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BLIND PENSIONERS - Recipient of blind pension by person receiving income from other sources sufficient for ineligibility for such pension as disqualifying such pensioner from future benefits under blind pension law.

September 11, 1934



Missouri Commission for the Blind,  
3858 Westminister Place,  
St. Louis, Missouri.

Attention Miss Marie W. Finan,  
Pension Secretary.

Gentlemen:

A request for an opinion has been received from you under date of August 24th, 1934, such request being in the following terms:

"The above desires to apply for the state blind pension. He was formerly a pensioner, having filed an application on February 24, 1927. At the time of the filing of his application and subsequent investigation he did not advise that he was the recipient of \$70.00 per week - payable \$280.00 every four weeks - compensation from the state of Louisiana. This compensation was being paid him covering the loss of his vision as a result of an accident met with in that state.

A re-investigation of this case was made on July 20, 1929 and investigator reported pensioner advised he had been awarded \$8,000.00 compensation, to be paid \$20.00 per week for four hundred (400) weeks, commencing on October 25, 1926. He was, therefore, receiving this compensation at the time of his application for the pension and continued to receive same after becoming a pensioner of the state of Missouri. Since the compensation being paid him was greater than \$600.00 per annum, which is the limit set by the pension law, he was accordingly stricken from the pension roll as of August 19, 1929.

Although Mr. Werntz was injured in Louisiana, while employed there, his family was living at Eldon, Missouri, where they had lived for the previous forty (40) years and where he owned his home, therefore, his residence was not involved.

Section No. 5905 - PERSONS VIOLATING PROVISIONS OF LA  
GUILTY OF MISDEMEANOR - provides:

'Any person or persons found guilty of violating any of the provisions of this article shall be deemed guilty of a misdemeanor; and any person who shall wilfully and fraudulently violate any of the provisions of this article for the purpose of obtaining any benefits thereunder, to which such person is not entitled, shall, in addition to the penalties otherwise provided herein, forfeit all right to future benefits hereunder.'

We, therefore, respectfully request you to advise us whether or not Mr. Werntz because of the facts in his case has disqualified himself from future benefits of the pension and if Section No. 8905 applies to this case.

We also request you to advise if Section No. 8905 does not apply in this instance, when it does."

In Revised Statutes Missouri 1929, Section 8905, quoted in your request, a violation of any of the provisions of Article I of Chapter 51 of the Revised Statutes of 1929 which is not wilful and fraudulent is declared to be a misdemeanor and by plain inference a violation which is not wilful and fraudulent will not of itself disqualify any person from receiving future benefits under the blind pension law. As we understand the facts as stated in your letter, they do not indicate that the violation by Henry Werntz was wilful or fraudulent and we believe that a decision as to whether or not such violation was wilful and fraudulent would rest with the Commission for the Blind and would be final in the absence of an appeal to the Circuit Court under Section 8901. As to other cases to which Section 8905 might apply, we shall reserve our opinion until specific cases are presented for our ruling.

In conclusion, it is our opinion that a person who has violated the provisions of Chapter 51 of the Revised Statutes of Missouri 1929 by applying for and receiving a blind pension at a time when he was the recipient of an income sufficiently great to prevent him from being entitled to such pension, would not be disqualified, when such income ceased or fell below the statutory maximum, from receiving future benefits under the blind pension law, unless such person violated such law wilfully and fraudulently.

Very truly yours,

EDWARD H. MILLER

ASSISTANT ATTORNEY GENERAL

APPROVED

*Correll R. Smith*

(ACTING)

ATTORNEY GENERAL.