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Blind Commission - Reasonable Notice Discussed

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

Dear Mrs. Matteson:

We wish to acknowledge your letter of March 23, 1933, concerning the following:

"Mr. Abington suggested yesterday that we write to you for your opinion about the clause in the blind pension law which requires "reasonable notice" sent to a pensioner before striking his name from the pension roll. Will you please advise us as to what may be considered reasonable notice and suggest a form in which such notice may be sent so that it may meet every requirement of the law."

We find from our files that on June 6, 1927, an opinion was rendered to Miss Audrey M. Hayden, Executive Secretary for the Missouri Commission for the Blind, and on July 6, 1927 a further opinion was rendered to Honorable John H. Holliday, Commissioner of the Missouri Commission for the Blind, both dealing with "reasonable notice", and we quote from them:

(John H. Holliday--July 6, 1927)

****Section 4 of the blind pension act, Laws of Missouri 1923, page 304, among other things, provides as follows:

****And whenever it shall become known to the commission that any person whose name is on the blind pension roll is no longer qualified to receive a pension, after reasonable notice mailed to such person at his or her last

known residence address, such fact shall be certified to the State Auditor and the name of such person shall be stricken from the blind pension roll.***" (Sec. 8896 R. S. Mo. 1929)

This language, when considered in its ordinary and usual meaning, makes clear the following points: When the commission, of its own knowledge, knows that any person whose name is on the blind pension roll is no longer qualified to receive a pension, it shall, after reasonable notice to such person, certify such fact to the state auditor, who will strike the name of such person from the blind pension roll.

We must now ascertain what constitutes the "fact" which the commission certifies to the state auditor. It is obvious that the legislature intended the commission to certify to the state auditor the date of its actual knowledge that some person on the blind pension roll was no longer qualified to receive a pension. The date upon which the commission determines the disqualification of a person whose name is on the blind pension roll, is the date upon which the law contemplates that such person shall cease to be a pensioner. It is the duty of the commission to give such pensioner reasonable notice of its decision and that unless he shows to the contrary within the time allowed as reasonable notice, the facts will be certified to the state auditor and the name of the pensioner stricken from the roll.***"

And quoting from the opinion rendered on June 6, 1927:

"The only question presented is, what would be reasonable notice in a given case? Of course, that will depend on the geographical location of the pensioner. I believe, however, that ten days notice would be reasonable notice to any person on the blind pension roll of the State of Missouri.***"

The court in three cases, hereinafter cited, had under consideration that portion of Section 8896 R. S. Mo. 1929, relative to reasonable notice. In the case of State ex rel. Palmer v. Thompson, State Auditor, 297 S. W. (2d) 62, the court after quoting that provision regarding reasonable notice from Section 8896, and quoting from Section 8893 that portion that deals with blind persons who are maintained in either public, private or endowed institutions etc., had this to say:

"Under the 1923 act, the fact that relator is and was being maintained in a publicly supported institution automatically deprived her of the right to receive a pension. The commission certified that fact to the auditor. It thereupon became the duty of the respondent, as such auditor, to strike the name of relator from the blind pension rolls."

In this case the court held such pensioner automatically forfeited her pension, and in substance held notice was unnecessary if such pensioner was not within the requirements of Section 8893.

However, in the case of State ex rel. Fitzgerald v. Missouri Commission for the Blind, 48 S. W. (2d) 872, the court pointed out the necessity of reasonable notice to a pensioner, having this to say:

****Of course, payment of the pension was discontinued. We assume the commission acted on reasonable notice to Fitzgerald for the proceeding is not questioned for failure of notice.****

Also, in the case of State ex rel. Smearing v. Thompson, State Auditor, 45 S. W. (2d) 1078, the court had this to say:

"One is "enrolled under the provision of this article," when his name is placed on the blind pension roll by the State Auditor. Section 8900. When enrolled the pensioner is entitled to a pension from the date of the filing of his application with the probate court. An applicant's name is placed on the blind

pension roll upon certification by the commission for the blind; it is stricken from the roll upon a like certification when the commission, after notice and hearing, determines that the pensioner is no longer qualified to receive a pension. Section 8896***"

It will be noted from the above two cases, that reasonable notice is necessary to a pensioner before said fact is certified to the State Auditor. We also call to your attention these words that were used in the Smearing case:

"After notice and hearing."

It being our interpretation of these words, that it was in the court's mind that before the fact was certified to the State Auditor that a person was ineligible, that a notice should be given to pensioner, and if the pensioner wanted a hearing, to give him one to present his or her side of the case. That it is in fairness to the pensioner to permit him to show to the contrary or rebut any accusations or facts from which the commission arrived at its finding.

It is therefore our opinion, in view of the foregoing, that when it comes to the knowledge of the commission, that is to say, when the commission has facts sufficient to warrant a finding that said person is no longer eligible to receive the benefit of the pension act, or is not a deserving blind person, within the meaning of the act, then said commission shall issue a formal finding from the facts, and when it does, that is the time the fact has become known to it that such person is no longer qualified, and a notice shall then be mailed to the last known residence address of such pensioner stating therein that the fact of such finding shall be certified to the State Auditor; and before thus certifying said fact, the pensioner be given a reasonable time, i.e., not less than ten days, to show to the contrary, or show that the finding should not be certified to the Auditor.

This gives the pensioner an opportunity to present his or her evidence, and in some instances the commission might be wrong in its finding, and if the commission is wrong, it would have an opportunity to reverse its former finding and do same before the State Auditor struck his or her name from the roll, without prejudice or an injustice to the pensioner.

Mrs. Blanche T. Matteson

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There is no set form which the commission may use, the statute does not give one as a guide, but only provides that notice be given. We are attaching hereto, a form which the commission may use if it so desires. You are at liberty to change or amend same to suit your convenience.

Yours very truly,

JAMES. L. HORNBOSTEL
Assistant Attorney General.

APPROVED

ROY MCKITTRICK
Attorney General.

JLH:MM
Encl.