

OLD AGE PENSIONS: (1) Inmate of county infirmary/^{may} make application for pension before being discharged from institution, but immediately upon receipt of pension must be discharged. (2) Inmate of county infirmary cannot use old age pension to support himself in the infirmary and occupy quarters as a paying patient.

August 17, 1935.

8-20



Honorable David E. Impey,
Prosecuting Attorney,
Texas County,
Houston, Missouri.

Dear Sir:

This department is in receipt of your letter of August 12 wherein you make the following inquiries:

I

"May an inmate of a county poor farm make application for and receive old age pension without prior discharge from the farm?"

We are enclosing herewith copy of an opinion recently rendered by this department to the Honorable W. Ed Jameson with reference to county inmates making application and receiving old age assistance; this opinion bears indirectly on your question; however, your question involves the receiving of the pension itself before discharge from the county infirmary.

Section 28 of the Old Age Assistance Act provides as follows:

"The State Board shall have authority to make such rules and regulations as are necessary to carry out the provisions of this Act. The State Board and respective County Boards shall meet at such times and places as may be fixed by the rules of the State Board."

The State Board, having authority to make rules and regulations, we assume will make certain rules regarding inmates of the county infirmary. Section 16 of the Act provides:

"No person receiving assistance under this Act shall at the same time receive any other relief from any public funds, except for medical and surgical assistance."

In view of the above section, we are of the opinion that an inmate of the county infirmary would not have to be discharged before making application for or receiving old age assistance, but immediately upon receipt of the pension, it would be necessary that the inmate be discharged from the county infirmary, as under Section 16, supra, no one may receive assistance or relief from county funds and at the same time receive the old age assistance in addition thereto.

II

"In the event that a qualified person receives allowance of an old age pension, has no home nor people, has become accustomed to the surroundings of the county poor farm and does not want to leave, would it be permissible for the county court to allow such pensioner to occupy quarters on the poor farm as a paying patient?"

Section 12950, R.S. Mo. 1929 is as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 12951, R.S. Mo. 1929 is as follows:

"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law and able to maintain them, shall be deemed poor persons."

In the case which you mention, it appears that the inmate is committed to the county infirmary for the reason that he was unable to support himself. If the inmate receive the old age assistance pension, then it may be readily concluded that he is able to support himself financially.

Section 12954, R.S. Mo. 1929 empowers the county court to use its discretion in regard to support of the county poor, and is as follows:

"The county court shall at all times use its discretion and grant relief to all persons, without regard to residence, who may require its assistance."

None of these sections have been directly interpreted by the Supreme Court. They are reviewed in the case of Jennings v. City of St. Louis, 332 Mo. l.c. 178. At page 179 the Court, in speaking of the duty of a county to support its citizens, said:

"The good of society demands that when a person 'is without means, and unable, on account of some bodily or mental infirmity, or unavoidable cause, to earn a livelihood', he is entitled to be supported at the expense of the public. 'It is immaterial how the alleged pauper is brought into need, as it is the fact of the situation and not the method of producing it that is important.' 'So the fact that a person's want is the result of gross intemperance does not prevent him from securing relief as a pauper.' 'An able-bodied man, who can, if he chooses obtain employment which will enable him to maintain himself and family, but refuses to accept employment, is not entitled to public relief, though relief may be properly extended to the wives and children of such men.' (21 R.C.L. 705, 706) It necessarily follows that an able-bodied man, who is unable to obtain employment on account of the economic conditions existing at the time, and who is without means of support is entitled to public relief.

"The Supreme Court of Pennsylvania directly passed on this question in the recent case of Commonwealth v. Liverright, 161 Atl. 697, l.c. 710:

'Again we hold that the support of the poor--meaning such persons as have been understood as coming within that class ever since the organization of the Government, persons who were without means of support, the same persons stated in the * * * bill * * * is and always has been a direct charge on the body politic for its preservation and protection; and that as such, in the light of an expense, stands exactly in the same position as the preservation of law and order. The expenditure of money by the state for such purposes is in performance of a governmental function or duty, and is not controlled by the constitutional provision, if the purpose is to supply food and shelter to the poor, including those who are destitute because of enforced unemployment, provided only that the money be not administered through forbidden channels. The appropriation in providing for relief of poor comprehended those who has been driven into that situation through enforced unemployment; they having no means to support themselves. From this cause the ranks of the poor had increased so rapidly as to stagger the people of our state. The fact that their numbers are swollen through unemployment does not change the established concept of poor persons. To hold that the state may not under the Constitution now aid such people, even though it had a governmental duty, would be to deny to the state the right to perform, not only an important, but at this time a most pressing governmental function. To hold that the state cannot or must not aid its poor would strip the state of a means of self-preservation, and might conceive untold hardships and difficulties for the future."

CONCLUSION

It is the opinion of this department that inmates of a county infirmary cannot be permitted to receive the old age assistance pension and at the same time remain at the county farm on a paying basis using the pension for the payment of their board and lodging, for the reason that the statutes contemplate that only persons unable to support themselves may become inmates of a county infirmary. When a person receives an old age assistance pension, the law contemplates that he is no longer unable to support himself financially. And in addition thereto, the statutes in no wise provide for a person being an inmate of a county infirmary and occupying quarters as a paying patient.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
Attorney General.

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