

South Portland City Council
Position Paper of the City Manager

Subject:

RESOLVE #1-14/15 – Supporting the City’s current general assistance practices. Passage requires majority vote.

Position:

On June 23, 2014, the City received a letter from Governor LePage’s office following up to a directive handed down by DHHS day’s earlier prohibiting towns and cities from continuing to serve people who are not U.S. citizens through the General Assistance Program (GA). Aiding undocumented individuals through the GA Program has been a long standing practice in Maine; however, the Governor’s Office points to a 1996 federal law amendment pertaining to welfare reform making it illegal under federal law for states to provide GA to undocumented individuals (illegal aliens). The Maine Attorney General is on record opposing the Governor’s directive and has stated such a directive can only be done through a rule-making process governed by the Administrative Procedures Act.

If a municipality elects to deny assistance under GA based on DHHS’ and the Governor’s directive, the municipality could be exposed to a legal challenge, probably in federal court, on the grounds the municipality violated certain rights of an applicant who is protected by both Maine and U.S. Constitutions.

The hammer in this debate is the Governor’s directive to DHHS to suspend all reimbursements to towns and cities if a particular town or city opts to continue the assistance of these undocumented individuals through the GA Program. This raises another legal question in whether DHHS has the ability under state or federal law to suspend all reimbursement back to a municipality, or do they have the rights only to suspend reimbursement of the aid given to an undocumented individual(s).

For an understanding of the City’s exposure, City staff has gone back to December of 2013 and has located 9 who are undocumented, meaning that they did not provide to the City an I 94, Passport or US Visa. This does not necessarily mean they are unlawful. They have Maine ID cards, some with SS #'s. We have flagged these cases and will continue to follow up to learn more of each individual case. Since December of 2013 the City has provided aid for the families in the amount of \$30,801.60. The distributed dollar amount reflects aid given to the entire family and does not reflect whether the individuals have I 94 documents as DHHS has

not required this documentation in the past. The total distribution of funds would be reduced by approximately \$15,000 if the undocumented individual was removed from the equation on the City's existing caseload. Further reduction of aid could be experienced if the City had a better understanding of whether those individuals who sought aid in the past possessed an I 94, a document DHHS is now requiring. An example would be a previous family of 4 that received GA would now be a family of 3 because the mother is undocumented and the GA Program provides aid based on household size.

Maine towns and cities are stuck in a difficult position. On one hand, municipalities have been providing aid to these individuals for a number of years, aid in some cases that helps keep these individuals off the streets. If a municipality continues providing aid through GA, the municipality exposes itself to forfeiting its reimbursement from the State of Maine. If the municipality opts to suspend past practice and follow the directive of the Governor's Office, a directive unsupported by the Maine Attorney General, then a municipality exposes itself to a legal challenge from an individual or advocacy group asserting the municipality violated certain rights provided under the Maine and U.S. Constitution.

Since the directive, the City of South Portland has opted to continue to provide aid to undocumented individuals. During the past three weeks the City's GA Office has provided no financial assistance to undocumented individuals; however, a meeting has been scheduled in the upcoming week with an undocumented family who is new to the City's program.

This past week a Petition for Review Under Rule 80C with Complaint for Declaratory Judgment and Injunctive Relief was filed by Portland, Westbrook and the Maine Municipal Association. The Petition is being handled by Peter DeTroy, Esq. of the firm Norman Hanson & DeTroy, LLC and legal costs are being covered by the Maine Municipal Association. The Petition asks Superior Court to review the various directives and opinions and rule on the question of whether DHHS and the Governor's directives were properly promulgated and are legally enforceable. The focus of this legal challenge will be whether the directive follows the State of Maine Administrative Procedures Act and whether the Act was required to be used to implement the changes handed down by DHHS and the Governor's Office.

At last Monday's workshop, the City Council discussed this item and expressed its commitment to provide general assistance to undocumented individuals/families and, if needed, appropriate funds for this expense. This resolve is brought forward to formally express its support of continuing with the current practices used for general assistance.

Requested Action:

Council passage of RESOLVE #1-14/15.


City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

District One
MICHAEL R. POCK

District Two
PATRICIA A. SMITH

District Three
MELISSA E. LINSKOTT

District Four
LINDA C. COHEN

District Five
GERARD A. JALBERT

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

IN CITY COUNCIL

RESOLVE #1-14/15

RESOLVED, that the City Council supports the ongoing provision of providing general assistance to undocumented individuals/families consistent with the City's past practices.

Fiscal Note: Less than \$1,000

Dated: July 21, 2014