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THE HONORABLE ART AGNOS, Member of the California Assembly, has requested an opinion on the following questions:

1. Can the San Francisco Juvenile Court assume jurisdiction under the provisions of section 300 of the Welfare and Institutions Code over "homeless" minors who are found in San Francisco, but who came to San Francisco from other counties or out-of-state?

2. Can the San Francisco Juvenile Court retain jurisdiction over these "homeless" minors and place them in the custody of the San Francisco Department of Social Services?

3. Would state or federal law requirements for family reunification services prevent the San Francisco Juvenile Court from exercising jurisdiction over these

"homeless" minors pursuant to the provisions of section 300 *et seq.* of the Welfare and Institutions Code?

4. Would these "homeless" minors placed in the custody of the San Francisco Department of Social Services meet the residence requirements for Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments and services?

5. Would state or federal law requirements for family reunification services render these "homeless" minors who are under the jurisdiction of the San Francisco Juvenile Court ineligible for Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments?

6. As between the state and the county, who would be responsible for foster care payments and services and in what proportions?

7. Would San Francisco be allowed to place out-of-county minors in San Francisco County foster placement funded by the State of California Aid to Families with Dependent Children-Foster Care (AFDC-FC) program in light of section 361 of the Welfare and Institutions Code?

8. Would San Francisco be allowed to place out-of-state minors in San Francisco County foster placement funded by the State of California Aid to Families with Dependent Children-Foster Care (AFDC-FC) in light of section 361 of the Welfare and Institutions Code?

CONCLUSIONS

1. The San Francisco Juvenile Court can assume jurisdiction under the provisions of sections 300 and 327 of the Welfare and Institutions Code over "homeless" minors who are found in San Francisco but who came to San Francisco from other counties or other states if such minors meet any of the criteria set forth in those sections for being adjudged a dependent child of the court.

2. The San Francisco Juvenile Court can retain jurisdiction over these "homeless" minors and place them in the custody of the San Francisco Department of Social Services.

3. Neither state nor federal law requirements for family reunification services would prevent the San Francisco Juvenile Court from exercising jurisdiction over these "homeless" minors pursuant to the provisions of section 300 *et seq.* of the Welfare

and Institutions Code provided that the court complies with subdivision (c) of section 361 with respect to placement of the minors.

4. These "homeless" minors placed in the custody of the San Francisco Department of Social Services would meet the residence requirements for Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments and services.

5. Neither state nor federal law requirements for family reunification services would render these "homeless" minors under the jurisdiction of the San Francisco Juvenile Court ineligible for Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments.

6. The State of California and the City and County of San Francisco would be responsible for these foster care payments and services, with the state being responsible for ninety-five percent of the costs and the county being responsible for the remaining five percent.

7. Section 361 of the Welfare and Institutions Code would not prevent San Francisco from placing out-of-county minors in San Francisco foster placement funded by the State of California Aid to Families with Dependent Children-Foster Care (AFDC-FC) program provided that the requirements of subdivision (c) of that section are met as to the placement of the minors.

8. Section 361 of the Welfare and Institutions Code would not prevent San Francisco from placing out-of-state minors in San Francisco foster placement funded by the State of California Aid to Families with Dependent Children-Foster Care (AFDC-FC) program provided that the requirements of subdivision (c) of that section are met as to the placement of the minors.

ANALYSIS

The San Francisco Mayor's Criminal Justice Council rendered a report on "Homeless Youth In San Francisco" in March, 1984. It defined homeless youth as follows:

> "Any person under the age of eighteen years who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode. Such youth include but are not limited to youth who are:
>
> Both males and females involved in prostitution or other street hustling in order to survive;

Runaways who are at risk of prostitution and drug involvement, including both San Francisco and out-of-county youths;
Older teenagers who have failed in placement or who have been appropriately placed in the foster care system and have fled from it;

Unaccompanied minors originating from outside the United States;

Minors who are 'pushed out' of their homes and have no permanent alternative."

This same report estimated that there are one thousand homeless youths on San Francisco streets on any given night. It is with respect to these "homeless" minors that we are asked a number of questions which, in the final analysis, distills into the question whether the San Francisco Juvenile Court may assume jurisdiction over these youths, place them in the custody of the County Department of Social Services, which in turn will place them in San Francisco foster care placement, when the youths came from other counties or from out-of-state.

1. The Initial Jurisdiction of the Juvenile Court Pursuant to Section 300 of the Welfare and Institutions Code

The first question presented is whether the San Francisco Juvenile Court can assume jurisdiction pursuant to the provisions of section 300 of the Welfare and Institutions Code[1] over "homeless" minors who arrive in San Francisco from other counties or from out-of-state.

[1] All section references are to the Welfare and Institutions Code unless otherwise indicated.

We note the enactment of several bills by the 1986 Legislature in the areas of law discussed herein with respect to the Juvenile Court Law and the rendition of family reunification services to minors adjudged to be dependent children of the court pursuant to section 300.

Two of these bills which are germane to the laws discussed herein are relatively comprehensive bills, that is, Senate Bill 1195, Statutes of 1986, Chapter 1122 and Senate Bill 2531, Statutes of 1986, Chapter 1120, effective on September 24, 1986 as an urgency measure.

Another bill, Assembly Bill 360, Chapter 71, Statutes of 1986, also amended section 300. That section is also amended by Senate Bill 1195, a later enacted bill.

Finally, Assembly Bill 2645, Statutes of 1986, Chapter 640 adds section 361.3 to require that preferential consideration be given to the request of a relative of the minor for placement of the child with the relative, before a dependent child of the court may be placed in other foster care.

References will be made herein by footnote to several of the more germane changes.

Section 300, a provision of the Juvenile Court Law, presently provides:

"Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

"(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising care or control, or has no parent or guardian actually exercising care or control.

"(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode.

"(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality.

"(d) Whose home is an unfit place for him or her by reason of neglect, cruelty, depravity, or physical abuse of either of his or her parents, or of his or her guardian or other person in whose custody or care he or she is.

"(e) Who has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights and for whom an interlocutory decree has not been granted pursuant to Section 224n of the Civil Code or an adoption petition has not been granted.

"(f) It is the intention of the Legislature in enacting the amendments to subdivision (a) enacted at the 1985-86 Regular Session, to assure that courts, in making a determination pursuant to subdivision (a) shall not focus upon the fact that a parent has a physical disability. The Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to subdivision (a) should center upon whether a parent's disability prevents him or her from exercising care and control."[2]

[2] Section 300 is recast somewhat by both Chapters 71 and 1122, Statutes of 1986. The only amendment germane to our inquiry herein is to subdivision (b), which is amended by both enactments to add the following language: "except that no person may be adjudged a dependent child solely due to the lack of an emergency shelter for the family."

Accordingly, *any* minor who meets *any* of the criteria of subdivisions (a) through (e) of this section falls within the jurisdiction of the juvenile court. There is no requirement that the youth be a resident of the county where found, in our case, San Francisco, nor is there any exception with respect to youths who are originally from other counties or from out-of-state.

Furthermore, section 327 with respect to the venue of actions brought to declare a minor a dependent child of the court states as follows, clearly including San Francisco as the proper venue as to "homeless" youths found therein.

> "Either the juvenile court in the county in which a minor resides or in the county where the minor is found or in the county in which the acts take place or the circumstances exist which are alleged to bring such minor within the provisions of Section 300, is the proper court to commence proceedings under this chapter."

Accordingly, *any* "homeless" minor found in San Francisco who meets any of the criteria of section 300 would fall within the juvenile court's jurisdiction. As defined at the outset, most, if not all, the "homeless" youths under consideration herein would fall within subdivisions (a) or (b) of section 300. Thus, the San Francisco Juvenile Court can assume jurisdiction over these "homeless" minors.

2. Retention of Jurisdiction By The Juvenile Court

The second question presented is whether the San Francisco Juvenile Court may retain jurisdiction over these "homeless" minors and place them in the custody of the San Francisco Department of Social Services.

With respect to youths from other counties, the usual procedure is to return them to the county of their residence. This is provided for in sections 375 through 380. Thus, section 375 provides that "[w]henever a petition is filed in the juvenile court of a county other than the residence of the person named in the petition. . . the entire case *may* be transferred to the juvenile court wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such minor. . . ." (Emphasis added). The use of the term "may" indicates such a transfer is, however, discretionary. (See sections 5 and 15.)

It is to be noted that under the Juvenile Court Law there is a two-step proceeding to bring the minor completely under the jurisdiction of the juvenile court. The first step is the initial hearing where the court makes its determination that the particular minor does in fact fall within the jurisdiction of section 300. This constitutes the

adjudication of the jurisdictional facts. Assuming no transfer of the case, the second proceeding would be the initial dispositional hearing. At that time, after notice to the parents or guardian of the minor, with the opportunity accorded them to be heard, the court decides whether the minor should be adjudged a dependent child of the court. (See, e.g., *In Re La Shonda B.* (1970) 95 Cal.App.3d 593, 599.)

Thus section 360 provides:

> "After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows:
>
> "(a) If the court finds that the minor is a person described by Section 300, it may, without adjudicating the minor a dependent child of the court, order that services be provided to keep the family together and place the minor and the minor's parent or guardian under the supervision of the probation officer for a time period consistent with Section 330.
>
> "(b) . . . . . .
>
> "(c) If the court finds that the minor is a person described by Section 300, it may order and adjudge the minor to be a dependent child of the court."

If the court determines (1) that a minor should be declared a dependent child of the court and additionally finds (2) that circumstances are such that the child should be taken from the physical custody of the parents (sec. 361),[3] then section 362 provides that "the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the [county] probation officer."[4] In San Francisco, these duties of the probation officer have been delegated to the San Francisco Department of Social Services.[5]

That the juvenile court need not relinquish jurisdiction of any minor is confirmed by section 301. It provides:

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[3] These circumstances are set forth at length in subdivisions (b) of section 361, and include such matters as the parent or guardian being unwilling to have physical custody of the minor, the minor has been sexually abused at home, or where it is necessary to remove the child from the physical custody of the parents or guardian to protect the physical or mental health of the minor. This section will also be amended and recast by Chapter 1122, Statutes of 1986.

[4] This language will be moved to section 361.2, subdivision (b) by Chapter 1122, Statutes of 1986.

[5] See sections 215, 272 and 362.

"The Court *may retain jurisdiction over any person* who is found to be a dependent child of the juvenile court until such ward or dependent child attains the age of 21 years." (Emphasis added.)

No exception is provided with respect to out-of-county or out-of-state minors.

Accordingly, pursuant to the provision of sections 300, 301, 360, 361 and 362 and under the appropriate circumstances set forth in section 361, the court may retain jurisdiction over "homeless" minors who are from other counties or other states.

3. Family Reunification Services-State and Federal Law and Section 300 *et seq.*

The third question presented is whether state or federal law requirements for family reunification services would prevent the San Francisco Juvenile Court from exercising jurisdiction over "homeless" minors from other counties or from out-of-state pursuant to the provisions of section 300 *et seq*.

This question has required an examination of the provisions of Public Law 96-272, 96th Congress (94 Stat. 500) and implementing federal regulations (See 45 C.F.R. Part 1357) relating to "child welfare services" promulgated in 1980, and an examination of California legislation enacted to conform to this federal law in "SB 14" (Stats. 1982, ch. 978). The latter provision, *inter alia*, amended sections 16500-16514 relating to "child welfare services", and other provisions of law such as the Juvenile Court Law, which is the focus of this opinion. This question has also required an examination of the regulations of the State Department of Social Services in its Manual of Policies and Procedures (MPP, e.g. Chapter 30-300).[6] Additionally, the question has required an examination of the Aid to Families with Dependent Children-Foster Care statutes and regulations (hereinafter AFDC-FC) insofar as they have been amended to incorporate changes with respect to mandated family reunification services. (See section 11400 *et seq.*, and e.g., 11400(b), (g), (h) and MPP Div. 45).

The thrust of both federal and state law with respect to "child welfare services" is to provide a program of services in three situations.

The first is to provide "Preplacement Preventative Services." These services are those "which are designed to help children remain with their families by preventing or eliminating the need for removal." (Sec. 16501.1).

[6] Also known as Eligibility and Assistance Standards Manual (EAS).

The second is "The Family Reunification Program." These services are "designed to provide time-limited foster care services to prevent or remedy neglect, abuse, or exploitation, when the child cannot safely remain at home, and needs temporary foster care, while services are provided to reunite the family." (Sec. 16501.2)

The third is "The Permanent Placement Program." These services are "designed to provide an alternate permanent family structure for children who because of abuse, neglect, or exploitation cannot safely remain at home and who are unlikely to ever return to home." (Sec. 16501.3)

Section 16501.2 above, and section 16506.1 and an implementing regulation of the State Department of Social Services define and set forth the scope of such services.[7]

In the context of section 300 *et seq.* of the Juvenile Court law, family reunification services present one facet of "child welfare services" which are to be given to a dependent child of the court. It is true that these family reunification services are normally mandated by state and federal law with respect to such a minor. (See e.g. in the Juvenile Court Law: Sections 361, subds. (c) & (f); 366.1, subds. (b) & (c); 366.2, subd. (c); 366.25; and in the AFDC provisions section 11400, subds. (b),(g) & (h) and 11401, subd. (b)(1). However, in examining all the provisions of state and federal law we discovered nothing which would prohibit the San Francisco Juvenile Court from exercising its jurisdiction under section 300 to make out-of-county or out-of-state minors dependent children of the juvenile court.[8]

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[7] See MPP 30-320:

".1 The service-funded activities which shall be available to all children and their families receiving family reunification program services shall include the following:

.11 Counseling.

.12 Emergency shelter care.

.13 Teaching and demonstrating homemakers.

.14 Parent training.

.15 Transportation.

.2 Additional services shall be provided only with prior departmental approval."

[8] Chapter 1122, Statutes of 1986 will add section 361.5 to set forth five situations where the court need not order family reunification services. These are (1) where the whereabouts of the parents is unknown, (2) where the parent is suffering from certain mental disabilities (3) where prior physical sexual abuse has been resumed by a parent or guardian, (4) where the parent has been convicted of causing the death of another child and (5) where the minor has been brought under the court's jurisdiction through new subdivision (e) relating to severe physical abuse of a minor under the age of three.

We would, however, point out the provisions of subdivision (c) of section 361 with respect to the placement of minors for purposes of family reunification service. It provides:

> "(c) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.
>
> "In the event that there are no appropriate placements available in the parents' or guardians' county, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community or residence. . . .[9/] Whether there is an appropriate foster care placement in the county of residence of the minor's parents or guardian, or in an adjoining county, would be a question of fact in each case for determination by the juvenile court.

Accordingly, absent any specific prohibition, and assuming compliance with subdivision (c) of section 361, we conclude that state or federal law requirements for family reunification services would not prevent the San Francisco Juvenile Court from exercising jurisdiction over "homeless" minors pursuant to the provisions of section 300 *et seq*. In short, the law does not require that family reunification services be rendered only within the limits of the county or only to residents of the county.

4. Residence Requirements For AFDC-FC

The fourth question presented is whether these "homeless" youths who are placed in the custody of the San Francisco Department of Social Services will meet the residence requirements for AFDC-FC payments and services. This issue arises because these minors are (or at least were)[10] residents of another county or another state.

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[9] This provision will become subdivision (b) of section 361.2 by the enactment of Chapter 1122, Statutes of 1986.

[10] We state, "or at least were," since as to many of these youths a tenable argument could be made that they have been impliedly emancipated by their parents by having either been "thrown-out" or having been placed in the position of never being able to return to their parents home again. As such, these youths could establish their own residence separate and apart from their parents, and accordingly could establish their residence in San Francisco. (See generally *Jolicoeur* v. *Mihaly* (1971) 5 Cal.3d 565, 579-582.)

As to those youths who arrived in San Francisco from other counties in California, there is no problem. "County residence is not a qualification for any public assistance program." (Sec. 11102.) However, "[n]o person shall be granted aid . . . unless he is a resident of this state." (Sec. 11105. See also MPP 42-400.) Accordingly, a person from out-of-state is not eligible for AFDC-FC in California unless and until he or she becomes a resident of California. Section 17.1 sets forth rules for determining the residence of a minor as follows:

> "Unless otherwise provided under the provisions of this code, to the extent not in conflict with federal law, the residence of a minor person shall be determined by the following rules:
>
> "(a) The residence of the parent with whom a child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian or the individual who has been given the care or custody by a court of competent jurisdiction, determines the residence of the child.
>
> "(b) Wherever in this section it is provided that the residence of a child is determined by the residence of the person who has custody, 'custody' means the legal right to 'custody' of the child unless that right is held jointly by two or more persons, in which case 'custody' means the physical custody of the child by one of the persons sharing the right to custody.
>
> "(c) The residence of a foundling shall be deemed to be that of the county in which the child is found.
>
> "(d) If the residence of the child is not determined under (a), (b), (c) or (e) hereof, the county in which the child is living shall be deemed the county of residence, if and when the child has had a physical presence in the county for one year.
>
> "(e) If the child has been declared permanently free from the custody and control of his or her parents, his or her residence is the county in which the court issuing the order is situated."

Applying section 17.1 to a homeless youth who just arrived in San Francisco from out-of-state is not readily apparent. Subdivisions (c), (d) and (e) would be

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This would have to be established as to each minor as a question of fact. As to out-of-state minors, their "status" as emancipated minors would have to be decided under the law of the parents' residence. (See generally 16 Am.Jur.2d, Conflicts of Law, § 23.)

inapplicable to such a youth. Since the youth no longer maintains his or her abode with a parent, the residence of the parent is not determinative under subdivision (a). We assume no one has been appointed legal guardian of the youth to make that provision determinative under subdivision (a). Subdivision (a) also states that "The residence of . . . the individual who has been given the care or custody by a court of competent jurisdiction, determines the residence of the child." This language requires further scrutiny to determine whether it is applicable to the homeless youth recently arrived from out of state.

In the case of *In re Grimmer* (1968) 259 Cal.App.2d 840 Miss Grimmer's parents divorced and the court awarded her custody to her mother who then resided in Marin County. Miss Grimmer violated the law and the Marin County Juvenile Court adjudged her a ward of the court and placed her on probation in her mother's home subject to the supervision of the juvenile probation officer. When that placement was found unsatisfactory the court removed Miss Grimmer from the custody of her mother and put her in the custody of the probation officer for placement in a foster home. Thereafter the mother moved from Marin to Mendocino County whereupon the Marin County Juvenile Court transferred the case to the Mendocino County Juvenile Court. Mendocino County appealed the order of transfer.

The appellate court pointed out that the transfer of the juvenile court proceeding was authorized only when the "residence" of the juvenile is changed to another county and that such residence is defined by section 17.1. At that time section 17.1 provided in (a) that the residence of the father in some circumstances or in (b) the residence of the mother in other circumstances determined that of the child. These provisions did not apply when the parent was legally deprived of the child's custody. Subdivision (c) then provided in part that if (a) and (b) did not apply then "the residence of any individual who has been appointed legal guardian or the individual who has been given the care or custody by a court of competent jurisdiction determines the residence of the child."

The court held that the divorce decree awarding custody to the mother deprived the father of custody so section 17.1(a) was inapplicable. The court then held that the juvenile court's order removing custody from the mother and giving it to the probation officer for foster care placement legally deprived the mother of custody so section 17.1(b) was not applicable. The court then held that under section 17.1(c) Miss Grimmer's residence remained in Marin County. Since residence had not changed, the order transferring the case to Mendocino County was reversed.

The only way that the court could have determined that under section 17.1(c) the minor's residence had not changed was that the probation officer to whom custody had been given for foster care placement was an "individual who had been given the care or custody by a court of competent jurisdiction." (There was no appointment of a guardian.)

The language then appearing in section 17.1(c) quoted above now appears in subdivision (a) of the present section 17.1. Following the *Grimmer* case we conclude that when the juvenile court deprives the parents (or guardian) of custody and places a minor in the custody of the probation officer for foster care placement, whether under wardship or dependency proceedings, the residence of the minor is determined by the residence of the probation officer in whose custody the minor is placed under section 17.1(a). Thus when a California juvenile court makes a homeless youth from out-of-state a dependent child of the court and places the youth in the custody of the probation officer (or social welfare department where it performs this responsibility of the probation officer) for foster care placement, such orders make the youth a resident of California under section 17.1(a) and thus eligible for AFDC-FC in California.[11]

5. Family Reunification Services-State and Federal Law and AFDC-FC

The fifth question presented is whether there is anything in state and federal law requirements for family reunification services which would render "homeless" minors from out-of-county or out-of-state who are under the jurisdiction of the San Francisco Juvenile Court ineligible for AFDC-FC payments.

With respect to federal law, federal aid to states under Public Law 96-272 for AFDC-FC is conditioned upon a state plan having been adopted which, *inter alia*:

> ". . . provides that, in each case, *reasonable efforts will be made* (A) prior to placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) *to make it possible for the child to return to his home*. . . ." (42 U.S.C. 671(15), emphasis added. See also 42 U.S.C. 625.)

Likewise, the state in its general requirements for state or federal AFDC-FC services requires, *inter alia*, that the agency with responsibility for the placement and care of the minor shall:

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[11] This conclusion is consistent with section 14007.4 added by Chapter 630, Statutes of 1986, which makes the county welfare department having jurisdiction of a minor who is a dependent child in foster care placement the county of the minor's residence for eligibility for Medi-Cal benefits.

We note also that AFDC-FC has income and resource requirements as well as residence requirements. We do not comment on whether such requirements would be met in all cases involving "homeless" minors.

"Provide family reunification services or, when return of the child to his or her own family is documented in the services case record as being inappropriate, provide permanent placement services." (MPP 45-201.413; see also § 11401, subd.(b)(1).)

Thus the federal scheme is that reasonable efforts shall be made to provide family reunification services. Likewise the state law, while mandating family reunification services as a general proposition, recognizes that in some situations such efforts will be futile. (See also sections 361, subdivisions (c) and (f); 366.25).

However, we have found nothing in state or federal law requirements which relate to the provision of family reunification services which would make the "homeless" youths from out-of-county or out-of-state ineligible for AFDC-FC payments or services by virtue of the requirements to provide family reunification services. As stated by the court, after reviewing the appropriate provisions of law in *In Re John B.* (1984) 159 Cal.App.3d 268, 275:

"Viewing the foregoing provisions together, we find that they require *a good faith effort* to develop and implement a family reunification plan whenever a court renders a dependency disposition of foster care in a 300, subdivision (a) case. . . ." A "good faith effort" to render those services to "homeless" youths would suffice to retain their eligibility for AFDC-FC.

6. Responsibility For The Cost of AFDC-FC

The sixth question presented is, as between the state and the county who would be responsible for the costs of AFDC-FC and in what proportions?

Regulations adopted by the State Department of Social Services (see section 11209) and found in the Manual of Policies and Procedures of the State Department of Social Services provide the answer as to the responsible agency for the actual granting of public assistance such as AFDC-FC as follows:

1. 42-400: ". . . It is necessary to determine the county in which the applicant lives in order to establish county responsibility for payment of aid."

2. 40-125.1: "Responsibility for accepting the application and taking all actions necessary to determine eligibility or ineligibility and for granting or denying aid rests with the county where the applicant lives. (See Section 40-125.3.)"

3. 40-125.3: "The county where the applicant is physically present when he makes his application is considered to be the county in which he 'lives' except under the circumstances specified in Sections .31 through .36 below. However, even though circumstances permitting an exception exist, counties may, by mutual agreement, consider that the applicant lives in the county in which he is physically present. . . ." (Sections 31-36 are not relevant to our discussion).

4. 40-125.81: "A child residing in a family home or group home as a result of placement by a public agency, or by a private agency which has legal custody because the child has been relinquished to them or a court has given them legal custody, is considered to make his/her home in the county in which the agency is located, regardless of whether the family home or group home is situated in that county." (See also, generally, section 11050 *et seq*.)

Accordingly, San Francisco City and County would be the responsible county as to foster care payments for the "homeless" out-of-county or out-of-state youths under consideration herein. Neither the county or other locale of origin of the applicant-recipient, nor the location of the foster care home, is determinative.

However, the county would only be directly responsible for five percent of the foster care cost under the provisions of section 15200, subdivision (c). That provides:

> "There is hereby appropriated out of any money not otherwise appropriated, and after deducting federal funds, the following sums:
>
> ". . . . . .
>
> "(c) to each county for the support and maintenance of needy children 95 percent of the sum necessary for the adequate care of each child pursuant to subdivision (d) of Section 11450 for the period July 1, 1979, to June 30, 1988."

Section 11450, subdivision (d) provides the amounts to be paid for children receiving AFDC-FC.

7. Section 361 and Out-Of-County Youths

The seventh question presented is whether San Francisco would be allowed to place out-of-county minors in San Francisco foster placement funded by the State of

California AFDC-Foster Care program in light of section 361 of the Welfare and Institutions Code.

We presume that the question is asked primarily because of subdivision (c) relating to placement in the county where the parents reside, if possible, and possibly subdivision (f) relating to family reunification services, which permits the court to order parent participation in those services. The problem with respect to subdivision (c) was touched upon in our answer to question three. As already noted, section 361, subdivision (c) provides:

> "(c) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.
>
> "In the event that there are no appropriate placements available in the parents' or guardians' county, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community or residence.
>
> "Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement on the minor and the parents' or guardians' reason for the move."[12]

Since out-of-county placement is permitted by law, section 361, subdivision (c) does not present any legal impediment to placing out-of-county minors in AFDC-FC funded by San Francisco and the state. (See MPP 40-125.8 *et seq*.) The juvenile court should, however, follow its mandate as to placement. As noted already in question three, whether or not there is an appropriate foster care placement in the county of residence of the minor's parents or guardian, or in an adjoining county, would be a question of fact for determination by the juvenile court in each individual case.

And, with respect to parent participation under subdivision (f) in family reunification services, this is to be done "unless the parent's participation is deemed by the court to be inappropriate."

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[12] To become subdivision (c) of section 361.2 by the enactment of Chapter 1122, Statutes of 1986.

8. Section 361 and Out-of-State Youths

The eighth question presented is whether San Francisco would be allowed to place out-of-*state* youths in San Francisco foster care placement funded by the State of California AFDC-FC program in light of section 361 of the Welfare and Institutions Code.

Again we see no *legal* impediment to such placement. In fact, the Interstate Compact on the Placement of Children (ICPC) contemplates a possible out-of-state placement when appropriate. (See MPP 30-366). As with out-of-county youths, however, the juvenile court should follow the mandate of subdivision (c) section 361 with the appropriate factual determinations in each individual case as to placement.

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