

ATTORNEY GENERAL

February 14, 1978

ANN KLEIN, *Commissioner*
New Jersey Department of Human Services
135 West Hanover Street
Trenton, New Jersey 08625

FORMAL OPINION NO.2—1978

Dear Commissioner Klein:

You have requested advice as to the scope of State and county welfare agency responsibility respecting the investigation and prosecution of fraud committed by either employees or recipients of the Food Stamp Program. You are hereby advised that the State and counties are obligated to investigate apparent instances of recipient or employee fraud, make demand for the repayment of food stamp coupons issued as a result of fraud or misrepresentation, make an administrative determination as to whether the facts warrant referral of the matter to State or federal authorities for prosecution, and refer the matter to such authorities if appropriate.

The Food Stamp Program [7 U.S.C. §2011 *et seq.*, as amended by P.L. 95-113, 91 Stat. 958 (1977)]* was enacted by Congress in order to alleviate the condition of widespread hunger and malnutrition common among members of low-income households. Food stamps or coupons permit eligible recipients to purchase food at a considerable discount. The coupons themselves are financed by the federal government, while the costs of administering the program are shared by the State and federal governments. 7 U.S.C. §2025(a). The Secretary of Agriculture is charged by Congress with operation of the program on the national level, and in exercise of this function he possesses the delegated authority to promulgate regulations which guide the operation of State programs. 7 U.S.C. §2013(c).

The knowing use, transfer, acquisition, alteration or possession of food stamps, or the vouchers used by recipients to obtain them, in violation of the Food Stamp Act or regulations is a crime under federal law, 7 U.S.C. §2024(b), as is the redemption of food stamps with knowledge that they have been received, used, or transferred in violation of the Act or regulations, 7 U.S.C. §2024(c), provided that the food stamps or vouchers in question are of the value of \$100 or more. See also 7 C.F.R. §270.4. Although prosecution under State law for offenses involving the Food Stamp Program was neither encouraged nor proscribed by former federal legislation, recent amendments to the Food Stamp Act clearly provide for a State enforcement role by authorizing the Secretary to fund 75% of the costs of State food stamp investigation and prosecutions. 7 U.S.C. §2025(a), as amended by Food Stamp Act of 1977, §16(a), 91 Stat. 976 (1977).

The Department of Agriculture's regulations specify that once a State food stamp agency determines that food stamps have been fraudulently obtained by recipients, the State shall make demands for the return of food

*All citations to 7 U.S.C. §2011 *et seq.* refer to the current version of this legislation as recently amended by the Food Stamp Act of 1977, P.L. 95-113, §1301 *et seq.*, 91 Stat. 958 (1977).

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stamps issued due to such fraud. 7 C.F.R. §271.8(e). However, State responsibility does not terminate upon recovering fraudulently issued stamps, for:

Demand and payment of any such amounts shall not relieve or discharge such household of any liability, either civil or criminal, for such additional amounts as may be due under any other applicable provisions of law. *Id.*

State as well as federal prosecutions are contemplated by 7 C.F.R. §270.4(d), which specifies that fraud, misrepresentation, or willful failure to report information in connection with food stamp applications is subject to criminal prosecution or civil liability under federal statutes "as well as to any legal sanctions as may be maintained under State law." *Id.*

This policy is further clarified in program instructions periodically issued by the Food and Nutrition Service of the U.S. Department of Agriculture. Thus, FNS(FS) Instruction 736-1 at page 8 (1972) states that:

It is likely, in any case in which a household has fraudulently obtained coupons, that there have been violations of either State or Federal criminal laws.

In such cases, continues the instruction, it should be determined administratively whether the facts warrant referral of the matter to the appropriate prosecutorial authorities. In the event of such referral, administrative collection action should be withheld until criminal prosecution is either declined or completed, or until such action is approved by the prosecutors. Where, however, the evidence does not warrant referral for criminal prosecution, or where prosecutorial authorities decline to take action, the State agency is responsible to initiate collection action. *Id.*

In New Jersey, the county welfare agencies are responsible for direct administration of the Food Stamp Program and act as agents of the State in this capacity. N.J. Food Stamp Manual (FSM) §111, N.J.A.C. 10:87-1.1(b); *cf. Essex County Welfare Bd. v. Dept. of Inst. & Agencies*, 75 N.J. 232 (1978); *Essex County Welfare Bd. v. Dept. of Inst. & Agencies*, 139 N.J. Super. 47 (App. Div. 1976). Thus, all references to State agencies in the federal statutes and regulations apply to the county welfare agencies with equal force. The provisions of New Jersey's food stamp regulations track their federal counterparts, requiring that possible criminal violations involved in the over-issuance of food stamps be referred to State or federal law enforcement officials (FSM §691.1, N.J.A.C. 10:87-6.41), and that collection activities are to be pursued after completion of the prosecutorial process [FSM §691.2(c), N.J.A.C. 10:87-6.41(a)(2)(iii)].

It is thus apparent that recipients who illegally receive benefits under the Food Stamp Program are subject to both federal and State criminal sanctions. *E.g.* 7 U.S.C. §2024; N.J.S.A. 2A:111-2, -3. *See State v. Jeske*, 13 Wash. App. 118, 533 P.2d 859, 861 (Wash. Ct. App. 1975). An essential duty of State and county welfare agencies is to investigate the facts of all alleged abuses of the program in order to initiate prosecution or collection, or both.

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The fact that State or county employees, or employees of vendors which contract with the State to issue food stamps to recipients, are engaged in federal food stamp activities does not in any way insulate them from possible prosecution for violations of State law. Such employees are subject to State prosecution for embezzlement (N.J.S.A. 2A:102-1) and other offenses notwithstanding their participation in a federal program. Additionally, they are subject to federal criminal sanctions which punish the unauthorized issuance, use, transfer, acquisition, alteration, possession or presentation of such coupons. 7 U.S.C. §2024; 7 C.F.R. §270.4(b). The State and counties are implicitly responsible to investigate the possibility of such offenses and report their findings to State, county or federal authorities, as appropriate, just as they would with offenses by non-food stamp employees.

In sum, prosecutions for abuse of the Food Stamp Program by recipients or employees may be pursued according to State and/or federal law. The State and county welfare agencies have the responsibility to investigate allegations of violations of law, refer such matters to the appropriate prosecutors, and take action to recoup improperly acquired food stamps.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: RICHARD M. HLUCHAN
Deputy Attorney General

April 18, 1978

ANN KLEIN, *Commissioner*
Department of Human Services
135 West Hanover Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1978

Dear Commissioner Klein:

You have asked for an opinion as to whether the Division of Medical Assistance and Health Services may validly promulgate regulations under the Pharmaceutical Assistance for the Aged (hereafter "P.A.A.") Program, excluding the coverage of prescribed drugs, insulin, insulin syringes or insulin needles for persons who are inpatients in nursing homes or hospitals. For the following reasons, you are advised that payments to pharmacies may not be denied for prescription drugs, insulin, insulin syringes or insulin needles of eligible persons solely on the basis of their being inpatients in nursing homes or hospitals.

The P.A.A. Program was enacted by Laws of 1975, c. 194, as a supplement to the New Jersey Medical Assistance and Health Services