

"When any person comes into this state without visible means of support for the immediate future and applies for aid to dependent children under chapter 301 or general assistance under part I of chapter 308 of the general statutes within one month from his arrival, the welfare commissioner shall determine whether such person's remaining will serve the best interests of (a) the state, (b) the town to which the person has come and (c) such person. In making his determination, the commissioner shall consider (a) the circumstances involved in such person's coming to this state, (b) his situation now that he is here, (c) the circumstances involved if he remains, (d) whether he comes to this state able and willing to support himself or whether he came for the purpose of seeking welfare assistance and (e) whether he will need such assistance indefinitely."

The 1965 Session then amended the law, § 17-2d, so as to change the phrase "one month from arrival" to "one year from arrival"; it eliminated the statutory restrictive standards for the guidance of the Commissioner's administration of the act, and adopted the maximum federal residence requirement. 42 U.S.C.A. § 602b. The intent of the law was to exclude those from benefits, who came into the state for the primary purpose of seeking welfare assistance and it should be so construed and interpreted. It has always been a principle of constitutional interpretation that the Courts, if at all possible, should construe a statute so as to bring it within the Constitution. *Michaelson v. United States*, 266 U.S. 42 (1924); *United States v. Delaware & Hudson Co.*, 213 U.S. 366 (1909).

The Public Welfare Committee of the 1967 Legislature, just adjourned, considered this residence issue in Substitute for Senate Bill No. 166; the bill was defeated by recommitment to committee.

The legislature so exercised its sovereign police power to classify equally all non-residents who came into Connecticut, who applied for welfare aid within a stated time period. The law affected all persons similarly situated in the class described:

"Class legislation, discrimination against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment." *Barbier v. Connolly*, 113 U.S. 27, 32 (1885).

Without such a statutory deterrent, this state would be powerless to prevent its becoming a refuge for welfare recipients of other states; even those who might be encouraged or even assisted to migrate from their settlement of origin.

"Freedom of residence is restricted as to citizens only while on relief. . . . No interference is had with the right of any citizen to choose and establish a home. What is controlled is the unrestricted imposition of indigent persons and families without settlement upon a community and State where they cannot establish a home because of their indigent status. . . . Such conditions restrict individual rights and freedom in the interest of the right, security and freedom of the rest of the community of the State." *Matter of Chirillo*, 283 N.Y. 417, 28 N.E. 2d 895 (dissenting opinion).

I further dissent from the award of money damages to the plaintiff by the majority for the past aid alleged to have been unconstitutionally withheld. Connecticut has not consented to be sued for money damages in this class of action. *Monaco v. Mississippi*, 292 U.S. 313, 324 (1933); *Ex Parte State of New York No. 1*, 256 U.S. 490, 497 (1920).

Welfare aid, by its nature, does not create a vested right to back payments which have been denied. Public welfare is a current subsistence grant from public charity funds administered by statutory standards. This is confirmed by the philosophy behind the state welfare laws requiring reimbursement from paupers for support payments. § § 17-277, 17-298. This plaintiff has been living on monthly allotments from a private source, the Catholic Family Services of Hartford. A money judgment award, under the circumstances, would amount to a gratuitous windfall.

Without such a right to reimbursement for past allotments, the case is now moot. The plaintiff moved to Hartford, Connecticut, in mid-June 1966. Her present residence eligibility under § 17-2d, having been satisfied, she now qualifies to apply for aid to dependent children under Chapter 301. The case should accordingly be dismissed. *Doremus v. Board of Education*, 342 U.S. 429 (1952).

T. EMMET CLARIE,
District Judge.