

BLIND PERSON, bona fide resident and who may have lost his or her sight while such -- discussed.

*Acc 8893-94 RSMo 1929*

March 18, 1933



Mrs. Blanche T. Matteson  
Pension Secretary  
Missouri Commission for the Blind  
1722 Olive Street  
St. Louis, Missouri

Dear Mrs. Matteson:

This is to answer your letter of February 9th, 1933, requesting an opinion concerning the following:

"In accordance with your letter of February 6th advising us that you will furnish legal advice when needed, we are writing to ask for an opinion on a matter which is of considerable importance in blind pension work.

Section 1 of the Blind Pension Law states that "every adult blind person, twenty-one years of age or over, who may have lost his or her sight while a bona fide resident of this state and who has been a continuous resident thereof since such loss of sight, shall be entitled to receive\*\*\* an annual pension".

It occasionally occurs that applications are made by persons who have come to Missouri or returned to this state, after residence in other states, who are virtually blind but who claim eligibility for pension because they had more vision than the limit fixed by the pension law at the time of their entrance into or return to this state. For example, a person who can detect hand motion at a distance of two feet from his eyes is ineligible for pension but is practically blind. If his vision decreases after coming to Missouri, so that he is eligible for pension, can he claim to have lost his sight in this state, irrespective of length of residence?

A decision on this point will affect many of our cases, as persons with extremely defective vision

March 18, 1933

move into Missouri and claim to have lost their sight here in order to receive the benefit of the Missouri blind pension.

We shall be most grateful for an early reply on this matter."

Section 8893 R. S. Mo. 1929, in part pertinent to answer your inquiry reads as follows:

"Every adult blind person, twenty-one years of age or over, of good moral character, who shall have been a resident of the State of Missouri for ten consecutive years or more next preceding the time for making application for the pension herein provided, and every adult blind person, twenty-one years of age or over, who may have lost his or her sight while a bona fide resident of this state and who has been a continuous resident thereof since such loss of sight, shall be entitled to receive, when enrolled under the provision of this article, and annual pension as provided for therein, payable in equal quarterly installments.\*\*\*"

It will be noted that Section 8893 supra provides:

"Every adult blind person, twenty-one years of age or over, of good moral character, who shall have been a resident of the State of Missouri for ten consecutive years or more next preceding the time for making application for the pension herein provided,\*\*\*"

The above quoted provision of said section is to our mind so plain that it is susceptible of but one construction, namely, that even though blindness occurred in some other State, if an adult blind person, twenty one years of age or over, of good moral character becomes a bona fide resident of this State and remains as such for a period of ten consecutive years next proceeding the time of making his or her application for a pension, when enrolled under the provision of said article, shall be entitled to receive the benefits as therein provided.

The next portion of said section is as follows:

\*\*\*\*and every adult blind person, twenty-one years of age or over, who may have lost his or her sight while a bona fide resident of this state and who has been a continuous resident thereof since such loss of sight, shall be entitled to receive,\*\*\*\*

This provision in our opinion is likewise self explanatory. If a person as in said section described while a resident or after becoming a bona fide resident of this State, loses his or her sight and continues thereafter to remain blind as hereinafter described and continues as a bona fide resident, upon application such person shall be entitled to the benefit of the Statute.

Section 8894 R. S. Mo. 1929, defines the requirements or conditions that must exist with reference to an applicant's eye sight to entitle them to the benefits of a pension and which section is as follows:

"No person shall be entitled to a pension under this article who has vision with or without proper adjusted glasses greater than what is known as light perception; that light perception as used in this section means not more vision than is sufficient only to distinguish light from darkness and recognize the motion (not the form) of the hand of the examiner at a distance not greater than one foot from the eye; and no person shall be entitled to receive a pension except upon scientific vision test supported by the certificate of a competent oculist, approved by the commission, that such person does not possess a greater vision than that provided above in this section; and every person passing the vision test and having the other qualifications provided in this article shall be entitled to receive a pension of three hundred (\$300.00) dollars per annum, payable quarterly."

The mere fact that a person's eyes might be weak or effected prior to his becoming a bona fide resident of the State would not

and should not deprive him of the benefits of the law unless his condition had reached the point of blindness as defined by the Statute, if the facts show that the acquiring a residence in this State was bona fide, that it was acquired honestly and in good faith, and not fraudulently asserted or claimed merely for the purpose of practicing a fraud thereby inducing favorable action upon his or her application, we are of the opinion such person would be entitled to the pension benefit. In other words, if prior to acquisition of residence there was an impairment of sight that facts alone would not defeat the claim if the loss of sight occurred in this State.

The perplexing part of your inquiry is that portion relating to bona fide residence. 'Bona Fide' means good faith without fraud or deception (Corpus Juris Words and Phrases). What is and what is not 'residence' is dependent upon the intention of the party and the facts connected with such party in the establishment of residence. Residence is defined in Section 655 R. S. Mo. 1929, clause 17, as follows:

"The place where the family of any person shall permanently reside in this State, and the place where a person having no family shall generally lodge, shall be deemed the place of residence of such person or persons respective."

Residence is defined by Webster to be a dwelling place for some continuance of time.

"There must be a settled fixed abode and an intention to remain permanently at least for a time for business or other purposes, to constitute a residence within the legal meaning of the term."

In discussing the word "residence" in the case of *In re Ozias' Estate*, 29 S. W. (2d) 240 l.c. 243, the court had the following to say:

"The ruling herein depends upon the proper construction of the word domicile. Our Supreme Court held in *Re Estate of Lankford*, 273 Mo. 1, 197 S. W. 147, that residence is largely a matter of intention, to be deduced from the acts of a person.

Residence and domicile are used interchangeably, and in so far as they apply to the situation here presented are synonymous.

"Domicil. That place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning."

Bouv. Law Dict., Vol. 1, page 915. Proof of domicile, or legal residence, does not depend upon any particular fact, but upon whether all the facts and circumstances taken together tend to establish the fact. Engaging in business and voting at a particular place are evidence of domicile there, though not conclusive. Hayes v. Hayes, 74 Ill. 313; Inhabitants of East Livermore v. Inhabitants of Farmington, 74 Me. 154. To constitute a change of domicile three things are essential: (1) Residence in another place; (2) an intention to abandon the old domicile, and (3) an intention of acquiring a new one. Berry v. Wilcox, 44 Neb. 82, 62 N. W. 249, 48 Am. St. Rep. 706. It has been held a wife's removal into another state for the benefit of her husband's health and a residence there for twelve years will not change the original domicile. In re Reed's Will, 48 Or. 500, 87 P. 763; Ensor v. Graff, 43 Md. 391.

A person can have but one domicile, which, when once established, continues until he renounces it and takes up another in its stead. It is not lost by temporary absence. The question is one of fact which is often difficult to determine."

The blind pension law is for the benefit of deserving blind people. It enables a person who is unfortunate in that respect to receive an annual pension quarterly provided said person has the necessary residential and other qualifications.

The fact that you state that persons with defective vision move into Missouri and claim to have lost their sight here in order to receive the benefit of the pension act are questions for the consideration of the General Assembly. The commission for the blind has no

Mrs. Blanche T. Matteson

-6-

March 18, 1933

discretion in the matter other than to properly apply the law. Of course, the Commission for the blind should investigate and ascertain if the applicant was a bona fide resident of the State at the time he lost his sight and if he has been a continuous resident of this State ever since then, just the same as they investigate the moral character, the age and the property owned by such applicant.

Trusting that this answers your inquiry. We are,

Yours very truly

JAMES L. HORNBOSTEL  
Assistant Attorney General.

APPROVED

ROY MCKITTRICK  
Attorney General

JLH: MM