American Indian Law Review

Volume 4 | Number 2

1-1-1976

Indian Rights: Eligibility of Indians for State Assistance

Joe D. Dillsaver

INDIAN RIGHTS: ELIGIBILITY OF INDIANS FOR STATE ASSISTANCE

Joe D. Dillsaver

Felix Cohen, in the 1942 edition of his *Federal Indian Law*,[1] devoted two paragraphs to the eligibility of Indians for state assistance.[2] Cohen concluded that Indians were entitled to services provided by state laws if they were subsidized by the Federal Social Security Act.[3] The following discussion is a chronological examination of Indian eligibility for various state programs. The beginning point is the Social Security Act. This will be followed by an in-depth consideration of judicial decisions that have shaped the policy.

The foundation for the eligibility of state assistance to Indians had been laid before Cohen's book appeared. Congress passed the Social Security Act in 1935, which called for direct aid to needy citizens by the state in cooperation with the federal government.[4] In 1936 the Solicitor for the Department of the Interior ruled that the Social Security Act applied to Indians.[5]

The first judicial test of the eligibility of Indians to receive state aid arose in 1938 in the case of *State ex rel. Williams v. Kemp*.[6] The Board of Commissioners of Big Horn County, Montana, sought a writ of prohibition to prevent the state from forcing them to pay for aid given to Indians in Big Horn County. In granting the writ,[7] the court held that the state was responsible for the relief of the Indians without contributions from the county.[8] The court specifically applied the ruling to "ward"[9] Indians[10] but omitted nonward Indians because "they are entitled to all the rights and privileges of white residents."[11]

The next court decisions dealing with the issue of state aid for Indians took place in 1954. Two cases, *Arizona v. Hobby*[12] and *Acosta v. San Diego County*,[13] confirmed *Williams v. Kemp*.[14] *Hobby* was brought in the United States Court of Appeals, District of Columbia Circuit, to compel the Federal Social Security Administrator[15] to "[a]pprove Arizona's plan for aid to permanently and totally disabled persons."[16] The court's technical basis for the decision against Arizona was that the dispute with the Administrator involved money and the United States "had not consented to be sued."[17] Saying that the complaint against the Administrator did not charge that he "exceeded his authority" and the allegation that the Administrator "relied upon [an] unconstitutional statute could not be maintained,"

the court held the suit should have been dismissed for lack of trial court jurisdiction.[18]

Judge Bazelon pointed out in *Hobby* that all state plans to aid "permanently and totally disabled" persons had to be approved by the Federal Social Security Administrator.[19] Arizona submitted a plan which provided "that no assistance shall be payable under such plan to any person of Indian blood while living on a federal Indian reservation."[20] After a hearing before the Administrator, Arizona's plan was disallowed because the exclusion of reservation Indians "imposes as a condition of eligibility, a residence requirement, prohibited by § 1402(b)(1) of the Social Security Act."[21] Arizona's attempt to force acceptance of its plan was dismissed.[22]

The 1954 California case, *Acosta v. San Diego County*,[23] likewise addressed the issue of eligibility of reservation Indians for relief. One significant difference separated *Acosta* from *Hobby*. The unit of government was not the state directly but a county government acting under state law.[24] *Acosta* was an action for a declaratory judgment on whether the Board of Supervisors of San Diego County had a duty under the California Welfare and Institutions Code to the plaintiff, "a needy Indian," living on a government reservation in the county.[25]

San Diego County argued, *inter alia*, that the federal government had exclusive jurisdiction over the reservation Indians and, therefore, state law was controlling.[26] Because the reservation Indians were "not subject to the burdens or obligations of the laws of the County of San Diego or the State of California,"[27] they were not entitled to the benefits of the laws.[28] San Diego County maintained that it was willing and able to perform its obligations to the Indians when the federal government "emancipates the California Reservation Indians" of its exclusive jurisdiction.[29]

The court rejected San Diego County's allegation of exclusive federal jurisdiction over Indian reservations by stating that the state had jurisdiction over "all matters which do not interfere with the control which the federal government has over Indian Affairs."[30] Since none of the treaties with the Indians of California were ever approved by the Senate, the "tribal lands" of the state were part of California.[31] The court pointed out that the state had long been able to enter Indian lands and regulate such areas as health and educational activities.[32]

The court of appeals stressed that the Constitution of the United States, in Section 1 of the fourteenth amendment,[33] provided Indians "with the rights, privileges and immunities equal to those enjoyed by all other citizens and residents of the state."[34] The argu-

ment that reservation Indians may be exempt from certain taxes and therefore could not meet the eligibility requirements of residence to receive state aid, was not necessarily relevant in this case.[35] The court rejected this contention on two grounds. First, the Indians who lived on the reservation did not live in a vacuum, and "no resident . . . can help traveling beyond its borders, nor can he escape ordinary state cigarette, gasoline, sales or use taxes."[36] Second, many nonresidents live on tax-exempt lands in San Diego County (such as religious institutions) and in "no such case has this fact been considered a justification for the withholding of any public services."[37] Indians may participate in Social Security benefits administered by the state and federal government.[38]

A line of reasoning contrary to *Acosta* developed in the early 1960's in the Minnesota case of *County of Beltrami v. County of Hennepin.*[39] The problem treated in this case was whether residents of the Red Lake Reservation had residence in Beltrami County for the purposes of poor-relief.[40] The children involved were the sons and daughters of Alice Beaulieu. She had moved from the reservation to Hennepin County in 1955. In 1956 Beaulieu was adjudged mentally ill and committed to a state hospital. The children came under the care of their maternal grandmother until 1958, when they were placed in foster homes.[41]

The question arose as to whether the children met the residency requirements for poor-relief purposes.[42] It should be noted that there is no indication in the opinion of the *County of Beltrami* case that the program was part of the Social Security program of the state. Hennepin County denied settlement and transferred the claim of the children back to Beltrami County. Beltrami County refused responsibility and the proceedings were transferred to the Commissioner of Public Welfare. The Commissioner certified that the settlement belonged to Beltrami County. Thereupon, Beltrami County brought this action for a judicial determination of the issue.[43]

Justice Rogosheske phrased the key question in the case as being "whether enrolled members . . . while residing on Red Lake Reservation in Beltrami County can acquire legal settlement for poor-relief purposes."[44] Beltrami County argued that the state had no jurisdiction over the tribe because of the federal responsibility for the reservation. "No tribal resident of the reservation has a 'legal right' to support" from the county.[45] Hennepin County maintained that the Indians were not the sole responsibility of the federal government and were residents of the state of Minnesota. To deny them relief

would be to violate their civil rights and the equal protection of the law.[46]

Rogosheske rejected Hennepin County's reasoning and accepted that of Beltrami County. He pointed to the fact that the federal government had never transferred Red Lake's jurisdiction to Minnesota.[47] Strangely, however, the Justice acknowledged the fact that the state did have some jurisdiction over the Indians. Hennepin County's position was recognized because state law extended to the reservation "unless the exercise of such jurisdiction by the state would impair a right granted or reserved by federal law or interfere with tribal self-government."[48]

This "right granted or reserved by federal law"[49] or impairing of "tribal self-government"[50] was the basis used by the Minnesota court to refuse to grant poor-relief to the children through Beltrami County.[51] At the time of this dispute, the Department of the Interior was administering a relief plan for Red Lake.[52] The court admitted the fact that the federal program had no relevance to the question of this case. Nevertheless, the court used the federal program as a foundation of its decision that the state poor-relief program would interfere with the federal relief and the tribe's administration of that relief.[53] Finally, Justice Rogosheske concluded that while the Indians were citizens and residents of Minnesota, "there is absent from this status the peculiar statutory character of residence necessary to acquire settlement."[54]

The reasoning of the *County of Beltrami* case, however, was rejected in the 1964 North Carolina case, *State Board of Welfare v. Board of Commissioners of Swain County*.[55] Swain County maintained that members of the Eastern Band of Cherokee Indians, "who live on the Cherokee Indian Reservation in Swain County" are tax-exempt citizens.[56] Therefore, it is "illegal and unconstitutional" for the taxpaying citizens to provide welfare programs for nontaxpayers.[57]

Justice Rodman's opinion pointed out that the Cherokees were citizens of North Carolina and Swain County. Because North Carolina accepted the Federal Social Security Act,[58] the Cherokees were eligible for benefits administered under the Act.[59] The individual counties, like the state, were required to furnish certain matching funds to the program, and to furnish Indians with the welfare programs in spite of the fact that the Cherokees were tax-exempt.[60]

Only one case during the 1970's touched upon the problem of eligibility of Indians for state aid. However, *Morton v. Ruiz*[61] affirmed the right of Indians to receive state assistance. The question presented in this case dealt with the right of nonreservation Indians

near reservations to receive Bureau of Indian Affairs' general assistance benefits.[62] Justice Blackmun in writing the opinion also included the right of Indians to receive state aid as well.

> Any Indians, whether living on a reservation or elsewhere, may be eligible for benefits under the various social security programs in which his state participates and no limitation may be placed on social security benefits because of an Indian claimant's residence on a reservation.[63]

Morton v. Ruiz seems to establish as settled law that Indians are eligible for state assistance whether they reside on a reservation or not. The Minnesota position denying them this right appears to be out of step with the Supreme Court. Until the court rules specifically on the Minnesota argument of the special status of the Red Lake Reservation and Minnesota's poor-relief law not being under the Social Security Act, the *Mortion v. Ruiz* position cannot be described as universal.

The previous cases indicate that certain ground rules exist which must be met before Indians are uniformly eligible for state aid. The most significant requirement is that the states must have accepted the Social Security Act,[64] the reason being that no citizen of the United States can be denied aid under this program.[65] Therefore, the conclusion may be drawn that Indians, as citizens of the United States, no matter where their place of residence, are eligible to receive aid from any state government level, providing the program springs from some part of the Federal Social Security Act.

NOTES

1. F. COHEN, FEDERAL INDIAN LAW (1942).
2. *Id.* at 162.
3. *Id.*
4. Act of Aug. 14, 1935, ch. 531, 49 Stat. 620.
5. Memorandum of the Solicitor, Dep't of Int., Apr. 22, 1936.
6. 78 F.2d 585, 586 (9th Cir. 1938).
7. *Id.* at 585.
8. *Id.* at 588.
9. *See* Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831).
10. 78 F.2d 585 (9th Cir. 1938).
11. *Id.* at 588.
12. 221 F.2d 498 (D.C. Cir. 1954).
13. 126 Cal. App. 2d 455, 272 P.2d 92 (1954).
14. 78 F.2d 585 (9th Cir. 1938).
15. *See* 221 F.2d 498 (D.C. Cir. 1954), now the Secretary of Health, Education, and Welfare.
16. *Id.*

17. *Id.*
18. *Id.*
19. *Id.* at 499.
20. *Id.*
21. *Id.*
22. *Id.* at 498.
23. 126 Cal. App. 2d 455, 272 P.2d 92 (1954).
24. CAL. WEL. & INST. CODE §§ 200, 2500, 2501 (1951).
25. 126 Cal. App. 2d 455, 272 P.2d 92 (1954).
26. *Id.* at 94.
27. *Id.*
28. *Id.*
29. *Id.* at 96.
30. *Id.*
31. *Id.* at 96-97.
32. *Id.* at 97.
33. U.S. CONST. amend. XIV § 1.
34. 126 Cal. App. 2d 455, 272 P.2d 92, 98 (1954).
35. *Id.*
36. *Id.* at 97.
37. *Id.* at 98.
38. *Id.* at 97.
39. 119 N.W.2d 25 (Minn. 1963).
40. *Id.*
41. *Id.* at 27.
42. *Id.* Up to this time the children received support under the Aid to Dependent Children program in both Beltrami and Hennepin counties.
43. *Id.*
44. *Id.* at 26.
45. *Id.* at 28.
46. *Id.*
47. *Id.* at 30.
48. *Id.* at 31.
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at 32.
55. 262 N.C. 478, 137 S.E.2d 801 (1964).
56. *Id.* at 802.
57. *Id.*
58. N.C. Gen. Sess. Laws, §§ 108-20, 108-47 (1937).
59. 262 N.C. 478, 137 S.E.2d 801, 803 (1964).
60. *Id.*
61. 415 U.S. 199 (1974).
62. *Id.*
63. *Id.* at 208.
64. Act of Aug. 14, 1935, ch. 531; Memorandum of the Solicitor, Dep't of Int., Apr. 22, 1936.
65. *E.g.*, text at note 21, *supra.*