levy from 5.3 to 6.3 mills. The State approved the increased levy. [Vol.5,p.345,L14-p.347,L2]

In December 1980, the State Department of Social Services received a copy of the County's 1981 social services budget [Vol.3,p.46,L23-p.47,L7] and did not disapprove it. [Vol.3,p.48,LL22-24]

During the spring of 1981, the County was notified by the State that the County would receive less reimbursement than it had budgeted for and earned under the county contingency fund, §26-1-126, C.R.S. This shortage, coupled with similiar shortages to the county contingency fund in the previous two years and to the County's reimbursement of foster care funds under §26-5-104, C.R.S. for 1981, led to a budget deficit and cash flow problem in the County's social services fund. [Vol.5,p.473, L15 -p.487,L23]

On May 21, 1981 the County advised the State that projections indicated all County appropriations for social services would be exhausted on or about the 1st of November, 1981. [Vol.7, Ex.F] The State responded by wire, dated August 18, 1981, "ordering" the County to provide additional funds during 1981 and advising the County that such funds should come from unanticipated revenues, unappropriated revenues, or other funds, and further advising the County it was obligated to give priority to such funding. [Vol.7, Ex.G] The County did not respond to the State. [Vol.3,p.41,LL21-

24] This action was then filed on August 26th.

Ruben A. Valdez, Executive Director of the Colorado Department of Social Services, asked the County if it would make it's books available to the State so it might determine where such additional monies might come from. The County thereafter made all it's books available to the State for that purpose. [Vol.3,p.39,LL5-12]

In August, 1981, Karen Reinertson, then Director of the Division of Local Government for the State, and Dorwin Hild, a member of the field audit unit for the State Department of Social Services, were dispatched to the County to make the investigation. [Vol.5,p.356,L20-p.357,L2] They found what was termed a "marginal" or "risky" budget problem in the County. [Vol.5,p.357,LL9-12] The draft report to the State [Vol. 7, Ex. 18] said in part:

> "If Pueblo County makes up an $800,000 social services deficit by 12/31/81, there will
>
> (a) be a necessity to cease other county functions, operations and appropriations, and
>
> (b) be no carry forward cash balances to pay for county functions and operations after January 1, 1982.
>
> In either case, the ramifications for the 1982 calendar budget are severe and may not be within the power of the county commissioners to totally rectify."

A number of officials testified a county government hiring and wage freeze, and a freeze on capital expenditures went into effect as an emergency measure in 1981. [Vol.5,p.437,LL1-24] County officers testified their departments were operating at a minimum level, and transfers of funds from their departments to

social services would render questionable their ability to carry out the duties demanded of them by law.[Vol.4,p.319,L24-p.321L3]; [Vol.6,p.557,L17-p.577,L24; p.590,L5-p.593,L12; p.594,L10-p.595, L25; p.597,L20-p.598,L7]. A search was made of all departments for any available county funds and none were found. [Vol.6,p.576, LL10-13]

During the trial, the County attempted to offer the testimony of the Honorable Floyd M. Sack, and the deposition testimony of the Honorable Martin Hatcher and the Honorable Robert N. Shoemaker. Representative Sack had been the Chairman of the Interim Study Committee on Welfare in 1971 and 1972 and the prime sponsor of 1972 H.B. 1025, which amended the present §26-1-126, C.R.S. Senator Hatcher and Representative Shoemaker were the prime sponsors of 1977 H.B. 1569 in their respective houses of the legislature which repealed and reenacted with amendments §26-1-125 (1), C.R.S., (Appendix B). The testimony of these witnesses was offered as evidence of the legislative intent behind their respective bills and the resulting amended statutes. The trial court ruled their testimony inadmissable (Sack [Vol.4, p.300, LL15-23]; Hatcher [Vol.5,p.341,L10-p.342,L12]; Shoemaker [Vol.5, p.343,L8-16]

Dorwin L. Hild, of the State Department of Social Services Field Audit Unit, and Peter V. Nolan, Board Services Administrator, presented evidence concerning the dollar amounts in controversy, Hild for the State and Nolan for the County. Their computations were generally in agreement, although at the time of

trial final exact figures could not be given because the county fiscal year and the state fiscal year are out of sync. The county fiscal year begins and ends with the calendar year (§29-1-103, C.R.S.), and the state fiscal year begins July 1 (§24-30-204, C.R.S.).

The problem was solved when by agreement on May 11, 1983 the parties stipulated as follows:

> "1. That the total amount in controversy herein, termed the 'deficit' for calendar year 1981 was $539,771.92.
>
> 2. That contributing thereto were the following 'shortages' of Contingency Fund:
>
> | | |
> |---|---|
> | FY 78/79 | $ 22,256.44 |
> | FY 80/81 | 65,514.07 |
> | FY 81/82 | 236,272.03 |
> | TOTAL: | $324,042.54 |
>
> 3. That contributing thereto was the following 'shortage' to Foster Care allocation: $96,027.18." [Vol.1,p.645]

One State witness asserted at trial the proper method of determining the overall 80% State/20% County division of social services costs included a credit to the State of 100% state or federally funded pass through programs. The county showed such programs had never been included in that calculation prior to this trial, programs funded 100% by the County weren't included, and the State's own administrative manuals excluded them. [Vol.6, p.555,L20-p.556,L1; Vol.7, Ex.35]

James H. Walch, Director of the Pueblo County Department of Social Services, testified the State had fully funded the contingency fund until 1979, when shortages in State appropriations

resulted in a shortage to the County of some $22,000.00 [Vol.5, p.473,LL15-18], and 1980 of an additional $65,000. [Vol.5,p.474, L25-p.475,L3] In preparing for the 1981 budget, the County received Exhibit 21, of Volume 7, a communication from the State, dated July 17, 1980, advising the County it was anticipated the State would only appropriate 90% of the funding for the contingency fund. It was later determined the State appropriated the fund at only 75%. [Vol.5,p.477,LL12 -17] That resulted in about $236,000 in additional shortages. Also at the end of 1981, there was a shortage of about $120,000 in State funding for foster care. [Vol.5,p.478,LL16-20] The County was not advised until March 18, 1981, almost three months into the County's fiscal year, there would be no county contingency reimbursement for April, May, and June, 1981. [Vol.7, Ex.3] [Vol. 5,p.487,LL9-16] The County has little control over foster care placement because 90% of such placements are court ordered. [Vol. 5,p.491,LL10-14]

Samual J. Corsentino, Al Alber, Stephan Dale Bronn, and Gary Ernest Ingerhoffer testified during the Taxpayer's portion of the proceedings, and the facts relevant to that portion of the case will be presented by the Intervenor.

After trial, the Court entered it's Order. [Vol.1,p.583] (Appendix C)

The County seeks reversal of the Order finding:

1. The County is not entitled to limit it's local funding for social services to 2.5 mills under the provisions of §26-1-125, C.R.S.

2. The testimony of the witnesses Sack, Hatcher and Shoemaker was not admissable to prove legislative intent.

3. The County is not entitled to reimbursement for foster care expenditures incurred in excess of the allocation therefor under §19-3-120, C.R.S.

4. The State is properly determining it's 80% share of social services costs.

The Taxpayer additionally seeks reversal of the order finding the funding provisions of the Code do not violate Article X, Sections 3, 7, and 8, and Article II, Section 25 of the Constitution of Colorado, as well as the Fourteenth Amendment to the Constitution of the United States.

The State seeks reversal of the order finding the County is entitled to reimbursement of all sums it has earned under the social services contingency fund (§26-1-126, C.R.S) whether or not the State has appropriated monies for such reimbursement. The State further asserts the trial court should have given it's order prospective effect only.

A confusing point to be kept in mind is the fact that reference in the trial was made to the county social services "contingency fund" (§26-1-126, C.R.S.) which is State money used to supplement a county's share of social services. It is limited to counties levying more than 3 mills for social services. Reference was also made to the County "contingent fund" (§30-25-107, C.R.S.) which is county money used to cover various unforeseen contingencies.

IV

SUMMARY OF ARGUMENT

1. The trial court erred in its finding No. 4 that the county was not entitled to limit it's local funding for social services to 2.5 mills under the provisions of §26-1-125, C.R.S. [Vol.1, p.606] The trial court based it's ruling solely on Colorado State Board of Social Services v. Billings, 175 Colo. 380, 487 P.2d 1110 (August 1971) (hereinafter referred to as the Billings case, attached hereto as Appendix A), when this court chose not to rule on the effect of the law and simply stated Weld County should look to other revenue sources for funding. Yet, the legislature has repeatedly reenacted the section, modified it, clarified it, and done everything possible to make certain courts would understand it meant what it said.

2. The trial court erred in ruling inadmissable the testimony of the witnesses Hatcher and Shoemaker to prove the legislative intent of the latest reenactment and clarification of §26-1-125, C.R.S. The witnesses were the prime sponsors of the bill in each house of the Colorado General Assembly. One carried the bill in the house, the other in the senate. They answered their colleagues' questions concerning it, their testimony was positive and certain. If an ambiguity exists concerning this law, it's true intent should be sought. Those most familiar with it's intent should be allowed to reveal it to the court. For the same reasons, the trial court erred in ruling inadmisable the testimony of witness Sack, the prime sponsor of 1972 H.B. 1025

concerning §26-1-126, C.R.S.

3. The trial court erred in holding the County is not entitled to reimbursement for foster care expenditures incurred in excess of its allocation therefor under §19-3-120, C.R.S.

4. The trial court erred in holding the State is properly determining it's 80% share of social services costs.

5. The trial court erred in ruling the Code is constitutional. The County incorporates the taxpayer's brief herein by reference.

6. The trial court correctly ruled the State is required to provide full funding under the social services contingency fund (§26-1-126, C.R.S.). In connection with this ruling the County will forego argument here and respond to the State's brief.

V
ARGUMENT

1. THE COURT ERRED IN IT'S FINDING NO. 4 THAT THE COUNTY WAS NOT ENTITLED TO LIMIT IT'S LOCAL FUNDING FOR SOCIAL SERVICES TO 2.5 MILLS UNDER THE PROVISIONS OF §26-1-125, C.R.S. AND IN BASING SUCH RULING ON BILLINGS.

The trial court followed Billings in rejecting the county's argument under this issue. In it's order it said:

> "Some argument is advanced by both the intervenor and the County that a county should not have to impose a mill levy for welfare purposes in excess of the limitations set forth in section 26-1-125, C.R.S. 1973. This contention has also been disposed of by Billings, which is binding on this Court . . ." [Vol. 1, P. 604] (emphasis supplied)

The parties agree §26-1-122, C.R.S. provides a limit of 20% on county spending. However, the County further contends §26-1-

125, C.R.S. provides a second and independent mill levy limit on County spending, while the State, relying on Billings, believes the latter section should be treated as no more than padding in the statute books.

The only reference in Billings to the predecessor of §26-1-125, C.R.S. is the following:

> " The appellees urge strongly that C.R.S. 1963, 119-3-6 provides for a levy limit in Weld County of 3 mills for welfare purposes. * * * A ruling on this question is unnecessary . . ." 175 Colo. at 388, (Appendix A, p.388) (emphasis supplied)

This law has always stated it provided a limitation on the county mill levy for social services. True, the County might apply for and receive permission from the Department of Local Affairs for a greater levy, but the County was not required to do so.

The backdrop in Billings is bizarre. A close reading of that case suggests this Court quite correctly forstalled a callous effort to bypass and ignore the needs of the impoverished and unfortunate within the community and to exchange the county's own ridged and restrictive needs test for that established by the State. The Court noted:

> " The board of commissioners of Weld County has presented its position that welfare funds are being wasted; that the state should bear the burden of costs in excess of the monies realized for a 3-mill levy; that many recipients of public welfare should not be receiving it; and that there ought to be more authority in the county commissioners with respect to the administration of the program. In argument to the trial court the county attorney made a statement to the effect that

> the action of Weld County was an attempt to get rid of 'fakers, cheaters and connivers.'" 175 Colo. at 389,(Appendix A, P. 389) (emphasis supplied)

Such a lack of sensitivity is not exhibited by Pueblo County in this case. On the contrary, the evidence here shows, and the trial court found, what is obviously this County's motives.

> "In the year 1981, the mill levy runs from a low of 0.15 mills in Hinsdale County to a high of 6.45 mills in the City and County of Denver. Pueblo's levy for the same year was 6.3 mills. The levy in Jefferson County at the same time was 1.98 mills. The owner of a $10,000.00 home in Denver would pay $64.50 to support Denver's welfare programs, the owner of a home of equal value in Pueblo County would pay $63.00 for the same purposes, the owner of such a home in Jefferson County would pay $19.80 and the owner of the same home in Hinsdale County would pay a paltry $1.50. Secondly, statistics as to the per capita cost of welfare benefits were submitted, based upon U.S. Census population reports. In Denver, the per capita cost is $30.40, in Pueblo it is $23.41; the state-wide average per capita cost is $11.21, and the lowest per capita cost is $2.71. Thirdly, Pueblo County has 4.36 percent of the state's population but has 9.4 percent of the state-wide social services caseload." [Vol.1,pp.589-590] (Appendix C, p. 7-8) (emphasis supplied)

To compare this case, which is a plea for justice, to an attempt to place stingier standards on the needy, is an over-reaching. It is a frantic and mindless retreat to stare decisis as a last refuge.

Billings went on to say:

> " . . . it is our holding that in some manner the counties must produce their 20%, whether it be from contingency funds, an excess levy, registered warrants (C.R.S. 1963, 88-1-16), sales tax or otherwise." 175 Colo. at 388, (Appendix A, p. 388,) (emphasis supplied)

This language from the Billings decision suggests this court was ruling a county may resort to many sources of revenue when attempting to meet it's social services obligations, but §26-1-125, C.R.S. only limits one of those sources - the property tax mill levy. Such an interpretation of this statute renders it meaningless in practical application since property taxation is the only workable source of income available to a county for this purpose. Such a ruling violates the fundamental rule that the court is to give effect to every word of an enactment, if possible, Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972); and should not presume the legislature used language in a statute idly with no meaning, Blue River Defense Comm. v. Town of Silverthorne, 33 Colo. App. 10, 516 P.2d 452 (1973).

While Billings specifically did not rule on §26-1-125, it allowed it's dicta to get carried away with itself. An examination of the last quotation from Billings as applied to this case is interesting. The Court's five "revenue sources" will be considered in order.

1. Contingency Funds: At the time of trial, the evidence showed the County had meager sums in it's contingency fund. Mr. Craddock, County Administrator, testified:

> " A Contingency fund, we used to keep at the 400 to half a million dollar level, was down to 27,000.
>
> Q That's the county contingency?
>
> A Yes, the county, for acts of God and unforeseen contingency ." [Vol.5,p.440,LL3-7]

* * *

" Q How about the county contingency fund? Can we reach into that?

A If they will settle with us for $28,000, it would be my guess. (Counsel's recollection of the answer is "If they will settle with us for $28,000, they can be my guest".)

Q That's all the money that's in there?

A It may be up to 50 some thousand now." [Vol.5,p.444,L24-p.445,L2]

In 1981, when the case was first filed, the County had even less contingent monies. Al Alber, County Director of Finance and Administration, testified:

"A . . . and the contingency fund we zeroed out, we placed a no mill.

Q That's the county contingency fund?

A Yes.

Q And what was that fund after '81?

A We carried about $24,000 on an average through '81, no revenues in the fund.

Q So you just used your carry over for the contingency fund?

A Uh-huh." [Vol.5, p.422,LL16-25]

This is a far cry from the State's alligation in it's Amended Complaint that:

"21. Upon information and belief, the defendants have approximately $800,000 of unanticipated or unallocated revenue". [Vol.1, p.198]

This phantom $800,000 was obviously the money the State sent the witnesses Hild and Reinertson on a fruitless mission to find.

2. Excess Levy: The evidence shows the County had already asked for and received an excess levy. In 1981, it increased it's overall levy by 1.44 mills, one mill of which went to social services. [Vol.5,p.345,L23-p.346,L5] Mr. Al Hayden, County Commissioner testified:

> "Q And you were granted that excess levy by Miss Reinertson?
>
> A That's correct.
>
> Q Did you consider going to a vote of the people for an increase in excess of that granted by the Department of Local Affairs?
>
> A Not very seriously, I didn't, because we would have had to stand the cost of a special election and there was no doubt in my mind but what it would have been -- would have went down to defeat by a 10 to 20 margin, so it would have been an effort in futility." [Vol.4,p.318,LL7-16]

3. Registered Warrants: The registered warrants suggested by Billings amount to no more than county I.O.U.'s. Common sense, more than legal rhetoric, proves the folly of sending the needy to discount their warrants at the grocery store in exchange for bread and milk.

4. Sales Tax: Pueblo County had no sales tax. Mr. Craddock testified at Volume 5, Page 444, Lines 15-19:

> " Q Is sales tax a possibility?
>
> A I think you'd have to ask the electorate that question. It's permissible under the statute.
>
> Q. We don't have one in this County?
>
> A No, we do not."

Furthermore, this Court is asked to take judicial notice that on November 2, 1982, subsequent to this trial, a 1% county sales tax was defeated in Pueblo County 31,952 to 8,539.

5. Otherwise: Finally, Billings suggests the county "otherwise", cough up the money. Presumably this would be done by taking funds already appropriated to other county departments. Even if such action were possible under the Local Government Budget Law of Colorado (Part 1, Article 1, Title 29, C.R.S.), the evidence proves a county-wide (excluding social services) hiring freeze, wage freeze, and freeze on capital purchases went into effect in 1981. [Vol.5,p.437,LL5-24; Vol.6,p.576,LL14-18] The evidence further shows the County Roads and Bridges Department [Vol.4,p.319,LL24-p.321,L3], the County Grounds and Buildings Department [Vol.6,p.577,L5-p.578,L8], District Attorney [Vol.6, p.590,L3-p.593,L11], County Sheriff [Vol.6,p.594,L10-p.595,L25], County Treasurer [Vol.6,p.597,L20,-p.598,L7], County Assessor [Vol.6, p.597,L20,-p.598,L7], and County Clerk [Vol.6,p.597,L20, -p.598,L7], could not give up funds and continue to carry out the duties required of them by law.

In preparing for the 1981 budget, the County had already scrounged money from other available sources to fund social services. Mr. Hayden testified:

> "I might also say, Mr. Phelps, we made a transfer in '81. Before that we had funded the S.R.D.A. $89,000 from the social service budget. However, in 1981, we funded that $89,000 to S.R.D.A. out of the general fund which relieved the social service fund of another $89,000. Plus the one full mill that we put on.

Q What is S.R.D.A.?

A Senior Resource--senior citizen deal." [Vol.4,p.317,LL9-15]

There simply is no reliable source of revenue available to a county for the support of its social services obligations other than property taxation. When money gets tight, it is just too simplistic a solution for a court, or for the State, to tell a local government to go out and find the money wherever it can. That notion, we suggest, is what Senator Hatcher and Representative Shoemaker sought to bury forever with H.B. 1569 of the 1977 Legislature. (Copy attached hereto as Appendix B)

This Court went on to say in Billings:

> "As to many of the matters which cause concern to the board of county commissioners, the remedy which the board seeks must come from the legislative branch of the government, and not from us." 175 Colo. at 389-90, (Appendix A) (emphasis supplied)

In November, 1971, the legislature, presumably taking this Court at it's word, accepted the report of the Legislative Council's Committee to study welfare. The joint committee was chaired by the witness, Sack. Exhibit 63, Volume 7 is that report That the legislature was then aware of the Billings decision is apparant from the report's reference to the case on Page 51 of the Exhibit.

H.B. 1025 of the 1972 legislature [Vol. 7, Ex. 61] was the first action taken. The witness, Sack was prime sponsor. Doubtless this Court will hear more about that when the State

files it's brief in this case, but for now it is enough to say the trial court here correctly found the act had the effect of changing the County welfare contingency fund from one which the State might provide for to one which it must provide for. [Vol. 1, pp.595-601] The 1973 legislature, with the witness Sack again as prime sponsor, next passed H.B. 1003. [Vol.7,Ex.67] This act revamped the social services code from first to last.

The mill levy limitation statute as it existed at the time of Billings (§119-3-6 C.R.S. 1963) provided eight graduated limits on county mill levys for welfare purposes ranging from 6 mills in the top county classification to 2.5 mills in the bottom one. In 1972, the section was amended in a manner not material here, but was not repealed as meaningless. (Colo. Session laws 1972,pp.616-617). In 1973 it was repealed and reenacted as §119-1-24, C.R.S. 1963. [Vol.7,Ex.67]. The section was later recodified as §26-1-125, C.R.S. 1973.

In 1977, H.B. 1569, sponsored by the witnesses Hatcher and Shoemaker, was passed. (See Appendix B) Importantly, Section 1 added a second paragraph to the legislative declaration contained in §26-1-102, C.R.S., making clear beyond question the fact social services programs in Colorado were primarily the responsibility of the State and not the county. It says:

> "(2) In providing for such programs relating to public assistance and welfare, the general assembly finds that recipients of social services qualify under the various state and federal programs without regard to the adequacy or inadequacy of funds available for such services. Recognizing this fundamental fact and, further, recognizing that the state

> department, not the several county departments, is the principal in all federal-state social services programs covered in this title, the general assembly further finds that the monetary limit prescribed in this article for the county department participation shall be deemed a precise limit beyond which no county can operate or be required to operate by virtue of any statutory or regulatory provision." (emphasis supplied)

In other words, if funds run short, it is the State's duty, not the County's, to plug the gap.

Section 2 required the State to advance it's contributions to the counties not reimburse them as before.

Finally, Section 3 again repealed and reenacted subsection 1 of 26-1-125 with amendments. It reduced the number of county classification from eight to four and changed the limits from 4 mills in the highest classification to 2.5 mills at the lowest. (See Appendix B) That section remains in effect today.

The evidence is undisputed that in 1981 all of Colorado's counties except Conejos had formula limits of 2.5 mills under §26-1-125, C.R.S. [Vol.6,p.613,LL1-14; Vol.7,Ex.I-10] Volume 7, Exhibit I-8 discloses in 1981 only 19 counties exceeded such formula limit. Volume 7, Exhibit I-3 shows 19 counties levied less than 1 mill to meet their 20% limitation under §26-1-122, C.R.S.

It is manifestly clear, therefore, after passage of H.B. 1569 Article 1, of Title 26, C.R.S. applies first a county funding limit of 20% (§26-1-122, C.R.S.) beyond which the county may not go. §26-1-125 applies a second and independent limit of 2.5 mills which the county may exceed so long as it does not go beyond the

20% limit. One county may impose a 2.5 mill limit even though it's resulting contribution amounts to only 15%; another county may limit it's levy to 1.5 mills if that is sufficient to produce it's 20%. (See argument 2 of this Brief regarding evidence offered, but held inadmissable by the trial court, to prove this interpretation was the intent of the legislature).

No longer could it be asserted, as it was in Billings, it was a countys duty to let all its other statutory responsibilities go begging in order to give top priority to the funding of welfare.

2. THE COURT ERRED IN RULING INADMISSABLE THE TESTIMONY OF THE WITNESSES, HATCHER AND SHOEMAKER, TO PROVE THE LEGISLATIVE INTENT OF H. B. 1569 OF THE 1977 SESSION. (DEPO. EX. 1 TO EX. 44) AND WITNESS SACK TO PROVE THE LEGISLATIVE INTENT OF H.B. 1025 OF THE 1972 SESSION.

The testimony of the witness Hatcher was taken by deposition and is found as Exhibit 44 in Volume 7. It was ruled inadmissable and was presented to the trial court under offer of proof. [Vol.5,p.343,L1]

The testimony of the witness Shoemaker was likewise taken by deposition and is found as Exhibit 39, Volume 7. It was also ruled inadmissable and was also presented to the trial court under offer of proof. [Vol.5,p.343,L15]

Senator Hatcher was prime senate sponsor of 1977 H.B. 1569, handled it at committee, and carried it on the floor. His testimony was offered to the trial court by the County as evidence of the legislative intent behind that bill. [Vol.5,p.341,LL10-20] In response to questions regarding the purpose intended in §26-1-

125, C.R.S., the witness said:

> "A I do remember, however, in carrying that bill, that we were trying to define a precise limit for the county's responsibility in welfare programs. We were trying to limit its responsibility so that the entire burden could not have been on the county. We tried to make the state the primary agent in working with the federal government and would hold it responsible rather than the county. Now, the county did have responsibilities, but our purpose was to limit them." [Vol.7,Ex.44,p.7, LL14-21]
>
> * * *
>
> "A I believe it is a separate limitation. I think the legislature did not intend to get rid of that limitation. It is a limitation based on the mill levy. I see it as a separate limitation as well . . ."[Vol.7, Ex.44,p.9,LL9-12] (emphasis supplied)

He went on to say on Page 10, Lines 6-16 of the same Exhibit:

> "A . . . those counties that were relatively poor, that assessment per capita raised $2,600 or more, whatever, that they would not exceed that two and one-half mills in raising the share of that social services budget. So we see that as a limitation that, again, if that fell below twenty percent, I think that is a separate limitation from the one we added in 1569. I think it is still valid. I don't see any conflict in the two.
>
> Q All right, sir.
>
> A I think both of them are simply different kind of limitations." (emphasis supplied)
>
> On Page 11, Lines 4-23 he went on to say:
>
> " A You couldn't be held responsible for more than the twenty per cent even though your two and one-half mills may have raised more money than necessary.
>
> Q All right, sir. Now, let's say hypothetically that that two and one half mills in a given county raised less than

twenty per cent. How was your intent this act would apply?

A Well, as legislators, we read them pretty much as they are printed. We would say that is still the limitation and the other one would not apply.

Q Which one?

A This one would apply because it is dealing with the mill levy.

Q All right, sir. When you say "this one," which one are you pointing to?

A I am pointing to the one that limits you not to exceed two and one-half mills.

Q And the state having primary responsibility would be responsible for the remainder?

A That's correct." (emphasis supplied)

Representative Shoemaker was prime house sponsor of 1977 H.B. 1569. He carried the bill through committee and on to the floor. [Vol7,Ex.39,p.5,] On p.11,L24 through p.12,L9 of Exhibit 39 he testified:

"A The county was obligated to twenty per cent of the cost of social services, but could not exceed two and one-half mills. In the example you are giving, could not exceed two and one-half mills to attain that twenty per cent.

Q Okay. So if the two and one-half only raised fifteen per cent, why, that was all the county would be required under the law, is that correct?

A That is the way I understand.

Q And that was your intention when you carried this bill?

A Yes." (emphasis supplied)

The trial court also ruled inadmisable the testimony of Floyd M. Sack, [Vol.4.,p.300,L22-23], which was submitted to prove the legislative intent of §26-1-126, C.R.S. Under offer of proof, Mr. Sack testified he was formerly a member of the Colorado legislature and was Chairman of the Interim Study Committee on Welfare in 1971 and 1972. Because social services was of state-wide concern, equalization of county levies was desired. H.B. 1025 of the 1972 Legislure, [Vol.7,Ex.61], (now §26-1-126, C.R.S.) of which Mr. Sack was prime sponsor, resulted. Mr. Sack testified it was intended to require the State to fully appropriate funding for the contingency fund annually thereafter. [Vol.4,p.305,L7-p.309,L1].

While the court is the ultimate interpreter of statutes, the cardinal rule they must follow in statutory interpretation is to discover and enforce the legislative intent. People v. Taggart, ___Colo___, 621 P.2d 1375 (1981). Rules of statutory construction are subordinate to legislative intent. Robinson v. State, 155 Colo. 9, 392 P.2d 606 (1964). The trial court may not only consider the language of the specific section being construed in context with the language of the entire statute as a whole to ascertain its underlying intent and meaning, Doenges - Glass, Inc. v. General Motors Acceptance Corp., 175 Colo 518, 488 P.2d 879 (1971), but it may also consider extrinsic evidence of that intent, Train v. Colorado Public Interest Res. Grp., 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed2d 434 (1976). Successive drafts of a bill as it traveled through the legislature, reports of conference

committees, legislative journals, contemporary legislative construction, and statements made by the chairman of a congressional committee have all been held to be admissable under proper qualification and considered persuasive even though not necessarily controlling on the issue. Haines v. Colo. State Personnel Board, 39 Colo. App. 459, 566 P.2d 1088 (1977); Nicholas v. Denver and R.G.R.W. Co., 195 F.2d 428, (C.A. Colo. 1952); City and County of Denver v. Adams County, 33 Colo. 1, 77 P 858 (1904); and Gibson v. People, 44 Colo. 600, 99 P. 333 (1908).

As recently as 1982, this Court approved the use of the Affidavit of Senator Clarke to prove the legislative intent of Colorado's antitrust statutes because he drafted the legislation. People v. North Avenue Furniture and Appliance, Inc., ___Colo___, 645 P.2d 1291, 1294 footnote 4 (1982)

Furthermore, in Isbill Associates, Inc. v. City and County of Denver, Vol. 12, p. 953, The Colorado Lawyer (June 1983) the Court of Appeals relied on statements of a senator who was joint sponsor of Colorado's new law on prejudgement interest in order to deter- mine the legislative intent at the time it was enacted.

Finally, in Lewis v. United States, 445 U.S. 55, 100 S.Ct 915, 63 L.Ed2d 198 (1980), the Supreme Court at Page 919 quoted Senator Long, who introduced and directed passage of Title VII of the Omnibus Crime Act, when construing it. The Court said:

> "Inasmuch as Senator Long was the sponsor and floor manager of the bill, his statements are entitled to weight. Simpson v. United States, 435 U.S. 6, 13, 98 S.Ct. 909, 913, 55 L.Ed2d 70 (1978).

3. THE TRIAL COURT ERRED IN HOLDING THE COUNTY IS NOT ENTITLED TO REIMBURSEMENT FOR FOSTER CARE EXPENDITURES IN EXCESS OF THE ALLOCATION SET BY THE STATE FOR THE COUNTY UNDER §19-3-120, C.R.S.

Part of the deficit incurred by the County in its social services fund in 1981 was attributable to shortages in reimbursement from the State to the County for foster care expenditures. [Vol.1,p.645] Those expenditures were $120,000 greater than the amount allocated to the County by the State under the formula the State had developed pursuant to §19-3-120, C.R.S. [Vol.5,p.485, LL12-20] The trial court held the County was not entitled to reimbursement of the State's 80% share of that excess ($96,027.18) citing that statute. [Vol.1,p.645]

The trial court interpreted the Code's provisions for foster care reimbursement too narrowly. §26-5-104 and 19-3-120, C.R.S., require the State to develop an allocation formula to reimburse the counties up to the limits of the State appropriation. However, foster care is one of the "actual costs" for social services activities for which §26-1- 122(1)(d), C.R.S., prohibits a county from expending beyond its 20% share. (See §26-1-122(2) and 26-1-122(4)(c), C.R.S. definitions of "actual" and "program" costs). Thus, while the general rule prohibits a county from expending beyond its allocation set pursuant to §19-3-120,C.R.S., that section, when read with the other two cited sections, imposes a mandatory duty on the State to develop and apply a formula which provides sufficient funds to meet the State's proportionate share of foster care expenses incurred by the

counties.

The formula developed and used by the State did not meet this obligation. Both years the original formula was used, shortages occurred in 29 counties including Pueblo County. [Vol.5,p.483, LL22-25] Supplemental appropriations were sought and obtained to cover the shortages the first year (FY 1979-80) and partially cover those of the second year (FY 1980-81). [Vol.5,p.482,Ll; p. 483,L18; and p.485,LL7-20] Evidence at trial showed a formula could be designed which would meet the requirements of the counties. A new formula was developed and applied in FY 1981-82 to the present and the counties have had no problems staying within their allocations. [Vol.5,p.485,LL7-11]

The state-wide appropriation and the size of the allocation available to each county for foster care reimbursement are not the only things set by the State. The expenses incurred by counties for foster care are also largely dictated by the State and the judiciary. The courts and the provisions of the Colorado Children's Code (Title 19, C.R.S.) determine what children are to be placed in foster care and often in which facilities. [Vol.5,p. 491,LL13-14] Lastly, the fees paid by the counties to various facilities are set by the State. [Vol.3,p.54,Ll-p.61,L7; Vol.5, p.490,L16,-p,491,L9]

To force the County to absorb foster care expenditures incurred at the direction of the State and the judiciary in excess of an allocation set by an unworkable State formula, under a budget appropriation also set by the State [Vol.3,p.90,L3-p.91,

L15; p.110,L12-p.113,L19] violates the provisions of §26-1-122(1)(d) and 26-1-102(2), C.R.S. The party who makes the rules, causes the expenses, and fails to develop the allocation formula, should be permitted to pay for the privilege.

4. THE COURT ERRED IN HOLDING THE STATE IS PROPERLY DETERMINING IT'S 80% SHARE OF SOCIAL SERVICES COSTS

It is difficult to know whether the trial court [Vol. 1, pp.603-604 and 606] (Appendix C, pp.21-22 and 24) approved the inclusion of 100% "pass-through" funds as a credit to the State's 80% as the witness Christy urged [Vol.4,p.180,L23-p.184, L8; p.191,L11-p.192,L5; p.249,L19-p.250,L3] or approved their exclusion in computing the 80% - 20% division as the Social Services Manual dictates (Ex. 35), and the witness, Hild, demonstrated on Page 8 of Ex. M. As a practical matter both before trial and thereafter, such funds have been excluded in making the calculations by the State and County alike.

Certain social services programs administered by the State through the County departments are entirely funded by the state or federal government, such as the Low Income Energy Assistance Program (LEAP) and the Old Age Pension (OAP). Susan A. Christy, Associate Director for Operations of the State Department of Social Services, testified in calculating the 80% State/20% County contribution split, she considered payments under these 100% pass through programs part of the State's share under §26-1-122, C.R.S. even through: (1) Such programs are totally funded by the state and federal government. (2) Such programs were not

in existance at the time of the passage of §26-1-122, C.R.S. (3) She had testified at deposition it could be calculated either way. (4) She did not consider such payments in calculating county contingency fund earnings under §26-1-126, C.R.S. and (5) The part of the State Social Services Manual describing by illustration how to make such calculations (Ex. 35) excludes such payments. [Vol.4,p.180,L23-p.184,L8; p.191,L11-p.192,L5; p.249, L19,-p.250,L3]. In fact, neither 100% state and federally funded programs, nor the programs entirely funded by the County (general assistance) have ever been used in this calculation prior to this trial. [Vol.6,p.555,L20-p.556,L16]

Karen Reinertson, Associate Director of Colorado Counties, Inc., formerly of the Governor's office of State Planning and Budgeting, and formerly Director of the Division of Local Government of the State, using Exhibit 79 as a hypothetical example said that by including such federal and state payments the County would only receive credit for 17% of the funding, and that by excluding them the County would receive it's full credit of 20%. [Vol.5,p.364,L4-p.367,L9] It would otherwise be impossible for the County to ever reach it's 20% limit. [Vol.5,p. 395,LL2-22]

It is unclear whether the trial court ruled in favor of the State's inclusion of these 100% pass through programs in this calculation or not. The issue is not the 80% State share, but the 20% County share since that is the statutorily imposed limit. Including these programs in the calculation expands the base and the State's share allowing the County to pay more than 20% of the

programs in which both entities share the funding.

This Court's interpretation of the trial court's ruling is therefore necessary to a disposal of this case.

IV

RELIEF SOUGHT

1. An order overruling the trial court's finding that §26-1-125, C.R.S. does not provide a mill levy limitation on county spending for social services programs independent of and in addition to that limitation provided for in §26-1-122, C.R.S.

2. An Order affirming the trial courts finding that the State is required to provide full funding under the social services contingency fund, §26-1-126, C.R.S., and ordering the State to credit the County with the sum of $324,042.54.

3. An order overruling the trial court's finding that the County is not entitled to reimbursement for foster care expenditures incurred in excess of the amount alocated therefor under §19-3-120, C.R.S., and further ordering the State to credit the County with the sum of an additional $96,027.18.

4. An order requiring the State and County to exclude Old Age Pension Funds, Low Energy Assistence Payments and others not specifically included in §26-1-122, C.R.S. in calculating the 20%-80% County - State division of social services contributions.

Respectfully submitted this 14th day of November, 1983.

OFFICE OF PUEBLO COUNTY ATTORNEY

By _____
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CERTIFICATION OF SERVICE

This is to certify that I have duly served the within OPENING BRIEF upon the parties named below by depositing copies of same in the United States mail, postage prepaid, at Pueblo, Colorado, this 14th day of November, 1983 addressed as follows:

Rexford L. Mitchell
MITCHELL 7 MITCHELL, P.C.
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Rocky Ford, Colorado 81067

Charles E. Berry
El Paso County Attorney
27 E. Vermijo
Colorado Springs, CO 80903

Theresa L. Reinert

This is to certify that I have duly served the within OPENING BRIEF upon the parties named below by personally handing to and leaving with each a true copy of same.

Gerald A. Marroney
WARE AND MARRONEY
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Terry A. Hart

No. 25267.

THE COLORADO STATE BOARD OF SOCIAL SERVICES *v.* GLENN K. BILLINGS, HARRY S. ASHLEY, AND MARSHALL ANDERSON, INDIVIDUALLY AND AS MEMBERS OF THE WELD COUNTY BOARD OF COUNTY COMMISSIONERS AND AS THE WELD COUNTY BOARD OF PUBLIC WELFARE.

(487 P.2d 1110)

Decided August 12, 1971. Rehearing denied August 16, 1971.

Action by state board of social services to compel county, through its board of county commissioners, to defray 20% of the welfare costs in the county. From refusal of district judge to enter a temporary restraining order, plaintiff appealed.

Reversed.

1. INJUNCTION — *Mandatory — Defray — Percent — Welfare Costs — County — Issue.* In action by state board of social services to compel county, through its board of county commissioners, to defray 20% of the welfare costs in the county, where district judge refused to enter a temporary restraining order, *held*, under the circumstances, reviewing court reverses and holds that a mandatory injunction should issue.

2. SOCIAL SECURITY AND PUBLIC WELFARE — *Lack of Welfare Money — Duty to Defray — Percent — Aid to Dependent Children — Statutes — Mandate.* Irrespective of its lack of welfare money produced by its *ad valorem* tax, a county is duty bound to defray 20% of the benefits awarded under the aid to dependent children statutes and of the costs incident thereto; especially, since the statutes create such a mandate.

3. COUNTIES — *Powers — Authority — Grant — General Assembly — Carry Out — Will of State.* A county and its board of county commissioners have only such powers and authority as are granted by the general assembly, and they must carry out the will of the state as expressed by the general assembly.

4. SOCIAL SECURITY AND PUBLIC WELFARE — *Statutes — Adoption*

— *Federal Requirements — State's Plan — Counties.* The public welfare statutes and amendments have been adopted in the light of federal requirements that the public welfare benefits must be allocated and expended in accordance with the state's plan by *all* the political subdivisions of the state handling the administration of the matter, *i.e.*, in Colorado, the counties.

5. *Statutes — Each County — Percentage — Costs — Lesser — Negative.* The Colorado statutes exhibit a legislative intent that each county must bear 20% of the welfare costs expended by it, and that one county cannot bear a lesser percentage than another.

6. *Commissioners — Decision — Benefits — Negative — Appointed by County Director — Fix Salary — Approve — Raise Funds.* The county commissioners do not have discretion to decide who is going to receive benefits and how much each person will receive, nor to rescind the benefits awarded to a person; its province is to appoint the county director, fix his salary, approve appointments and raise the money to pay the bill.

7. *State — Reimbursement — Counties — Remainder — Percentage.* Under the pertinent statute, the state will reimburse the counties for 80% of the amounts spent for welfare; the counties bear the remaining 20%.

8. *Counties — Produce — Percentage — Welfare — Mandatory.* The counties, in some manner, must produce their 20% of the amounts spent for welfare, whether it be from contingency funds, an excess levy, registered warrants, sales tax or otherwise.

9. *General Assembly — Mandate — County — Furnish — Percent.* The general assembly intended to and has placed a mandate upon the county to furnish 20% of public welfare costs.

10. APPEAL AND ERROR — *Restraining Order — County — Defray — Welfare Costs — Dismissal — Failure to File — Motion for New Trial — Negative.* Where no controverted issues of fact were involved and the only issue was one of statutory interpretation, appeal from refusal to enter temporary restraining order compelling county to defray 20% of the welfare costs was not required to be dismissed for failure to file motion for new trial.

Appeal from the District Court of Weld County, Honorable Earl A. Wolvington, Judge.

DUKE W. DUNBAR, Attorney General, JOHN P. MOORE, Deputy, DOUGLAS D. DOANE, Special Assistant, for plaintiff-appellant.

SAMUEL S. TELEP, THOMAS A. CONNELL, SCHNEIDER, SHOEMAKER, WHAM & COOKE, RONALD LEE COOKE, ELWYN F. SCHAEFER, for defendants-appellees.

En Banc.

MR. JUSTICE GROVES delivered the opinion of the Court.

[1] THE appellant, called the state board, brought an action in the district court to compel Weld County, through its board of county commissioners, to defray 20% of the welfare costs in the county. The district judge refused to enter a temporary restraining order and then upon stipulation of counsel placed his decision in a final, appealable form. Appeal was taken to our court of appeals and almost immediately thereafter the matter was certified to this court under the provisions of 1969 Perm. Supp., C.R.S. 1963, 37-21-9. We reverse and hold that a mandatory injunction should issue.

Several different types of welfare benefits are involved, being aid to (1) indigent tuberculars, C.R.S. 1963, 119-2-1 *et seq.*, as amended; (2) needy disabled, C.R.S. 1963, 119-6-1 *et. seq.*, as amended; (3) the blind, C.R.S. 1963, 16-2-1 *et seq.*, as amended; and (4) dependent children, 1967 Perm. Supp., C.R.S. 1963, 119-9-1 *et seq.*, as amended.

In each type of aid the state has obligated itself to reimburse the counties for 80% of the costs of the aid and administration expenses, subject to certain requirements which the counties must meet. There is a difference in wording of comparable provisions in the statutes

relating to aid to dependent children, on the one hand, and in the statutes relating to the other three types of benefits, on the other hand. Principally by the use of the word "shall" instead of "may" in portions of the provisions concerning the other three types, the mandatory character of the legislation requiring counties to pay 20% is beyond question. On oral argument, counsel for the appellees conceded that the county is liable for 20% of the cost of the program for indigent tuberculars, needy disabled, and the blind. Therefore, our attention will be directed to the statutory provisions relating to aid to dependent children.

The state board is the agency which administers public welfare programs on behalf of the state. The board of county commissioners in each county is the county board of public welfare, whose duties are to appoint the county director of public welfare and fix his salary in accordance with a salary schedule prescribed by the state department of public welfare. C.R.S. 1963, 119-1-10 and 11. So far as we are advised, these and approval of the hiring of the county department staff are the only duties placed upon the county board, acting as such.

1967 Perm. Supp., C.R.S. 1963, 119-9-12 provides as follows in regard to aid to dependent children:

"The board of county commissioners in each county shall appropriate annually such sum as in its discretion and judgment may be needed to carry out the provisions of this article, including expenses of administration based upon a budget prepared by the county welfare department, after taking into account state and federal funds. The board is to include in the tax levy for such county, the sum appropriated for that purpose. Should the sum so appropriated be expended or exhausted, during the year, and for the purpose for which it was appropriated, additional sums may be appropriated by the board of county commissioners."

The budget for 1971 prepared by the county welfare department estimated that the county's 20% share would

amount to $1,114,378, which would require a levy of 5.51 mills. The board of county commissioners in contrast made a levy for welfare for the year 1971 in the amount of 3.0 mills, to produce an estimated $602,790. When mid-year 1971 approached, it appeared that the funds that Weld County had appropriated for this purpose would be substantially exhausted by the end of July 1971. The state board on July 1, 1971, entered an order directing the county commissioners of Weld County to make sufficient county funds available for the remainder of 1971 in order that the county's 20% share would be paid. The county commissioners have not complied with the order and have indicated that, in the absence of a judicial mandate, they will not do so.

[2] While other questions are presented here, upon some of which we will later have comment, the fundamental question — and the one we first approach — is, irrespective of its lack of welfare money produced by its *ad velorem* tax, does a county have to defray 20% of the benefits awarded under the aid to dependent children statutes and of the costs incident thereto. We answer the question in the affirmative and hold that our statutes create such a mandate.

[3] Colo. Const. art. V, § 1 provides that, "The legislative power of the state shall be vested in the general assembly...." A county and its board of county commissioners have only such powers and authority as are granted by the general assembly, and they must carry out the will of the state as expressed by the general assembly. *Board of County Commissioners v. Love*, 172 Colo. 121, 470 P.2d 861 (1970).

[4] A substantial portion of public welfare money administered by the counties comes from federal grants paid to the state, and by the state in turn paid to the counties. Our public welfare statutes and the amendments thereof have been adopted in the light of federal requirements that the public welfare benefits must be allocated and expended in accordance with the state's

plan by *all* the political subdivisions of the state handling the administration of the matter, *i.e.*, in Colorado, the counties. 42 U.S.C. § 602; and 45 C.F.R. § 205.120, as found in 36 Fed. Reg. 3862 (1971).

[**5**] We find exhibited in the Colorado statutes a legislative intent that each county must bear 20% of the welfare costs expended by it, and that one county cannot bear a lesser percentage than another. The state department of public welfare must require as a condition for a county to receive grants-in-aid that the county shall bear the proportion of total expense of furnishing aid as fixed by law. C.R.S. 1963, 119-1-5. The board of county commissioners are authorized to make appropriations to defray the cost of "necessary welfare services within the county." 1969 Perm. Supp., C.R.S. 1963, 119-1-15. The county welfare budget is to contain, among other things, "the estimated amount required to be raised by county taxation in order to meet the county's share of the cost of public welfare." C.R.S. 1963, 119-3-5. The state department of social services is required to take such action as may be necessary or desirable for carrying out the provisions of the welfare laws and all "rules and regulations made by the state board shall be binding on the counties and shall be complied with by the respective county departments. . . ." 1969 Perm. Supp., C.R.S. 1963, 119-9-2(1)(c). 1969 Perm. Supp., C.R.S. 1963, 119-9-5 provides:

"The amount of assistance or aid to families with dependent children which shall be granted shall be on the basis of budgetary need as determined by the county department, with due regard to any other resources and in accordance with rules and regulations made by the state board, which may include the use of tables, standards, and other criteria with respect to such determination of budgetary need."

1969 Perm. Supp., C.R.S. 1963, 119-9-8 provides as follows:

"Upon the completion of the verification and record,

the county department shall decide whether the child is eligible for assistance or aid under the provisions of this article, and shall determine the amount of such assistance and the date upon which such assistance shall begin. It shall make an award which shall be binding upon the county, which award shall continue until modified or vacated. Upon its order, assistance shall be paid to or in behalf of the applicant from funds appropriated to it for such purpose."

1967 Perm. Supp., C.R.S. 1963, 119-9-12 provides:

"The board of county commissioners in each county shall appropriate annually such sum as in its discretion and judgment may be needed to carry out the provisions of this article, including expenses of administration based upon a budget prepared by the county welfare department, after taking into account state and federal funds. The board is to include in the tax levy for such county, the sum appropriated for that purpose. Should the sum so appropriated be expended or exhausted, during the year, and for the purpose for which it was appropriated, additional sums may be appropriated by the board of county commissioners."

[6] The standards governing the granting of aid and governing the amount to be paid to persons are established by the state board, except as are provided by statute. The county board of public welfare and the county department of public welfare must follow these standards. The conclusion follows that the county commissioners do not have discretion to decide who is going to receive benefits and how much each person will receive, nor to rescind the benefits awarded to a person. Its province is to appoint the county director, fix his salary, approve appointments and raise the money to pay the bill.

[7] The statutes provide that the state will reimburse the counties for 80% of the amounts spent for welfare. 1969 Perm. Supp., C.R.S. 1963, 119-9-13. In other words, the counties bear the remaining 20%. While the statute

in places uses the term "may," it is quite apparent to us that the general assembly has used it in a mandatory sense and has ordered each board of county commissioners to pay 20% of the benefits awarded and incidental costs. *Carleno Sales v. Ramsay Co.*, 129 Colo. 393, 270 P.2d 755 (1954).

The record discloses that the county commissioners' association recently asked the general assembly to enact legislation under which counties would not be liable for welfare costs in excess of the amounts raised by the mill levies made for that purpose. In contrast, the First Regular Session of the Forty-eighth General Assembly enacted Senate Bill No. 149, which was approved on May 6, 1971. This is a re-enactment and amendment of C.R.S. 1963, 119-1-15. It provides in part as follows:

"(1) The board of county commissioners in each county of this state shall annually appropriate as provided by law such funds as shall be needed to carry out the public assistance and social services activities of the county department, including the costs of administration, based upon the county welfare budget prepared by the county department pursuant to section 119-3-5, after taking into account state reimbursements provided for in this section, and shall include in the tax levy for such county the sums appropriated for this purpose. In the case of a district welfare department each county forming a part of said district shall appropriate the funds necessary to defray the welfare activities of such individual county.

"(2)(a) If the county departments are administered in accordance with the policies and rules of the department for the administration of county departments, eighty percent of the administrative costs of the county departments shall be advanced or reimbursed to the county by the state treasurer from funds appropriated or made available for such purpose. . . ."

This bill has an effective date of July 1, 1971. Under our determination of this matter, it is unnecessary to express a view as to whether this enactment is controlling here.

It may be that the legislative intent was for it to come into operation at the time counties fix their mill levies in the fall of 1971. In any event, it would appear, although we do not decide, that under this enactment the questions argued here become academic with the year 1972, as it seems that the general assembly sets forth in unequivocal terms the same mandates which we have determined that it previously enacted.

[8] The appellees urge strongly that C.R.S. 1963, 119-3-6 provides for a levy limit in Weld County of 3 mills for welfare purposes. They further argue that there is no duty upon the county to petition the property tax administrator for a rate in excess of these limits under C.R.S. 1963, 119-3-6(4) as amended by Colo. Sess. Laws 1970, ch. 90, § 5. The state board urges that the property tax administrator and his predecessor, the state tax commission, has without exception granted all requests for excess levies. A ruling on this question is unnecessary as it is our holding that in some manner the counties must produce their 20%, whether it be from contingency funds, an excess levy, registered warrants (C.R.S. 1963, 88-1-16), sales tax or otherwise.

It is urged by the appellees that, by reason of the wording of C.R.S. 1963, 119-1-5, the state board cannot require Weld County to bear its proportion of total expenses. The statute reads:

"(1) (a) In administering any funds appropriated or made available to the state department for welfare purposes, the state department shall have the power:

(b) To require as a condition for receiving grants-in-aid, that the county shall bear the proportion of the total expense of furnishing aid, as is fixed by law relating to such assistance.

(c) To terminate any grants-in-aid to any county if the laws providing such grant-in-aid and the minimum standards prescribed by the state department thereunder are not complied with."

The contention is that under this wording Weld County

must bear its share "as a condition for receiving grants-in-aid," and the only remedy of the state board is to terminate the grants-in-aid. A decision on our part really is not necessary under the disposition we are making, but we do wish to point out the fallacy of this argument. Conceivably, there might be something to the argument if in advance of 1970 Weld County notified the state board that it was not going to bear its share of welfare costs. Then it might be said that the sole remedy on the part of the state board would be to terminate grants-in-aid. However, here we have an entirely different situation in which Weld County accepted reimbursement from the state with respect to all welfare costs for a period of at least six months and during that time did not indicate to the state board that it would not bear its full 20% during the last half of the year. Thus, the grants-in-aid having been furnished, Weld County availed itself of and met the condition, and as a result the state board has a right to require performance by the county.

The board of commissioners of Weld County has presented its position that welfare funds are being wasted; that the state should bear the burden of costs in excess of the monies realized for a 3-mill levy; that many recipients of public welfare should not be receiving it; and that there ought to be more authority in the county commissioners with respect to the administration of the program. In argument to the trial court the county attorney made a statement to the effect that the action of Weld County was an attempt to get rid of "fakers, cheaters and connivers." However sympathetic we may be with these views, the correction of such evils is in no manner before us in this proceeding. If there are violations of existing laws, of course, appropriate action should be taken; but this issue is not here. As to many of the matters which cause concern to the board of county commissioners, the remedy which the board seeks must come from the legislative branch of the government,

and not from us.

[9] It is contended on behalf of the appellees that the only duty with respect to aid to dependent children was for the board, in fixing the welfare budget and levy, to exercise its discretion. This argument is predicated upon the provisions of 1967 Perm. Supp., C.R.S. 1963, 119-9-12, already quoted. Emphasis is placed upon the wording, "such sum as in its discretion and judgment may be needed to carry out the provisions of this article," and the inclusion of the word "may" in the last sentence relating to appropriations for deficiency. We repeat that disposition has been made of this argument by our determination that the general assembly intended to and has placed a mandate upon the county to furnish 20% of public welfare costs.

[10] The appellees moved that this appeal be dismissed because no motion for new trial was filed. C.R.C.P. 59(h) dispenses with the necessity for such a motion after a hearing involving no controverted issues of fact. We can find nothing in the decision of the trial court and nothing involved in our resolution in this matter predicated upon any controverted issues of fact. As is obvious, we are dealing here almost solely with statutory interpretation. Therefore, we deny the motion to dismiss.

The judgment of the trial court is reversed and the cause remanded with directions that an injunction issue to the end that Weld County furnish its 20% statutory share of the costs of welfare services for the year 1971.

It is ordered that the time for filing of a petition for rehearing be shortened, and that any such petition must be filed by 10:00 o'clock a.m. on Monday, August 16, 1971.

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CHAPTER 361

SOCIAL SERVICES CODE

GENERAL PROVISIONS

HOUSE BILL NO. 1569. BY REPRESENTATIVES Shoemaker, Lillpop, Waldow, Becker, DeMoulin, DeNier, Dittemore, Dodge, Frank, Hinman, Kirscht, McCroskey, Neale, Showalter, Strahle, Webb, and Zakhem; also SENATORS Hatcher, Allshouse, Anderson and Soash.

AN ACT

AMENDING ARTICLE 1 OF TITLE 26, COLORADO REVISED STATUTES 1973, AS AMENDED, CONCERNING THE "COLORADO SOCIAL SERVICES CODE".

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 26-1-102, Colorado Revised Statutes 1973, is amended to read:

26-1-102. Legislative declaration. (1) It is the purpose of this title to promote the public health and welfare of the people of the state of Colorado by providing through the state department of social services, and through the county departments in accordance with state department rules and regulations, programs relating to public assistance and welfare, including but not limited to assistance payments and social services; medical assistance; child welfare services; child care; protective services for the mentally retarded; programs for the aging; rehabilitation; and veterans' affairs. Such programs are intended to assist individuals and families to attain or retain their capabilities for independence, self-care, and self-support insofar as possible. The state department is authorized and directed to cooperate with and utilize the available resources of the federal government and private individuals and organizations for these programs.

(2) IN PROVIDING FOR SUCH PROGRAMS RELATING TO PUBLIC ASSISTANCE AND WELFARE, THE GENERAL ASSEMBLY FINDS THAT RECIPIENTS OF SOCIAL SERVICES QUALIFY UNDER THE VARIOUS STATE AND FEDERAL PROGRAMS WITHOUT REGARD TO THE ADEQUACY OR INADEQUACY OF FUNDS AVAILABLE FOR SUCH SERVICES. RECOGNIZING THIS FUNDAMENTAL FACT AND, FURTHER, RECOGNIZING THAT THE STATE DEPARTMENT, NOT THE SEVERAL COUNTY DEPARTMENTS, IS THE PRINCIPAL IN ALL FEDERAL-STATE SOCIAL SERVICES PROGRAMS COVERED IN

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

THIS TITLE, THE GENERAL ASSEMBLY FURTHER FINDS THAT THE MONETARY LIMIT PRESCRIBED IN THIS ARTICLE FOR THE COUNTY DEPARTMENT PARTICIPATION SHALL BE DEEMED A PRECISE LIMIT BEYOND WHICH NO COUNTY CAN OPERATE OR BE REQUIRED TO OPERATE BY VIRTUE OF ANY STATUTORY OR REGULATORY PROVISION.

Section 2. 26-1-122 (1), (2), (3) (b) and (3) (c), (4) (b) and (4) (e), and (5), Colorado Revised Statutes 1973, are amended, and the said 26-1-122 (1) and (4) are further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

26-1-122. County appropriations and expenditures — advancements — procedures. (1) (a) The board of county commissioners in each county of this state shall annually appropriate as provided by law such funds as shall be ~~needed~~ NECESSARY to ~~carry out~~ DEFRAY THE COUNTY DEPARTMENT'S TWENTY PERCENT SHARE OF THE OVERALL COST OF PROVIDING the assistance payments and social services activities ~~of the county department~~ DELIVERED IN THE COUNTY, including the costs allocated to the administration of each, AND SHALL INCLUDE IN THE TAX LEVY FOR SUCH COUNTY THE SUMS APPROPRIATED FOR THAT PURPOSE. SUCH APPROPRIATION SHALL BE based upon the county social services budget prepared by the county department pursuant to section 26-1-124, after taking into account state ~~reimbursements~~ ADVANCEMENTS provided for in this section. ~~and shall include in the tax levy for such county the sums appropriated for that purpose. Should the funds so appropriated prove insufficient for the purpose, additional sums shall be made available by the board of county commissioners.~~

(b) In the case of a district department, each county forming a part of said district shall appropriate the funds necessary to defray ITS PROPORTIONATE SHARE OF the costs of assistance payments and social services activities of such individual county BASED ON THE RATIO SET OUT IN PARAGRAPH (a) OF THIS SUBSECTION (1).

(c) Additional funds shall be made available by the board of county commissioners if the county funds so appropriated prove insufficient to defray the county department's twenty percent share of actual costs for assistance payments and social services activities, including the administrative costs of each.

(d) Under no circumstances shall any county expend county funds in an amount to exceed its twenty percent share of actual costs for assistance payments and social services activities, including the administrative costs of each.

(2) The county boards, in accordance with the rules and regulations of the state department, shall file requests with the state department for ADVANCEMENT OF funds for ~~administrative costs and~~ THE program costs of assistance payments and social services AND FOR THE ADMINISTRATIVE COSTS OF EACH. The state department shall determine the ~~needs~~ REQUIREMENTS of each county for such ~~administrative costs and~~ program costs AND ADMINISTRATIVE COSTS, taking into consideration available funds and all pertinent facts and circumstances, and shall certify by voucher to the state controller the amounts to be paid to each county. The amounts so certified shall be paid from the state treasury upon voucher of the state

department and warrant of the state controller and shall be credited by the county treasurer to the county social services fund in accordance with the law and rules of the state department.

(3) (b) If the county departments are administered in accordance with the policies and rules of the state department for the administration of county departments, eighty percent of the costs of administering assistance payments and social services in the county departments shall be advanced ~~or reimbursed~~ to the county by the state treasurer from funds appropriated or made available for such purpose, upon authorization of the state department, but in no event shall the state department authorize expenditures greater than the annual appropriation by the general assembly for the state's share of such administrative costs of the county departments. ~~Where~~ AS funds are advanced, adjustment shall be made from subsequent monthly payments for those purposes.

(c) For purposes of this article, under rules of the state department, administrative costs shall include: Salaries of the county director and employees of the county department staff engaged in the performance of assistance payments and social services activities; the county's payments on behalf of such employees for old age and survivors insurance or pursuant to a county officers and employees retirement plan and for any health insurance plan, if approved by the state department; the necessary travel expenses of the county board and the administrative staff of the county department in the performance of their duties; necessary telephone and telegraph; necessary equipment and supplies; necessary payments for postage and printing, including the printing and preparation of county warrants required for the administration of the county department; and such other administrative costs as may be approved ~~for reimbursement~~ by the state department; but ~~reimbursement~~ ADVANCEMENTS for office space, utilities, and fixtures may be made from state funds only if federal matching funds are available.

(4) (b) Except as provided in paragraph (d) of this subsection (4), eighty percent of the amount expended for assistance payments program costs and social services program costs shall be advanced ~~or reimbursed~~ to the county by the state treasurer from funds appropriated or made available for such purpose upon authorization of the state department pursuant to the provisions of this title. ~~Where~~ AS funds are advanced, adjustment shall be made from subsequent monthly payments for those purposes.

(e) When a county department provides or purchases certain specialized social services for public assistance applicants, recipients, or others to accomplish self-support, self-care, or better family life, including but not limited to day care, homemaker services, foster care, and services to mentally retarded persons, in accordance with state department rules and regulations, the state may ~~reimburse or~~ advance funds to such county department at a rate in excess of eighty percent, within available appropriations, but not to exceed the amount expended by the county department for such services. ~~Where~~ AS funds are advanced, adjustment shall be made from subsequent monthly payments for those purposes. The expenses of training personnel to provide these services, as determined and approved by the state department, shall be paid from whatever state and federal funds are available for such training purposes.

(h) Notwithstanding any other provision of this article, the county

department may spend in excess of twenty percent of actual costs for the purpose of matching federal funds for the administration of the child support enforcement program.

(5) If in any fiscal year the annual appropriation by the general assembly for the state's share, together with any AVAILABLE federal funds ~~available for the same purpose, is not sufficient to reimburse the counties for the portion of their costs, as provided in this section, then the said appropriation shall be first prorated among the counties in such a manner that the several counties shall each be reimbursed an equal percentage of their respective assistance payments and social services administrative and program costs. The applicable matching federal funds shall also be prorated among the several counties, in accordance with the federal regulations accompanying such funds~~ FOR ANY INCOME MAINTENANCE OR SOCIAL SERVICE PROGRAM, OR THE ADMINISTRATION OF EITHER, IS NOT SUFFICIENT TO ADVANCE TO THE COUNTIES THE FULL EIGHTY PERCENT SHARE OF COSTS, SAID PROGRAM OR THE ADMINISTRATION THEREOF SHALL BE TEMPORARILY REDUCED BY THE STATE BOARD OF SOCIAL SERVICES, SO THAT ALL AVAILABLE STATE AND FEDERAL FUNDS SHALL CONTINUE TO CONSTITUTE EIGHTY PERCENT OF THE COSTS.

Section 3. 26-1-125 (1), Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

26-1-125. County social services levy — limitations. (1) The board of county commissioners of each county shall make a county social services levy at such a rate that the amount when computed by applying the levy against the valuation for assessment of the county will provide the necessary money to be appropriated by the county, as provided by the final county social services budget as approved by the board of county commissioners, within the following limitations:

(a) Counties with valuation for assessment per capita of one thousand four hundred dollars or more, but less than one thousand six hundred dollars, not to exceed four mills;

(b) Counties with valuation for assessment per capita of one thousand six hundred dollars or more, but less than two thousand dollars, not to exceed three and one-half mills;

(c) Counties with valuation for assessment per capita of two thousand dollars or more, but less than two thousand six hundred dollars, not to exceed three mills;

(d) Counties with valuation for assessment per capita of two thousand six hundred dollars or more, not to exceed two and one-half mills.

Section 4. **Effective date.** This act shall take effect July 1, 1977.

Section 5. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 19, 1977

DISTRICT COURT, PUEBLO COUNTY, COLORADO

Case No. 81 CV 837, Division C

ORDER

THE COLORADO DEPARTMENT OF SOCIAL SERVICES,

Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO,

Defendant,

and

SAMUEL J. CORSENTINO,

Intervenor.

This matter was tried to the Court beginning May 17, 1982. Plaintiff (State Department) was represented by Maurice G. Knaizer, Assistant Attorney General; the Board of County Commissioners of the County of Pueblo (Commissioners) by James V. Phelps and Terry A. Hart; and the intervenor, Samuel J. Corsentino (Corsentinc by Gerald A. Marroney. Briefs were subsequently submitted by all parties. Because the issues are somewhat complex and because this Court had been advised that an appeal is an absolute certainty, a transcript of the testimony presented at the trial has been prepared and has been available for use by this Court.

In May, 1981, the Commissioners sent a letter to the Executive Director of the State Department, and a number of others, informing them that the Pueblo County Department of Social Services (County Department) would "terminate all Social Services operations" on November 1, 1981, because all available funds for social services would be exhausted on or about that date. Several meetings and conferences ensued. No resolution of the problem resulted, so the Executive Director of the State Department on August 18, 1981, sent what has been described as an "Order" to the Commissioners directing them to "comply with all statutes and regulations and to continue to provide full assistance payments and to continue social services in accordance with the Title XX State Plan". Receiving no response, and certainly none was required, the State Department commenced this action on August 26, 1981, seeking essentially the same relief as was "ordered" by the Executive Director in his communication of August 18, 1981. Various preliminary orders have been entered and several stipulations filed, none of which, with one exception, has any particular bearing on the matter at this point. The one exception is that such preliminary matters resulted in the State Department "advancing" funds to the County Department to keep the County Department afloat subsequent to November 1, 1981. The ultimate responsibility for these "advancements" is one of the issues presented. A determination of this issue and the other issues presented and which are between

the State Department and the County Department focus on whether the County or the State has correctly interpreted and complied with provisions of section 26-1-101, et seq, C.R.S. 1973, and the regulations promulgated thereunder.

Because the Commissioners are precluded from raising constitutional issues against the State, Corsentino, a tax-paying resident of Pueblo County, was permitted to intervene in order to present these constitutional issues. The matters asserted by Corsentino will be disposed of first. Somewhat simplistically stated, Corsentino requests a redistribution of the costs of providing social services benefits, asserting that various constitutional provisions require such redistribution.

Most of the statutes with which all are concerned in this matter are set out in the "Colorado Social Services Code", which now appears in Title 26, C.R.S. 1973. Several volumes of regulations have been issued which also govern the furnishing of social services. Section 26-1-102, C.R.S. 1973, provides:

> "(1) It is the purpose of this title to promote the public health and welfare of the people of the state of Colorado by providing, through the state department and through the county departments in accordance with state department rules and regulations, programs relating to public assistance and welfare, * * *.
>
> "(2) In providing for such programs relating to

public assistance and welfare, the general assembly finds that recipients of social services qualify under the various state and federal programs without regard to the adequacy or inadequacy of funds available for such services. Recognizing this fundamental fact and, further, recognizing that the state department, not the several county departments, is the principal in all federal-state social services programs covered in this title, the general assembly further finds that the monetary limit prescribed in this article for the county department participation shall be deemed a precise limit beyond which no county can operate or be required to operate by virtue of any statutory or regulatory provision."

In section 26-1-111, C.R.S. 1973, it is provided that:

"(1) The state department is charged with the administration or supervision of all the public assistance and welfare activities of the state, * * *.

"(2) The state department shall:

"(a) Administer or supervise all forms of public assistance and welfare, * * *;

* * *

"(d) Provide services to county governments including the organization and supervision of county departments for the effective administration of public assistance and

welfare functions as set out in the rules and regulations of the state department, * * * throughout the state; * * *" Section 26-1-118, C.R.S. 1973, provides in part:

> "(1) The county departments shall serve as agents of the state department and shall be charged with the administration of public assistance and welfare and related activities in the respective counties in accordance with the rules and regulations of the state department."

Section 26-1-119, C.R.S. 1973, provides, in essence, that the State Department controls the selection, retention and promotion of the staff of the County Department.

In Board of County Commissioners of the County of Otero v. The State Board of Social Services, et al., 186 Colo. 435, 528 P.2d 244, in referring to the relationship of the County Department vis-a-vis the State Department, it is stated:

> "It is thus apparent that the county, in the statutory scheme of things, is assigned its traditional role as an arm of the state, existing only for the convenient administration of the state government and to carry out the will of the state."

The statutes above quoted, and probably others, the enormous number of regulations promulgated by the state and the rationale of the Otero case, and others, furnish the predicate for one of the assertions made by Corsentino--that providing social services

benefits is completely controlled by the state and should be paid for on a state-wide, uniform basis. The present statutory scheme provides for the sharing of such cost between the state and the counties.

Some of the programs provided by the state do not require expenditure of any county funds. Of those programs that do involve expenditure of county funds, the basic system of funding the cost of such programs is that the state pays 80 percent of the cost and the county pays 20 percent of such cost. Corsentino argues that this system violates Sections 3 and 7 of Article X of the state constitution. Basically, Section 3 of that Article requires that taxes be uniform upon various classes of property located within the authority levying the tax; Section 7 provides that the general assembly shall not levy taxes for purposes of any city or county.

In support of his contention that Article X, Section 7 of the constitution is violated, Corsentino points out what is made abundantly clear by the statutes--that all social service benefits must be paid in accordance with the statutes and the regulations of the State Department. The state determines who is eligible for benefits and, if eligible, how much he should be paid. Because the state actually drives the amount that each county is required to spend, Corsentino asserts that the state, as a practical matter, fixes the levy for each of the counties to produce the funds required. There is wide disparity among the counties as to the funds necessary

to comply with the state requirements, and this unquestioned disparity among the counties provides, according to Corsentino, a lack of uniformity in taxation upon various classes of property in violation of Article X, Section 3, of the constitution.

A number of different statistics showing the effect of the present system on a taxpayer in a given county were submitted, and reference to one or two of such examples should suffice. First, evidence was presented as to the difference in the mill levy in a number of counties necessary to support social services benefits. In the year 1981, the mill levy runs from a low of 0.15 mills in Hinsdale County to a high of 6.45 mills in the City and County of Denver. Pueblo's levy for the same year was 6.3 mills. The levy in Jefferson County at the same time was 1.98 mills. The owner of a $10,000.00 home in Denver would pay $64.50 to support Denver's welfare programs, the owner of a home of equal value in Pueblo County would pay $63.00 for the same purposes, the owner of such a home in Jefferson County would pay $19.80 and the owner of the same home in Hinsdale County would pay a paltry $1.50. Secondly, statistics as to the per capita cost of welfare benefits were submitted, based upon U.S. Census population reports. In Denver, the per capita cost is $30.40, in Pueblo it is $23.41; the state-wide average per capita cost is $11.21, and the lowest per capita cost is $2.71. Thirdly, Pueblo County has 4.36 percent of the state's population but has 9.4 percent of the state-wide

social services caseload. Nothing would be gained by citing other statistics submitted which tell essentially the same story. Suffice it to say, there can be no question that the cost of providing social services benefits varies markedly from county to county. If providing social services benefits is a state function, the present system of making the counties contribute when the counties have nothing to say about the amount of contribution is obviously askew.

That providing social services benefits is not solely a state function is apparent from a consideration of controlling statutes and case law. The state legislature has declared in section 26-1-111, C.R.S. 1973, that "All public assistance and welfare activities of the state * * * are declared to be state as well as county pruposes". In The Colorado State Board of Social Services v. Billings, et al., 175 Colo. 380, 487 P.2d 1110, the statutory scheme of an 80-20 split of welfare costs between the state and a county was upheld, as against some of the same arguments that are advanced here. The question there posed was "irrespective of its lack of welfare money produced by its ad valorem tax, does a county have to defray 20 percent of the benefits awarded under the aid to dependent children statutes and of the costs incident thereto?" The answer given was that the statutes of the state quite clearly create such a mandate. The statutes are now not precisely the same as they were in 1971,

when the Billings case was decided, but the general statutory scheme of splitting welfare costs on an 80 percent state-20 percent county basis remains unaltered. The holding in Billings that furnishing social services benefits is to be shared between the counties and the state, pursuant to statutes, is controlling and this Court cannot fly in the face of Billings and hold that a county should not have to pay its share under existing statutes. The statutory system, upheld in Billings, which provides that the state controls essentially all of the expenditures for welfare purposes but requires the county to pay 20 percent of an amount over which it has no control is, philosophically, flawed. A better and fairer method can easily be envisioned, but that is a matter of legislative concern.

Similar attacks on the constitutionality of the welfare systems have been unsuccessfully waged in Oregon and New Jersey. See State ex rel Public Welfare Commission v. County Court of Malheur County (Oregon), 203 P.2d 305; Bonnet, et al., v. State of New Jersey, et al., 141 N.J.Super. 177, 357 A.2d 772. Lengthy quotations from these cases would serve no purpose other than to unnecessarily increase the length of this order.

The determination that the providing of social services benefits is not a state function essentially disposes of those matters asserted solely by Corsentino. The remaining issues are pretty much urged jointly by Corsentino and the County.

Far and away, the principal areas of disagreement between the County and the State Department focus on two issues. The first concerns the operation and handling of the statutorily created "contingency fund". The second concerns payment of the costs for "foster care". Consideration will first be given to the problems attendant upon the operation of the contingency fund. However, before setting forth the various statutes involved, a bit of factual background is helpful. Prior to 1979, the contingency fund was "fully funded" by the state legislature. Under full funding, Pueblo county had little difficulty in providing its statutorily mandated share of the costs of providing social services benefits. Because of a change in the method of funding the contingency fund, Pueblo County came up short about $22,000.00 in 1979, which increased to about $65,000.00 in 1980, and further increased to about $236,000.00 in 1981. Each year, shortly after the adjournment of the legislature, the State Department sends out what was referred to as a "county letter". Among other things, this letter advises each county as to the percentage of contingency funds that the county can reasonably expect. For example, the evidence showed that in the 1980 county letter, Pueblo County was advised that it would probably receive no more than 90 percent of its contingency fund claims. The 1981 county letter advised Pueblo County that it should plan on receiving no more than 70 percent of the amount it claimed. Completely ignoring

the advice that it should not reasonably expect full reimbursement from the contingency fund, the County Department, with the apparent blessing of the Board, continued to budget for 100 percent reimbursement of contingency fund claims. As much as for any other reason, one might suspect that Pueblo probably had designs on forcing a determination as to the proper operation of the contingency fund.

We turn now to a consideration of the statutes involved. Those statutes are to be construed in accordance with several well accepted concepts, including:

a.) the intent of the legislature in passing the statute is the "polestar" in statutory construction, Posey v. District Court, 196 Colo. 396, 586 P.2d 36; section 2-4-212, C.R.S. 1973;

b.) a statute is to be construed as a whole so as to give a consistent, harmonious and sensible effect to every part, Massey v. District Court, 180 Colo. 359, 506 P.2d 128;

c.) when a statute is amended, it is presumed that the legislature intended a different meaning, Ridge Erection Company v. Mountain States Telephone and Telegraph Company, 37 Colo.App. 477, 549 P.2d 408;

d.) if the language of the statute is plain, it's meaning is clear and no uncertainty is involved, the statute must be applied as written, People in the Interest of Paiz,

43 Colo.App. 352, 603 P.2d 976;

e.) that words used in a statute are to be considered using their common and generally accepted meaning, R and F Enterprises, Inc. v. Board of County Commissioners, 199 Colo. 137, 606 P.2d 64;

f.) a forced, subtle, strained or unusual interpretation should never be resorted to where the language of a statute is plain, its meaning is clear and no absurdity is involved, Harding v. The Industrial Commission, 183 Colo. 52, 515 P.2d 95;

g.) with reference to the use of the word "shall" in a statute, it is presumed to have a mandatory connotation unless it is necessary to construe the word as "may" to give effect to legislative intent, Firstbank of North Longmont v. The Banking Board of the State of Colorado, et al., _____ Colo.App. _____, 648 P.2d 684; and

h.) the construction of a statute by administrative officials charged with its enforcement shall be given great deference by the courts, Travelers Indemnity Company, et al., v. Barnes, et al., 191 Colo. 278, 552 P.2d 300.

Several statutes make it clear that counties are required to pay up to a maximum of 20 percent of state-approved costs of providing welfare benefits. See, for example, sections 26-1-102 (2), and 26-1-122(1)(d), C.R.S. 1973. Counties are required to

include the amount necessary to comply in the overall county budget. Section 26-1-124, C.R.S. 1973.

The statute providing for a "contingency fund" was first passed in 1969, and as it appeared in section 119-3-12, C.R.S. 1963 (1969 Supplement), provided:

> "There is hereby created a county contingency fund which may be expended to supplement county expenditures for public assistance, county welfare administration, and child welfare services in counties which have levied a property tax * * * for support of the county welfare fund and which tax is equal to or in excess of the maximum property tax levy permitted by statute for the support of the county welfare fund; but no county shall be eligible for assistance under this section until the state board of social services shall have caused the financial condition of the county to have been examined and shall have determined that the resources available to the county to meet its welfare needs are inadequate. The degree of assistance to be furnished any county under this section shall be determined by the state board of social services with due regard to funds available and the relative need of the various counties."

In 1973 the statute was amended to essentially its present form. It now appears as section 26-1-126, C.R.S. 1973, and provides:

"(1) There is hereby created a county contingency fund which shall be expended to supplement county expenditures for public assistance as provided in this section.

"(2) Notwithstanding the provisions of section 26-1-125(1), the state department shall make an advancement, in addition to that provided in section 26-1-122, out of the county contingency fund to any county if moneys equivalent to those raised by a levy of three mills on the property valued for assessment in the county are less than twenty percent of the amount expended for administrative costs and program costs of public assistance, medical assistance, and food stamps.

"(3) The amount of the additional advancement for each county for each month commencing on or after July 1, 1975, shall be fifty percent of the difference between the following:

"(a) Twenty percent of the monthly amount expended for the purposes named in subsection (2) of this section, minus;

"(b) The moneys equivalent to those raised by a levy of three mills on the property valued for assessment in the county divided by twelve.

"(4) In the event appropriations are insufficient to cover advancements provided for in this section, all reimbursements shall be prorated on the basis of total

claims submitted in proportion to funds available for reimbursement."

The underlining in both of the statutes above quoted has been added by the Court to highlight the significant difference between them. In accordance with the rules of statutory construction above referred to, it is to be presumed that a change was intended.

Subdivision (2) of the current statute refers to two other statutes, section 26-1-125(1) and section 26-1-122, C.R.S. 1973.

Section 26-1-125, C.R.S. 1973, requires the Board to make a social services levy which will provide the necessary funds to be appropriated by the county as is provided in the final county social services budget with a stated mill levy limitation dependent upon the per capita assessment valuation of the county. It also provides that the limit may be exceeded upon consent of the Division of Local Government in the Department of Local Affairs.

Section 26-1-122, C.R.S. 1973, sets forth the procedures that are to be followed by the state and the counties in paying for the costs of providing social services benefits. It provides:

"(1)(a) The board of county commissioners in each county of this state shall annually appropriate as provided by law such funds as shall be necessary to defray the county department's twenty percent share of the overall cost of providing the assistance payments, food stamps * * *, and social services activities delivered in the county, * * * and

shall include in the tax levy for such county the sums appropriated for that purpose. * * *

"(c) Additional funds shall be made available by the board of county commissioners if the county funds so appropriated prove insufficient to defray the county department's twenty percent share of the actual costs for assistance payments, food stamps, * * * and social services activities, * * *.

"(2) The county boards, in accordance with the rules and regulations of the state department, shall file requests with the state department for advancement of funds for the program costs * * * and for the administrative costs * * *. The state department shall determine the requirements of each county for such * * * costs, taking into consideration available funds and all pertinent facts and circumstances, and shall certify by voucher to the controller the amounts to be paid to each county.

* * *

"(3)(b) If the county departments are administered in accordance with the policies and rules of the state department * * *, eighty percent of the costs of administering assistance payments, food stamps, and social services shall be advanced to the county * * * from funds appropriated or made available for such purpose * * *, but in no event

shall the state department authorize expenditures greater than the annual appropriation by the general assembly for the state's share of such administrative costs of the county departments. * * *

* * *

"(4)(b) * * * eighty percent of the amount expended for assistance payments program costs and social services program costs shall be advanced to the county * * * from funds appropriated or made available for such purpose * * *."

Summarized, and again probably over simplified, the above statutes require that a county budget for necessary welfare costs, that it provide by taxation, or provide in some other fashion, sufficient funds to pay its 20 percent share of the cost of such services and that the remaining 80 percent share of the cost of such services shall be advanced to the counties by the state if the County Department is run in accordance with State Department rules and regulations.

This brings us, finally, to the effect on this scheme of the "contingency fund" statute. Repeating, and paraphrasing, that statute in essence provides the State shall make an additional advancement of 50 percent of the difference between the amount raised by a 3 mill levy in any county and the amount actually expended for administrative costs and program costs of public assistance, medical assistance and food stamps. Pueblo County

contends that this statute is mandatory and that the State must make such additional advancement. The State, on the other hand, contends that such advancements are to be made only if funds are appropriated for that purpose. This Court agrees with the interpretation placed on the statute by the County. The construction urged by the State does violence to several of the rules of statutory construction earlier set out as follows:

1.) the 1973 amendment of the statute provides that the fund shall be created and that it shall be expended as directed, and the meaning of such language is clear;

2.) if "shall" is interpreted as "may", no change was effected by the amendment;

3.) for whatever reason, the Executive Director of the State Department at the time of the trial in this case chose to ignore the contemporaneous interpretation placed upon the statute by his predecessors when full funding of the contingency fund was accomplished;

4.) the State places primarily emphasis on subdivision (4) of the statute in contending that the statute requires only that whatever fund is created shall be expended as such a construction essentially ignores subdivision (2).

Presuming that the legislature intended to effect a change in the operation of the contingency fund and attempting to give effect to all parts of the change, this Court feels that the statute clearly

requires full funding of the contingency fund. To construe subdivision (4) as providing otherwise is too strained a construction. However, subdivision (4) is not to be ignored. In the opinion of this Court, subdivision (4) simply makes provision for accomodating the effect of the lack of absolute precision in the budgeting process. As was explained at the trial by plaintiff's witness, Susan A. Christy, the Associate Director for Operations of the State Department, certain programs are designated as "entitlement programs" and certain others as "fixed or capped programs". With reference to the entitlement programs, she testified that "anybody who is eligible and comes in the door will be served". Using her example, if budgets are prepared at both the state and the local level to serve 100 people and 110 people come through the door, both the state and the county must come up with their respective shares to cover the cost of the additional ten people not budgeted for. If the additional and unexpected ten people come through the door in ten of the counties of the state and the contingency fund is not sufficient to cover the full amount earned by each of those counties for the unexpected people, then the amount to be advanced is to be prorated under subdivision (4).

The other principal area of dispute between the State and the County involves reimbursement for foster care. The County also began getting in trouble with its expenditures in this area in 1979. This was apparently occasioned largely by the fact that

in 1979, a new statute was adopted concerning the allocation to the County Department for foster care. The statute appears at section 19-3-120, C.R.S. 1973. Pueblo County has expended more than was allocated to it. The amount allocated to any county was to be determined by a formula to be devised by the State Department. The testimony rather clearly indicates that the first formula which was adopted didn't work. As is required by the statute, the State Department has modified the formula and, apparently, the formula in effect at the time of trial was working fairly satisfactorily so far as Pueblo County was concerned. This statute provides that "the amount thus allocated to each county shall represent the maximum expenditure by an individual county for foster care and for alternative services * * *". Obviously the formula wasn't perfect, but it is quite clear that Pueblo County had no business spending more than the amount allocated to it.

It is quite clear from the statutes that "program costs" and "administrative costs" are handled differently. Section 26-1-122(3) provides that the State Department shall reimburse the county 80 percent of administrative costs, properly incurred, but "in no event shall the state department authorize expenditures greater than the annual appropriation by the general assembly for the state's share of such administrative costs". Subdivision (4) of section 122 provides for reimbursement of "program costs" and

provides that the state shall advance 80 percent of such program costs "from funds appropriated or made available for such purpose". The amount appropriated limits the "administrative costs", but does not similarly limit the "program costs".

Apparently the expenditures made by Pueblo County for "administrative costs" exceeded the amount appropriated. Except for one area, no effort was made either by the State or by the County to show any breakdown of the administrative costs involved. The one area in which testimony was presented concerned the pay scale of employees of the County Department, and it was shown that a county could select one of three options. Pueblo County chose the option which resulted in the highest pay scale for the employees of the County Department. But even in this regard, no testimony was presented which disclosed the actual amount of money involved. It seems to the Court that the County had the burden of showing that it was improperly reimbursed for such administrative costs, and having failed to do so is not entitled to reimbursement for its shortfall in such costs.

One other area of disagreement, and the disagreement was presented largely through argument of counsel with one or two of the witnesses from the State Department, centers around the method of determining the 80-20 split. Certain programs do not involve the expenditure of any county funds. The funds for such programs emanate solely from the state or the federal government, but

distribution of such funds is handled through the County Department. These programs were referred to as "100 percent pass-through" programs. The amounts involved in these programs are used by the State in determining its 80 percent obligation but are not figured in determining the 20 percent obligation of the County. The argument seems to be that if you count it for one side you ought to count it for the other side. However, as indicated, this issue was presented largely through argument of counsel, and no evidence was presented which in any way established that the failure to figure in these pass-through programs in any way affected the 20 percent obligation of the County. The statutes are pretty clear that the County is obligated to pay 20 percent of the amount it expends in county funds.

Some argument is advanced by both the intervenor and the County that a county should not have to impose a mill levy for welfare purposes in excess of the limitations set forth in section 26-1-125, C.R.S. 1973. This contention has also been disposed of by Billings, which is binding on this Court, by the holding in that case that "in some manner the counties must produce their 20 percent, whether it be from contingency funds, an excess levy, registered warrants * * *, sales tax or otherwise."

Complaint is also made that Pueblo County's application for "distressed county funds", under section 26-1-122(4)(d), C.R.S. 1973, was apparently not even considered by the State Department.

It is clear from a reading of that section that distressed county funds in the discretion of the State Department may be awarded to a county if the county "by reason of an emergency or other temporary condition" is eligible. Suffice it to say that one would be hard put to define the condition that Pueblo County created for itself by budgeting for funds which it had been told it would not receive as any sort of an emergency or temporary condition.

For the reasons above set forth, the Court finds:

1.) That the statutory scheme of providing and paying for welfare benefits as set out in section 26-1-101, et seq. C.R.S. 1973, is not unconstitutional as urged by Corsentino, and his amended complaint should be dismissed so far as it asserts such constitutional issue;

2.) That section 26-1-126, C.R.S. 1973, requires that the contingency fund therein established be fully funded so that each month a county is fully reimbursed for 50 percent of the difference between 20 percent of the monthly amount expended for administrative costs and program costs of public assistance, medical assistance and food stamps and one-twelfth of the amount raised by a 3 mill levy on property in the county valued for assessment; provided, that such costs are incurred in accordance with the statutes and the rules and regulations of the State Department;

3.) That state reimbursement for expenditures of any

county for foster care programs are limited by the appropriation made by the legislature for that purpose;

4.) That Pueblo County is not entitled to limit its tax levy for welfare benefits to the limitations set forth in section 26-1-125, C.R.S. 1973, unless the funds necessary to pay 20 percent of the costs of such benefits as mandated by the statute is otherwise made available;

5.) That Pueblo County is not eligible for "distressed county funds" under section 26-1-122(4)(d);

6.) That insufficient evidence was presented on which to base a finding that Pueblo County is entitled to any additional reimbursement for its overexpenditure in administrative costs or that the State Department is not properly determining its 80 percent share of the overall cost of welfare benefits.

IT IS ORDERED:

1.) That the intervenor's claims that section 26-1-101, et seq, C.R.S. 1973, is unconstitutional is dismissed;

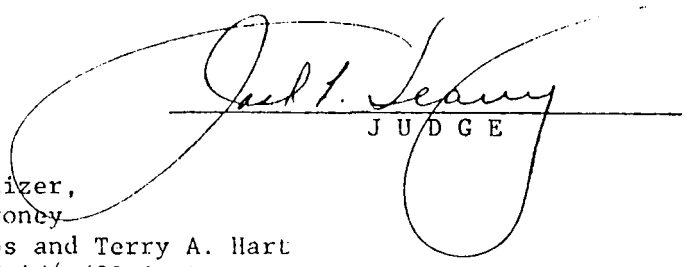
2.) That Pueblo County is entitled to reimbursement for the full amount "earned" under section 26-1-126, C.R.S. 1973;

3.) That Pueblo County is not entitled to reimbursement of the amount "earned" for foster care expenditures in excess of the amount allocated to the county under section 19-3-120, C.R.S. 1973;

4.) That Pueblo County is not eligible for the funds provided for in section 26-1-122(4)(d).

Dated April 6, 1983.

BY THE COURT:



JUDGE

cc: Maurice G. Knaizer,
Gerald A. Marroney
James V. Phelps and Terry A. Hart
(Copies mailed 4/6/83 jam)