

OLD AGE PENSIONS:

County Old Age Assistance Board may not employ clerks, investigators or deputies and pay them out of State funds.

6-28  
June 27, 1935.



Hon. Charles M. Hay  
City Counselor  
The City of St. Louis  
St. Louis, Missouri

Dear Mr. Hay:

This is to acknowledge your letter as follows:

"I have had referred to me by the Board of Estimate and Apportionment, a question relative to the power of the County Old Age Assistance Board, which the Board of Estimate, acting in the capacity of a County Court, has the power to appoint under Senate Bill No. 7, to engage assistants to make investigations necessary in the performance of their duties.

"I find nothing in the law, giving express authority to such a local board to employ investigators or other help, except in the case of formal hearings on applications for the pension.

"I do find, however, that in Section 3 there is this provision:

'The members of the County Board shall serve without compensation, except that the necessary expenses incurred while in the performance of their duties shall be paid to them.'

"In Section 7 it is made 'the duty of the County Board to appraise such property at its true value,' referring to property belonging to an applicant.

"In Section 10 it is provided that whenever an application is made for old age assistance, the County Board shall 'promptly made an investigation of the facts.'

"These provisions, as you will readily see, impose a very considerable burden upon the County Old Age Assistance Board, which is to serve without compensation. It seems to me that unless the language 'except that the necessary expenses incurred while in the performance of their duties shall be paid to them' be construed to authorize them to hire the necessary help in making such investigations, that the result will be well-nigh farcical. In my view of it, this language can, without doing violence to it, be construed to authorize the County Board to set up such an organization as is necessary properly to discharge the duties imposed upon this Board.

"Assuming that I am correct in this, then the next question presented is as to the source of the expense money. Is this to come from the Eleemosynary Board, or must local jurisdictions provide it?

"I assume that these questions have been presented to you already from other sources. I would be pleased to have your opinion before I give an opinion to the Board of Estimate."

Senate Bill No. 7 passed by the 58th General Assembly without an emergency clause, becomes effective on August 27, 1935. The Act contains 30 sections.

Section 1 defines certain terms used in the Act. Section 26 provides that in the City of St. Louis the Board of Estimate and Apportionment shall perform the same duties as the Act places upon the several county courts of the State

of Missouri. In other words, where the duty is placed upon the county courts of this state, such are deemed to be applicable to the Board of Estimate and Apportionment in the City of St. Louis.

Section 3 provides in part as follows:

"In every county there shall be established a County Old Age Assistance Board, to consist of three persons domiciled in the county, each of whom shall have been a resident taxpaying citizen of the county for a period of five years prior to his or her appointment at least one of whom shall be a woman, who shall be appointed by the county court for a term of four years, \* \* \* \* \*."

It is thus seen that in the City of St. Louis the Board of Estimate and Apportionment shall appoint a County Old Age Assistance Board. The members of the County Old Age Assistance Board are to serve without compensation, except that the necessary expenses incurred while in the performance of their duties shall be paid to them. Section 3.

The County Old Age Assistance Board have several duties to perform, namely: (1) Make an investigation into the facts when an application is presented to them for old age assistance. Section 10. (2) Make a recommendation of the amount of assistance to be allowed. Section 10. (3) The disapproval of the application. Section 10. (4) Direct a rehearing. Section 10. (5) Forward its decision to the State Old Age Assistance Commissioner. Section 10. (6) "For the purpose of ascertaining the true value of property of persons applying for a pension under this act, it shall be the duty of the County Board (County Old Age Assistance Board) to appraise such property at its true value." Section 7. (7) Issue to each applicant a certificate for one year stating the amount of each installment which shall be paid monthly. Sections 12 and 13. (8) Requiring of them to ascertain the qualification of all persons resident in their county, applying for benefits under the old age pension law.

It may safely be said that the members of the County Old Age Assistance Board are public officers and are to serve without compensation. Section 3.

Section 11 provides in part as follows:

"For the purpose of any such investigation \* \* \*, the county board (County Old Age Assistance Board) \* \* \* shall have the power to compel, by subpoena, the attendance and testimony of witnesses and the production of books and papers. The costs of such hearing to be paid by the State Board out of funds appropriated to such Board. \* \* \*."

Nowhere in the Act is it provided that the County Old Age Assistance Board may hire investigators or clerks to perform duties for them. Neither is it provided in the Act as to where "the necessary expenses incurred while in the performance of their (County Board) duties shall be paid" from, or by whom, except that it might be said that Section 11 provides for the payment of the costs of hearings to be paid by the State Board out of funds appropriated to such Board by the Legislature.

If it may by inference be said that the power to hire clerks or assistants to aid the County Old Age Assistance Board in the performance of its duties, is delegated to the Board, then, the Act must further be scrutinized and a statute pointed to in order to allow compensation to such clerks. We do not find any provision in the Act to which the clerks could point, if employed, which would allow them compensation. Hence, it follows that if such are employed no compensation could be paid to them out of state funds, except when the services could be taxed as costs by virtue of Section 11. What we are saying is that no clerk or assistant could be paid for services rendered on a monthly, weekly or yearly basis. Further, if the Board has a right to appoint clerks and assistants, then there is no limitation as to number or the compensation to be paid them. We clearly believe that the Legislature did not intend for the County Old Age Assistance Board to have the power to appoint and fix the compensation of clerks or assistants. And, if the Legislature intended them to have this power, it would and could have done so specifically and not have left it to inference.

In *King v. Riverland Levee District.*, 279 S. W. 195, 1. c. 196, the St. Louis Court of Appeals said the following:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creating of the law and then is incidental to the office. State ex rel. Evans v. Gordon, 245 Mo. 12, Loc. cit. 27, 149 S. W. 638; Sanderson v. Pike County, 195 Mo. 598, 93 S. W. 942; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S. W. 504. Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same. State ex rel. Evans v. Gordon, supra."

It is our opinion that Senate Bill No. 7 does not authorize the County Old Age Assistance Board to employ clerks or assistants, as regular employes, to aid or assist in the discharge of duties imposed upon them by law.

It is our further opinion that the reimbursing of members of the "County Board" for personal expenses shall be paid by the "State Board" by virtue of Sections 11 and 28, and House Bill No. 541 (Appropriation Act).

Hon. Charles M. Hay

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June 27, 1935.

We invite your attention to Section 2, in particular this part, namely, "The State Board shall administer the provisions of this Act and may appoint such clerical and office assistance, and such deputies as may be appropriated for by the General Assembly", with a view in mind of obtaining a clerk or deputy from the "State Board" if the "County Board" cannot discharge their duties without aid or assistance.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney-General.

JLH:EG