Variance in California's General Assistance Welfare Rates: A Dilemma and a Solution

James P. Wagoner

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VARIANCE IN CALIFORNIA'S GENERAL ASSISTANCE WELFARE RATES: A DILEMMA AND A SOLUTION

INTRODUCTION

In Siskiyou County, a family of two or more persons in the General Assistance welfare category receives an average welfare allotment of five dollars per month. In Tulare County, however, a similar family of two or more persons receives an average of one hundred eighty-eight dollars and thirty-three cents per month. In California's fifty-six other counties, the General Assistance rates range between these two extremes with an overall average of about eighty-three dollars per month for a family of two or more. Since the board of supervisors of each county is vested with the discretionary authority to set the level of support for their respective counties, some variation should be expected. However, when some counties pay their indigents thirty and forty times as much welfare as others, the obvious conclusion is that some counties are satisfying their statutory duty of support while other counties are falling far short of fulfilling their obligation.

This comment analyzes the degree of discretion granted to the counties under the current law along with the attendant merits and drawbacks of such discretion, and proposes alternative solutions to the inequities inherent in the present statutory scheme.

WELFARE IN CALIFORNIA

There are essentially two basic types of welfare programs currently operating in California. The most common welfare programs are the jointly funded state and federal programs designed

1. CALIFORNIA STATE DEPARTMENT OF SOCIAL SERVICES, PUBLIC WELFARE IN CALIFORNIA, JUNE 1972, Table 10a. This report was provided through the courtesy of Fredrick B. Gillette, Director, Santa Clara County Department of Social Services.
2. Id.
3. Id.
5. PUBLIC WELFARE IN CALIFORNIA, JUNE 1972, supra note 1, Table 10a.
to provide for individuals and families who have specific disabilities or needs. The other type of welfare program is classified as General Assistance, under which all indigents not eligible for any of the jointly funded programs are supported solely through county funds.

The Jointly Funded Federal and State Programs

All fifty states, along with the District of Columbia, Guam, Puerto Rico, and the Virgin Islands, participate in one or more of the jointly funded categorical aid programs. The term "categorical aid" covers the entire field of jointly funded programs designed to provide for indigents with particular disabilities or needs. These jointly funded programs consist of four primary categories:

1. Aid to Families with Dependent Children;
2. Aid to the Permanently and Totally Disabled;
3. Old Age Assistance;
4. Aid to the Blind.

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11. 42 U.S.C. §§ 601-44 (1970); Cal. Welf. & Inst'ns Code §§ 11200-507 (West 1972); see also Cal. Welf. & Inst'ns Code §§ 11000-138 (West 1972). The Aid to Families with Dependent Children category (also known as AFDC) includes families with one or more dependent children who have been deprived of parental support or care by reason of the death, continued absence from the home, physical or mental incapacity of a parent, or in some states by reason of the unemployment of the father. 42 U.S.C. §§ 606, 607 (1970); Cal. Welf. & Inst'ns Code § 11250 (West 1972).
14. 42 U.S.C. §§ 1201-06 (1970); California has divided this category into
Of the 2,096,877 welfare recipients in California,\textsuperscript{16} approximately 97.42\% are enrolled in one of the jointly funded categorical aid programs,\textsuperscript{18} in the following proportions:

\textit{Table 1\textsuperscript{17}}

\begin{tabular}{l c}
Aid to Families with Dependent Children & \textbullet \quad 72.56\% \\
Aid to the Permanently and Totally Disabled & \textbullet \quad 9.48\% \\
Old Age Assistance & \textbullet \quad 14.71\% \\
Aid to the Blind & \textbullet \quad 0.067\% \\
\end{tabular}

The remaining 2.58\% of the welfare recipients, approximately 54,000 persons, receive assistance solely through the General Assistance programs conducted by the individual counties.\textsuperscript{18}

\textbf{General Assistance}\textsuperscript{10}

The General Assistance programs in California are required by Welfare and Institutions Code section 17000 and are found in every California county.\textsuperscript{20} Welfare and Institutions Code section 17000 provides as follows:

Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or state or private institutions.\textsuperscript{21}

This statute makes it the duty of every county to supports its indigents regardless of monetary deficiencies in the county’s welfare budget.\textsuperscript{22} Thus, in the depression era case of \textit{Los Angeles County v. Payne}\textsuperscript{23} the Los Angeles County Board of Supervisors was faced with the problem of insufficient funds to support county indigents.\textsuperscript{24} To alleviate the situation the board passed an emer-

\footnotesize{\texttt{two sub-categories: Aid to the Blind, \texttt{CAL. WELF. \\ & INST’NS. CODE §§ 12500-850 (West 1972), and Aid to the Potentially Self-Supporting Blind, \texttt{CAL. WELF. \\ & INST’NS CODE §§ 13000-102 (West 1972); see also \texttt{CAL. WELF. \\ & INST’NS. CODE §§ 11000-183 (West 1972). The Aid to the Blind category includes persons who are blind and in need of assistance, except for those who are inmates in non-medical public institutions, and persons who are patients in an institution for mental disease or tuberculosis. 42 U.S.C. § 1206 (1970); \texttt{CAL. WELF. \\ & INST’NS. CODE §§ 12014, 12550-562, 13050-57 (West 1972).}}

\texttt{15. \textit{PUBLIC WELFARE IN CALIFORNIA, JUNE 1972, supra note 1, table 1.}}

\texttt{16. \textit{Id.}}

\texttt{17. \textit{Id.}}

\texttt{18. \textit{Id.; the actual figure in June of 1972 was 53,990.}}

\texttt{19. \textit{See generally \texttt{CAL. WELF. \\ & INST’NS. CODE §§ 17000-409 (West 1972).}}

\texttt{20. \texttt{CAL. WELF. \\ & INST’NS. CODE § 17000 (West 1972).}}

\texttt{21. \textit{Id.}}

\texttt{22. \textit{Los Angeles County v. Payne, 8 Cal. 2d 563, 66 P.2d 658 (1937).}}

\texttt{23. \textit{8 Cal. 2d 563, 66 P.2d 658 (1937).}}

\texttt{24. \textit{Id. at 567, 66 P.2d at 659-660.}}
ergency resolution adding $1,000,000 to the welfare budget for the continued support of the county's poor.\textsuperscript{25} Both the County Treasurer and the County Auditor refused to implement the resolution on the grounds that the appropriation exceeded the board's authority.\textsuperscript{26} The County filed suit requesting that a writ of mandate be issued to compel the county treasurer and auditor to honor the appropriation.\textsuperscript{27} The California Supreme Court granted the requested relief, holding that the county's statutory duty to support its resident indigents must be complied with.\textsuperscript{28}

Similarly, in \textit{San Francisco v. Collins},\textsuperscript{29} another depression era case, the San Francisco City and County Board of Supervisors attempted to place on the ballot a bond issue, which, if passed, would have provided the county with the funds necessary for the support of its indigents.\textsuperscript{30} The registrar of voters, however, refused to place the bond issue on the ballot, contending among other things, that the board lacked authority to issue that type of bond.\textsuperscript{31} The California Supreme Court disagreed, and issued a writ of mandate compelling the registrar to place the issue on the ballot.\textsuperscript{32} The court held that a county's duty to support its indigents was mandatory, and that therefore the county would be allowed to raise in any appropriate manner the funds necessary for the fulfillment of that duty.\textsuperscript{33} Although the court did not specifically address the issue of whether a county might be evading its statutory duty of support by leaving the authorization of welfare funds up to the voters, the language used by the court in its treatment of the bond issue indicated that even if the issue were defeated, the county would still be required to raise welfare funds in order to satisfy its statutory duty of support.\textsuperscript{34}

Another California Supreme Court case which stressed the mandatory duty of the counties to support their indigents was \textit{Mooney v. Pickett}.\textsuperscript{35} In that case the petitioner had been unem-

\begin{flushleft}
\begin{footnotesize}
\begin{enumerate}
\item Id. at 565-567, 66 P.2d at 659-660.
\item Id. at 567, 66 P.2d at 660.
\item Id.
\item Id. at 573, 66 P.2d at 663.
\item 216 Cal. 187, 13 P.2d 912 (1932).
\item Id. at 189, 13 P.2d at 912-913.
\item Id.
\item Id. at 194, 13 P.2d at 915.
\item Id. at 190, 13 P.2d at 913.
\item The following language gives rise to this implication: "There can be no question as to the applicability of the statute (§ 17000) . . . imposing a duty on the county . . . If then, a county or city and county must support its poor, how may it raise the funds with which to do so? Section 4041.16 of the Political Code . . . permits the levy of taxes by a county for this purpose, but does not purport to restrict it to this means." \textit{Id.} at 190, 13 P.2d at 913.
\item 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971).
\end{enumerate}
\end{footnotesize}
\end{flushleft}
ployed for a considerable length of time. When his unemployment benefits were finally exhausted, he sought the aid of the San Mateo County welfare department. He was denied General Assistance on the grounds that he was an "employable" person and therefore not eligible for General Assistance under San Mateo County's "employability rule". The petitioner then brought a class action on behalf of himself and all other persons deemed "employable" who were otherwise eligible for General Assistance in San Mateo County. Once again, the California Supreme Court issued a writ of mandate, this time forbidding San Mateo County to deny petitioner or members of his class General Assistance on the grounds of their employability. The court held that the language of section 17000 required the county to support all indigent persons not otherwise supported, and that this duty of support was mandatory, citing San Francisco v. Collins as support for this conclusion.

Along with its duty of support, every county is vested with the general powers necessary for the administration of its General

36. The petitioner had lost his job in December of 1969. Thereafter, he had found only temporary employment up until the time the suit was filed in July of 1970. Id. at 673-74, 483 P.2d at 1233, 94 Cal. Rptr. at 281.
37. Id. at 673, 483 P.2d, at 1233, 94 Cal. Rptr. at 281-82.
38. Id.; San Mateo County Ordinance Code § 2339 provided that "Employable persons who do not come within the definition of persons eligible for indigent aid . . . are not eligible for indigent aid; except in those cases in which there is illness in the family or where the welfare of the children is threatened, emergency aid may be given for temporary periods with the approval of the Superintendent of Social Services or the Director of Public Health and Welfare." Similarly, General Assistance regulation GA-08 provided that "Generally speaking, employable persons are not eligible for General Assistance. However, in those cases where the welfare of the children is threatened or where there is illness in the family, emergency aid may be given with the approval of the Superintendent of the Social Services division. Assistance will be granted to employable adults only in emergencies. Such applicants will be required to register with the California State Employment Service as a condition of receiving aid."
39. Id. at 674, 483 P.2d at 1234, 94 Cal. Rptr. at 282.
40. Id. at 675-79, 483 P.2d at 1234-39, 94 Cal. Rptr. at 283-85.
41. Id. at 677-78, 483 P.2d at 1235-36, 94 Cal. Rptr. at 284-85.
42. Los Angeles County v. Payne, San Francisco v. Collins, and Mooney v. Pickett all dealt with varying aspects of a county's mandatory duty to support its indigents. In Los Angeles County v. Payne the court was concerned with the board's authority to appropriate funds for this purpose, while San Francisco v. Collins dealt with the manner in which these funds might be raised. Subsequently, in Mooney v. Pickett the court was faced with the question of how far the county's duty of support extended. In each case, however, the court stressed the mandatory duty of the county to support its indigents, and the respective decisions turned on that issue. See Los Angeles County v. Payne, 8 Cal. 2d 563, 6 P.2d 658 (1937); San Francisco v. Collins, 216 Cal. 187, 13 P.2d 912 (1932); and Mooney v. Pickett, 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971).
CALIFORNIA WELFARE RATES

43. The express powers enumerated in Cal. Welf. & Inst'ns. Code (West 1972) are set forth in the following sections: the power to establish almshouses and county farms, § 17002; the power to investigate all applications for relief, and to supervise the indigent through periodic home visits in order to devise ways and means to promote the indigent to a status of self support, § 17006; the power to require residency within the county, §§ 17003, 17100-17105; the power to require the indigent to apply his personal property (within certain proscribed limits) toward his own support, §§ 17107, 17111; the power to require the indigent to transfer his property to the county for proper management while he is receiving aid, §§ 17109, 17409; the power to require the indigent to work as a condition of relief, §§ 17200-17201; the power to require the responsible relatives of the indigent to contribute towards his support, § 17300; with a court order if necessary, § 17311; the power to require the indigent to execute a lien to the county on all his real property for the amount of aid rendered, §§ 17400-17401, 17404-17408; and the power to set standards of aid and care for the relief of the indigent, § 17001.


47. Id. at 773-75, 95 Cal. Rptr. at 62-63.

48. Id. at 773, 95 Cal. Rptr. at 62.

49. Id.

50. Id.

51. Id. at 773-74, 95 Cal. Rptr. at 62.

52. Id. at 774, 95 Cal. Rptr. at 62.

53. Id.

Assistance program. These administrative powers are either express or implied, and can be very broad. For example the power of the county to "supervise" the indigent, and to devise ways and means to bring the indigent to a level of self-support is a very broad and vague delegation of authority which would permit any reasonable method of accomplishing this goal. The nature of this supervisory power was explained in the recent case of Adkins v. Leach. In that case the plaintiff brought a suit against the Monterey County Board of Supervisors claiming that he was unreasonably deprived of General Assistance relief. The plaintiff had recently arrived with his family from Kansas and apparently intended to establish residence in Monterey County. His family was without funds or a place to live and they had only a limited supply of food. Adkins went to the Monterey County welfare department and applied for General Assistance and Aid to Families with Dependent Children. His application for Aid to Families with Dependent Children was taken under submission while his application for General Assistance was immediately denied on the grounds that he did not have a county address. In order to become eligible for General Assistance, plaintiff then tried without success to find a landlord who would allow his family to move in without paying rent or a deposit. The plaintiff tried again to obtain General Assistance by explaining his dilemma but his application was denied. Thus Adkins, be-
because of his status as a newly arrived indigent, was left in a precarious situation: he was not eligible for General Assistance until he could obtain an address, and he could not obtain an address until he received General Assistance. To rectify the situation, the plaintiff brought suit in Monterey County Superior Court seeking mandatory and injunctive relief on the basis that the requirement of an address was an unreasonable condition of welfare eligibility. According to Adkins' contention, the county could not lawfully impose the condition of a county address on General Assistance applicants because such a requirement was arbitrary and capricious and thus beyond the authority vested in the board of supervisors. The court of appeals disagreed, however, and held that the requirement of a county address was within the discretion of the board of supervisors. The court stated that:

Neither arbitrary nor capricious conduct (nor fraud) can reasonably be inferred from the pleaded requirement that immediate general relief is available "only after the needy person has an address which can be given to the welfare department as his place of residence". Such a requirement is obviously reasonable. A county disbursing relief under the direction of section 17000 is fairly entitled to some objective criteria to determine whether an applicant is truly a resident of the county. One in Adkins' position could otherwise collect his general relief and then pass on, perhaps to repeat his demand in another county. And in such cases the requirement of section 17006 . . . that an applicant for general relief be investigated would obviously be frustrated by payment before investigation to one with no county address.

The court thus concluded that the county's address requirement was a legitimate prerequisite to General Assistance under the county's express powers to administer the General Assistance program, to require residency, and to investigate all applications for relief.

The Authority to Set Levels of General Assistance. Another power expressly delegated to the county boards is the power of supervisors to adopt standards of aid and care for general as-

54. Id.
55. The relief actually was asked for in the form of an "order prohibiting" and an "order compelling"; however, were this relief granted, it would have taken the form of a writ of mandate or an injunction. Id. at 771, 95 Cal. Rptr. at 61.
56. Id. at 774, 95 Cal. Rptr. at 62.
57. Id. at 778-79, 95 Cal. Rptr. at 65-66.
58. Id.
59. Id. at 779, 95 Cal. Rptr. at 66.
60. Id.
sistance recipients. This power is set forth in Welfare and Institutions Code section 17001 which provides that:

The board of supervisors of each county, or the agency authorized by the county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county.

As the statute indicates, the local boards of supervisors have the discretion to set the amount of assistance that will be granted to persons eligible for such aid. This discretionary authority has resulted in a wide discrepancy among the general assistance rates, as indicated by the following table.

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<tr>
<th>County</th>
<th>Family Cases</th>
<th>Average Grant per month</th>
<th>One Person Cases</th>
<th>Average Grant per month</th>
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<td>3</td>
<td>48.33</td>
</tr>
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61. CAL. WELF & INST'NS. CODE § 17001 (West 1972).
62. Id.
63. Id.
64. PUBLIC WELFARE IN CALIFORNIA, JUNE 1972, supra note 1, table 10a.
It is clear that there is a wide discrepancy in the general assistance rates from county to county. The central valley county of Tulare, for example, pays an average of $188.33 per month for a family of two or more, while the neighboring valley counties, Fresno and Kings, pay an average of $24.61 and $19.20 respectively for a family of two or more. Similarly, the southern California county of San Diego pays $108.02 for a family of two or more, while neighboring counties Imperial and Riverside pay an average of $31.89 and $48.13 respectively for a similar family.

The problem of wide variations in General Assistance rates which the statute authorizes is to a certain extent compounded by court cases which condone extensive board discretion in the setting of welfare rates. Consequently, individuals who are dependent

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65. Id.
66. Id.
on the county are left in some counties with wholly inadequate resources with which to meet their needs. A typical example of a court case condoning the use of broad discretion is *Patten v. County of San Diego.* The plaintiff had been a recipient of General Assistance under the San Diego County General Assistance program for some time before the county discovered his failure to report the fact that he had received certain sums of money from his sister. Based on the failure to report income, the county discontinued Patten's aid and he sued to compel the county to restore his welfare payments. The court ruled that his aid should be restored in the amount to which he was entitled and subject to certain conditions. Thereafter, the plaintiff moved to have the judgment modified to compel the county to pay him the sum of $157 with which to repay money advanced to him by third parties during the litigation. The court refused to grant such relief, holding that they had no authority to determine the amount of the payments to be made by the county. The court stated that:

The administration of County General Relief given pursuant to section 2500 of the Welfare and Institutions Code (now section 17000) is vested in the county boards of supervisors. The Welfare and Institutions Code does not require that the county grant indigents any specific type of relief nor does it require the payment of any specific amount of money to indigents nor prescribe the time at which payments are to be made. These matters are within the discretion of the boards of supervisors and the court has no authority to interfere with administrative determinations of a board of supervisors with respect to the granting of county general relief in the absence of a clear showing of fraud or arbitrary or capricious conduct.

68. Id.
70. Id. at 469, 235 P.2d at 218.
71. Id.
72. Id. at 469, 235 P.2d at 218-19. The opinion of the court does not specify what those conditions were.
73. Id.
74. Id. at 470, 235 P.2d at 219.
75. Id.: The *Patten* court rested its decision on the California Supreme Court case of *Bila v. Young,* 20 Cal. 2d 865, 129 P.2d 364 (1942). In that case the plaintiff was denied Old Age Assistance under a state statute providing for such a denial if the applicant or recipient transferred property without adequate consideration. The trial court held that the action of the Social Welfare Board in denying plaintiff aid was based on a mistaken interpretation of the statute, and entered an order requiring the Social Welfare Board to pay the plaintiff aid in the amount of $40 per month. On appeal, the California Supreme Court upheld the trial court's construction of the statute, but refused to enforce that part of the order requiring the payment of $40 per month. The court stated that "since the administration of this statute is conferred upon local boards of supervisors and the respondent Social Welfare Board, the trial court had no power to determine the amount of payment or the date at which such payment should be made." 20 Cal. 2d 865, 869-70, 129 P.2d 364, 367.
Similarly, in *County of Los Angeles v. Department of Social Welfare*, seven eleven persons who were recipients of Old Age Assistance and Aid to the Blind complained to the State Social Welfare Board that Los Angeles County, in determining the appropriate amount of General Assistance for their husbands and wives, was improperly treating their categorical aid as family income. The State Welfare Board ruled that this practice was illegal and ordered that state and federal funds be withheld from the county because of this procedure. The California Supreme Court however, overruled the State Welfare Board and allowed the county to continue treating categorical aid as family income for purposes of determining General Assistance aid. The court stated that:

No federal or state funds are granted for this purpose [general assistance relief] and the counties are not required to grant any specific type of relief or to pay any specific amount of money. The administration of county relief to indigents, as distinguished from old age security and needy blind assistance, is vested exclusively in the county supervisors who have discretion without supervision by the state, to determine eligibility for, the type and amount of, and conditions to be attached to indigent relief.

The grant of broad discretionary authority by section 17001 has met with wide acceptance in recent decisions. In *Mooney v. Pickett*, the Supreme Court stated that "we have interpreted this provision [section 17001] to confer upon the county a broad discretion to determine eligibility for, the type and amount of, and conditions to be attached to indigent relief." Furthermore, in *Adkins v. Leach*, the court quoted at length from *Patten v. County of San Diego* and *County of Los Angeles v. Department of Social Welfare* to hold that the local county boards of supervisors are vested with broad discretion to set the levels of general assistance payments to eligible indigents.

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76. 41 Cal. 2d 455, 260 P.2d 41 (1953).
77. Id. at 456, 260 P.2d at 42.
78. Id. at 457, 260 P.2d at 42-43. The opinion does not specify the reasons why the Social Welfare Board so held.
79. Id. at 459, 260 P.2d at 44.
80. Id. at 458, 260 P.2d at 43.
83. 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971).
84. Id. at 679, 483 P.2d at 1237, 94 Cal. Rptr. at 285.
87. 41 Cal. 2d 455, 260 P.2d 41 (1953).
County boards of supervisors are judicially limited only by the rule that in setting these rates, they must not act arbitrarily, capriciously or fraudulently. In effect then, counties are required to support all their eligible indigents, but may determine on any reasonable basis what that level of support should be. In the exercise of this discretion many counties have seen fit to grant insufficient aid to indigents. No extensive surveys are needed to show that the cost of food, clothing, shelter and other essential items for families of two or more greatly exceeds the levels of aid paid by some counties, as shown in Table 2. An indigent family of two or more can hardly live on such nominal amounts.

The Definition of Support: Burns v. Gillette. The previously discussed cases of Patten v. County of San Diego, County of Los Angeles v. Department of Social Welfare, and Mooney v. Pickett dealt with the power and duty of county boards to provide support. None attempted to define support or set standards for measuring the sufficiency of support. This issue was not squarely met until the recent Santa Clara County case of Burns v. Gillette. Burns arose out of the following facts: in late spring of 1972, the Santa Clara County Board of Supervisors was considering their budget for the fiscal year 1972-1973. At a meeting on May 23, 1972, the board considered a recommendation from the County Executive's office that the board reduce the current General Assistance rates. At the time of the recommendation, Santa Clara County allowed a maximum of $136 for single persons and an indefinite maximum for fami-

90. CAL. WELF. & INST'NS. CODE § 17000 (West 1972).
92. See table 2 supra.
93. No. 275048, Santa Clara County Superior Court, July 7, 1972.
95. 41 Cal. 2d 455, 260 P.2d 41 (1953).
96. 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971).
98. No. 275048, Santa Clara County Superior Court, July 7, 1972.
99. Affidavit of Charles A. Quinn, Chairman, Santa Clara County Board of Supervisors, Burns v. Gillette, No. 275048, Santa Clara County Superior Court, July 7, 1972.
ilies, depending on the number of individuals in the family units. The average grant for a single person was $106.46, and for families, $167.32. The County Executive recommended a reduction in the current rates of approximately 33%; which would have brought the welfare levels to an average of $80 to $85 dollars for a single person, and about $135 for an average family of two or more. The recommendation was considered and set aside for two weeks to enable the County Executive to obtain the views of the County Welfare Department regarding his recommendation and other related issues. Several days after the recommendation, the welfare department called a meeting of officers from the County Executive's office to consider the merits of the recommendation. The meeting was held on May 31, 1972, and the individuals attending the meeting concerned themselves primarily with the problem of reducing the welfare rates for so-called “employable persons” while leaving the current rates for aged or incapacitated “unemployable” persons intact. The actual amount of the proposed rate reduction was passed over and approved without any reference to statistical data or standards with respect to the cost of living or the cost of basic essentials (i.e. food, shelter, medical care, etc.) in Santa Clara County or in any other county. The officials attending the meeting eventually decided to recommend to the board of supervisors that General Assistance for employable individuals be reduced approximately 33%; while leaving the levels of assistance for non-employables unchanged. On June 7, 1972, the board of supervisors met, and the recommendation to reduce the rates for employable persons was discussed and approved, again without reference to statistical data showing whether the reduced rates would be sufficient to meet the needs of employable welfare recipients. At the close of the discussion, the board adopted the following standards, effective as of July 1, 1972:

100. Id.
101. PUBLIC WELFARE IN CALIFORNIA, JUNE 1972, supra note 1, table 10a.
102. Affidavit of Charles A. Quinn, Chairman, Santa Clara County Board of Supervisors, Burns v. Gillette, No. 275048, Santa Clara County Superior Court, July 7, 1972.
103. Id.
104. Id.
105. Id.
106. Id.
107. Id.
108. Affidavit of Charles A. Quinn, Chairman, Santa Clara County Board of Supervisors, Burns v. Gillette, No. 275048, Santa Clara County Superior Court, July 7, 1972.
<table>
<thead>
<tr>
<th>Number of persons in budget unit</th>
<th>Maximum for employables</th>
<th>Maximum for non-employables</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$100.00</td>
<td>$136.00</td>
</tr>
<tr>
<td>2</td>
<td>166.00</td>
<td>192.00</td>
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<td>231.00</td>
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<tr>
<td>6</td>
<td>314.00</td>
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<tr>
<td>7</td>
<td>344.00</td>
<td>374.00</td>
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<tr>
<td>8</td>
<td>375.00</td>
<td>409.00</td>
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<tr>
<td>9</td>
<td>405.00</td>
<td>443.00</td>
</tr>
<tr>
<td>10</td>
<td>435.00</td>
<td>477.00</td>
</tr>
</tbody>
</table>

Shortly after the decision of the board, a class action was filed on behalf of Donald Burns, Mary Motely, Roy Rowe, and all other similarly situated “employable” General Assistance recipients who were about to have their grants reduced in accordance with the June 7 resolution of the Santa Clara County Board of Supervisors.\(^{110}\) The complaint seeking injunctive and declaratory relief relied on three separate theories: first, that by adopting a 33% reduction in the level of general assistance aid, the county was failing to meet its statutory duty of support under Welfare and Institutions Code sections 17000 and 17001;\(^{111}\) second, that by failing to refer to or rely on any statistical data in determining whether the new rates were adequate to “support” an employable General Assistance recipient, the county board of supervisors acted arbitrarily and capriciously denying to the plaintiffs their constitutionally guaranteed right to due process of law under the California Constitution;\(^{112}\) and third, for the same reasons plaintiffs were denied due process under the United States Constitution.\(^{113}\)

The case was tried on July 7, 1972, and the board of supervisors decision to reduce the rates was upheld.\(^{114}\) At the trial, several officers from the County Executive’s office and the welfare department testified that they had each attended the meeting where the decision to reduce the rates originated. They each testified that they did not refer to or rely on any statistical data in determining whether the rates recommended were adequate to meet the minimum cost of living in Santa Clara County. The director of the welfare department testified, however, that the cost of living in Santa Clara County was common knowledge, not only to him, but also to the many other people who attended the meet-

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109. Id.
111. Id., 1-7.
112. Id., 7-9; see CAL. CONST. art. I § 13.
113. Id., 9; see U.S. CONST. amend. XIV, § 1.
ing, and that therefore it was unnecessary to refer to any statistical data in evaluating these costs. After considering this testimony, the trial judge held that the county board had not acted arbitrarily or capriciously and thus had not exceeded their discretion when they reduced the levels of General Assistance for employable persons. In his holding, the trial judge quoted from *Mooney v. Pickett*, discussed *supra*, saying that:

> We are aware of the financial difficulties which attend present welfare programs on local, state, and national levels. This court, however, is not fitted to write a new welfare law for the State of California, and while the Legislature addresses itself to that task it remains our task to enforce the existing law. We observe that the county retains extensive authority to establish standards for General Assistance, both as to eligibility and as to amount of aid. In view of this discretion, the county can surely find many ways which do not violate state statutes in which it can limit General Assistance to the financial resources available.116

The court concluded that the county could legally lower its General Assistance welfare rates without referring to any statistical data or criteria to determine whether the reduced levels of assistance were adequate to "support" the individuals dependent upon the county.

The decision of the trial judge, though unfortunate, was obviously correct in light of the cases dealing with the discretion of the county boards in this area.117 The judge could not properly overturn the decision of the board of supervisors unless their action constituted arbitrary, capricious, or fraudulent conduct.118 The unrefuted bare assertion that the welfare director and others were "familiar" with the minimum cost of living in Santa Clara County and had made their recommendation based on their expertise was insufficient to convince the court that the board of supervisors had acted arbitrarily, capriciously, or fraudulently.

The *Burns* case squarely presented the problem of defining "support" as the term is used in Welfare and Institutions Code section 17000,119 and how that level of support should be determined. The plaintiffs contended that the appropriate level of sup-

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116. Id. at 680, 483 P.2d at 1238, 94 Cal. Rptr. at 286.
port should be determined in light of the cost of living standards within the county. The court disagreed, however, apparently feeling that the county welfare department's recommendation to reduce support rates was reliable in view of the welfare department's familiarity with the cost of living in the county. Since the term "support" as used in Welfare and Institutions Code section 17000 is not defined in the statute, the county boards of supervisors are permitted to compute support payments by any reasonable means. Such means should properly include the recommendation of the county welfare department, since its director and his staff are considered experts in the field of welfare. Other reasonable means might include cost of living statistics, as the plaintiffs in *Burns* urged, as well as information regarding local housing costs, general food prices, the availability of Medi-Cal, and a host of similar factors. Such broad criteria, however, leave the board of supervisors free to base their General Assistance rates on any factor or combination of factors pleasing to them. This discretionary authority produces inconsistent welfare rates from county to county, as demonstrated by Table 2, *supra*. Consequently, some counties meet their statutory duty of support to those who are dependent on welfare, while other counties patently do not.

**Solutions to the Problem**

Two solutions might redress the imbalance in General Assistance rates: the first is a court action in mandamus to compel the respective boards of supervisors to "support" the county's indigents; the second is corrective legislation which would establish definite guidelines delineating and defining the duty of "support".

**Mandamus**

According to section 1085 of the Code of Civil Procedure, an action in mandamus will lie

... to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station. . . .

This provision has been interpreted to allow an action in mandamus to be brought against a county board of supervisors to compel the performance of a duty. The relief in such an ac-

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121. *See also Public Welfare in California, June 1972*, *supra* note 1, table 10a.

122. *Id.*

123. CAL. CIV. PRO. CODE § 1085 (West 1955).

124. Geiger v. Board of Supervisors of Butte County, 48 Cal. 2d 839, 313.
tion, however, is extremely limited—especially when dealing with a discretionary act of the board of supervisors, such as establishing of county welfare rates.\textsuperscript{125} Thus, in \textit{Patten v. County of San Diego},\textsuperscript{126} discussed supra, an action in mandamus was instituted in the form of a motion to modify the judgment in order to compel the county to pay $157 to the plaintiff.\textsuperscript{127} After ruling that the matter of county General Assistance levels was an area left by the Welfare and Institutions Code to the local boards of supervisors,\textsuperscript{128} the court held that:

\begin{quote}
Mandamus may not compel the exercise of such discretion in any particular manner. It may only direct that the officer act, and must leave that matter as to what action he will take to his determination.\textsuperscript{129}
\end{quote}

Similarly, in \textit{Berger v. Justice}\textsuperscript{130} the plaintiffs brought an action in mandamus to compel the board of supervisors to consider their motion to establish a new county rate for irrigation water delivered to them. The court denied relief, holding that the power to set rates for irrigation water was a discretionary power vested in the board of supervisors, and that the court had no power to compel them to change the rate, citing Code of Civil Procedure section 1085 as support for this conclusion.\textsuperscript{131}

In light of \textit{Patten v. County of San Diego}\textsuperscript{132} and \textit{Berger v. Justice}\textsuperscript{133} the utility of mandamus to solve the problem of insufficient county welfare rates is highly doubtful. As demonstrated by the \textit{Patten}\textsuperscript{134} case, the court is powerless to establish adequate levels of support itself.\textsuperscript{135} It can only compel the exercise of discretion by the board of supervisors, and the board's exercise of that discretion will prevail unless found to be arbitrary, capricious, or fraudulent.\textsuperscript{136} Under this standard of review, a court might be justified in overturning a rate of five or ten dollars per month for a family of two.\textsuperscript{137} But would a court do so were it

\begin{flushright}
\textsuperscript{125} P.2d 545 (1957); McCafferty v. Board of Supervisors of Placer County, 3 Cal. App. 3d 190, 83 Cal. Rptr. 229 (1969).
\textsuperscript{127} Id. at 469, 235 P.2d at 218-219.
\textsuperscript{128} Id. at 470, 235 P.2d at 219.
\textsuperscript{129} Id.
\textsuperscript{130} 4 Cal. App. 532, 88 P. 591 (1906).
\textsuperscript{131} Id.; see also CAL. CIV. PRO. CODE \S 1096.5 (West 1955) governing mandamus actions against administrative bodies.
\textsuperscript{133} 4 Cal. App. 532, 88 P. 591 (1906).
\textsuperscript{134} Patten v. County of San Diego, 106 Cal. App. 2d 467, 235 P.2d 217 (1951).
\textsuperscript{135} Id.
\textsuperscript{136} Id.
\textsuperscript{137} See table 2, supra; such counties as Placer, Tehama, Siskiyou, Lake,
faced with a forty or fifty dollar a month level?\textsuperscript{138} The courts may look with raised eyebrows on the individual welfare rates of some counties, but their authority to review the adequacy of the rates is strictly limited.\textsuperscript{139} Consequently it is doubtful whether a court action in mandamus would resolve the wide discrepancies among county welfare rates.

**Corrective Legislation**

This discrepancy in welfare rates can properly be rectified only through legislative amendments establishing definite guidelines delineating and defining "support."\textsuperscript{140} Such legislation would eliminate the problem of inadequate levels of support in some counties. Consequently, those indigents who rely on the county for their livelihood would at least have sufficient funds to meet the minimum costs of living.

An amendment along these lines might take the form of a statute repealing section 17001 of the Welfare and Institutions Code and replacing it with a code section setting forth uniform levels of support throughout the state. Such a statute would eliminate the wide discrepancy now existing among the various counties, and insure that all indigents dependent upon the county for support would have available the minimum funds necessary to meet the statewide minimum cost of living. A statute along these lines should declare that when any county undertakes to support an eligible indigent, relief must be provided according to a fixed schedule setting forth levels of support based on minimum costs of living standards within the state. In order to promote further uniformity, the statute might fix these levels at amounts identical to those established for the Aid to Families with Dependent Children category.\textsuperscript{141} These levels of assistance are as follows:

Mendocino, and Modoc all pay under $15 per month for a family of two or more.

\textsuperscript{138} *Id.*

\textsuperscript{139} Patten v. County of San Diego, 106 Cal. App. 2d 467, 235 P.2d 217 (1951).

\textsuperscript{140} In addition to the problem of the strict standard of review, the idea of court action seems impracticable. Initially, it would take a vast number of suits, one in each county, to acquire adequate relief. In the alternative, a statewide suit might be attempted, but the inconvenience to the respective county administrations might result in many inconveniences to witnesses, see Cal. CIV. PRO. CODE § 397 (West 1955). Furthermore, at least one plaintiff from each county would be required under Cal. CIV. PRO. CODE § 1086 (West 1955) requiring a plaintiff to be beneficially interested in the outcome of the litigation in order to have standing to sue for a writ of mandate, see Patten v. City of Port Hueneme, 102 Cal. App. 2d 141, 227 P.2d 25 (1951).

\textsuperscript{141} CAL. WELF. & INST'NS. CODE § 11450 (West 1972).
<table>
<thead>
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<th>Persons in budget unit</th>
<th>Maximum amount of assistance per month</th>
</tr>
</thead>
<tbody>
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<td>1</td>
<td>$115</td>
</tr>
<tr>
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<td>190</td>
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<tr>
<td>3</td>
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</tr>
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</tr>
<tr>
<td>9</td>
<td>465</td>
</tr>
<tr>
<td>10 or more</td>
<td>500</td>
</tr>
</tbody>
</table>

Under these proposed standards, general assistance recipients would have sufficient funds to carry on decent and healthful lives. Furthermore, they would have enough money for adequate clothing and transportation and thus be able to actively seek employment and eventually become self-supporting.

As an alternative solution to the problem, it is possible that the legislature would recognize the differences in the cost of living among the various counties and provide that the county set the levels of support according to these differences. To alleviate the situation presented by the *Burns* case, however, the statute should provide that when the county seeks to determine the level of support to be paid, the board of supervisors must refer to and rely on minimum cost of living statistics that have been based on local surveys. This alternative might be more desirable than having uniform rates throughout the state in light of the fact that the minimum cost of living can vary from one county to the next. Furthermore, the taxpayers in the counties where the minimum cost of living is lower than the normal would not needlessly pay higher taxes. To accomplish this, Welfare and Institutions Code section 17001 should be amended to set forth the criteria to be relied on by the county boards of supervisors in determining their respective levels of General Assistance. Such criteria might be similar to the guidelines used in the Aid to Families With Dependent Children category which are set forth in Welfare and Institutions Code section 11452:

(1) Safe, healthful housing.
(2) Minimum clothing for health and decency.
(3) Low-cost adequate food budget meeting recommended dietary allowances of the National Research Council.
(4) Utilities.
(5) Other items including household operation, educa-

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142. *Id.*
tion and incidentals, recreation, personal needs and insurance.

(6) Allowance for essential medical, dental, or other remedial care to the extent not otherwise provided at public expense.

(7) Other recurring special needs.

The determination of the cost of these items shall be made through reliance on factual surveys and data which show the cost of these items within the county.

CONCLUSIONS

From the preceding discussion of the varying levels of general assistance within the state, it can readily be seen that some counties are failing to meet their statutory obligation of support as required by Welfare and Institutions Code section 17000. This unfortunate consequence results from the broad discretion vested in local boards of supervisors to set such levels of support. As demonstrated by the cases of Patten v. County of San Diego,145 County of Los Angeles v. Department of Social Welfare,146 and Mooney v. Pickett,147 the board of supervisors discretion to fix such levels of support is limited only by the rule that the board must not act arbitrarily, capriciously, or fraudulently. Consequently, many counties have taken advantage of this rule to the point of rendering their county's General Assistance program useless: a level of five or ten dollars per month for a family of two or more persons148 is patently insufficient. The dependent poor who are subjected to this program have no recourse except to move to another county. This dilemma can only be effectively corrected through legislation requiring uniform standards of aid throughout the state, or in the alternative, by legislation requiring the county to conform its General Assistance levels to the minimum costs of living within the county. Thereby, the indigents dependent upon county aid would be provided with sufficient funds to carry on decent and healthful lives.149

James P. Wagoner*

146. 41 Cal. 2d 455, 260 P.2d 41 (1953).
147. 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971).
148. See Public Welfare in California, June 1972, supra note 1, table 10a.
149. For the equal protection aspects of this problem, see Horwitz and Neitring, Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place within a State, 15 U.C.L.A.L. Rev. 787, 812-15 (1968).
* The author wishes to express his thanks to Mr. Bob Saxe, Deputy County Counsel and attorney for the county in the Burns case, and Mr. Frederick B. Gillette, Director of the Santa Clara County Department of Social Welfare and defendant in the Burns case for their assistance in the preparation of this comment.