

OLD AGE ASSISTANCE: Inmates of county infirmaries not barred from benefits if otherwise qualified.

June 20, 1935.



Hon. W. Ed Jameson,  
President Board of Managers,  
State Eleemosynary Institutions,  
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter of June 18, 1935, which is as follows:

"A great many letters have come to this office in reference to the Old Age Pension. A number of them are asking about the occupants of infirmaries or poorhouses in the counties, as to whether or not they are eligible under the law.

"As I see it, I do not think because a person is a resident of a poor house they should be barred from the benefits of this law, provided they are over 70.

"I would be glad if you would have your office render me an opinion on this particular phase of the question."

Your letter refers to Senate Bill No. 7, same being an Act to provide for, regulate and fix the conditions and requirements for assistance for residents of the State of Missouri over the age of 70 years, as it may apply to inmates of county infirmaries.

Section 4 of said Act is general in its terms and provides as follows:

"Subject to the provisions and under the restrictions contained in this Act, every aged person who has no income or an income inadequate to

provide a reasonable subsistence compatible with decency and health, but in any event not exceeding \$30.00 per month, shall, while residing in the State, be entitled to assistance in old age. Provided that where a husband and wife, who are living together, are both entitled to assistance under the provisions of this act, the maximum amount to be received by both shall not be more than \$45.00 per month."

The qualifications necessary for an old person to obtain assistance in old age as mentioned in Section 4, besides having no income or an income inadequate to provide a reasonable subsistence compatible with decency and health, are set out in Section 6 of the Act, which provides:

"Old age assistance may be granted only to an applicant who has attained the age of 70 years or upwards, is incapacitated from earning a livelihood and is without adequate means of support, is a citizen of the United States, has resided in the State for 5 years or more within the 9 years immediately preceding application for assistance and for the one year next preceding the date of application for assistance (absence in the service of the State or of the United States shall not be deemed to interrupt residence in the state if domicile be not acquired outside of the state), if not at the date of making application or of receiving aid an inmate of any prison, jail, insane asylum, or any other public reform or correctional institution, and has no child or other person responsible under the law of this state and found by the state board or by the county board able to support him."

Thus, it will be noted that under Section 6, supra, in order to receive assistance a person must (1) have attained the age of 70 years or upwards; (2) be incapacitated from earning a livelihood and without adequate means of support;

(3) be a citizen of the United States; (4) have resided in the State for 5 years or more within the 9 years immediately preceding application for assistance and for the one year next preceding the date of application for assistance; and (5) at the time of making the application or receiving aid not be an inmate of (a) any prison, (b) jail, (c) insane asylum, (d) any public reform or correctional institution, and (e) have no child or other person responsible under the law of the State of Missouri and found by the state board or the county board able to support him.

It is taken for granted that an inmate of a poor farm or infirmary is confined in the institution for the reason that he (or she) has no adequate income on which to support himself--that he is one of the unfortunates of life--otherwise, he would not be so confined.

An institution known as a poorhouse or infirmary is not one of the institutions mentioned in Section 6 which would prevent an inmate thereof from making an application, and if otherwise qualified, from coming within the purview of the Act. Assuming that the inmate can qualify, the question next arises as to the status of his citizenship. Section 6 does not make it compulsory that he be a citizen of this State, but he must be a citizen of the United States.

Sec. 2 of Article VIII of the Constitution of Missouri, with reference to the status of an inmate of a poorhouse and his exercising the right of franchise is as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and in the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person, shall be entitled to vote at all elections by the people; provided, no idiot, no insane person and no person while kept in any poor-house at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from the right of voting."

Section 10178, R.S. Mo. 1929 also excludes an inmate of a poorhouse from exercising the right of franchise, but the question arises as to whether or not if a person be not entitled to the right to vote, he by the denial of that right, loses his citizenship. This question was decided by our Supreme Court in the case of *The State v. Fairlamb*, 121 Mo. 137, wherein the Court said (l.c. 150-151):

"While the right to exercise the elective franchise is the highest evidence of citizenship, a man may be a citizen of the county in which he permanently resides without possessing the necessary qualifications of a voter. 'A citizen is a person born in the United States.' 1 Bouvier's Law Dictionary. Another definition is 'one who owes to government allegiance, service, and money by way of taxation, and to whom the state in turn grants and guarantees liberty of person and of conscience, the right of acquiring and possessing property, of marriage and the social relations, of suit and defense, and security in person, estate and reputation.' 3 Am. and Eng. Encyclopedia of Law, 242. Women are citizens although in this state they can not vote.

"In *Amy v. Smith*, 1 Litt. (Ky.) 333, it is held that it is not necessary 'even for an adult male to be a citizen, that he should be in the actual enjoyment of all those rights and privileges which belong to a citizen. He may not only not be in the actual enjoyment of those rights and privileges, but he may even not possess those qualifications, of property, of age, or of residence, which most of the states prescribe as requisites to the enjoyment of some of their highest privileges and immunities, and yet be a citizen.

"In *Minor v. Happersett*, 21 Wallace, 162, it was held that women may be citizens, that they are persons and

by the fourteenth amendment of the constitution of the United States, 'All persons born or naturalized in the United States and subject to the jurisdiction thereof', are expressly declared to be 'citizens of the United States and of the state wherein they reside.' Robinsons case, 131 Mass. 376."

Further definitions of citizenship bearing directly on the question are found in the case of *The State ex rel. v. The County Court of Howard County*, 90 Mo. 593, l.c. 598, as follows:

"A citizen is defined by Webster to be: 'A person native or naturalized who has the privilege of voting for public officers, and who is qualified to fill offices in the gift of the people; also every native born or naturalized person of either sex who is entitled to full protection in the exercise and enjoyment of the so-called private rights.' Bouvier's definition of a citizen, in American law, is: 'One who, under the constitution and laws of the United States, has a right to vote for representatives in congress and other public officers, and who is qualified to fill offices in the gift of the people. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.' Abbott defines it thus: 'A person who owes allegiance to, or may claim reciprocal protection from, a government. One who is a member of a nation or of the body politic of a sovereign state. \* \* \* Age or majority is not involved. The most important political rights are not, indeed, acquired until

the age of twenty-one; but it is not the possession of these which constitute citizenship, nor is citizenship in abeyance while they are. \* \* \* Nor is sex involved. Women are citizens fully and truly as men; \* \* \* nor does a recognition of women's citizenship involve a grant of political rights, such as are, indeed, usually conferred only upon citizens, but do not inhere in that status.' United States v. Anthony, 11 Blatchf. 200; Minor v. Happersett, 21 Wall. 162; United States v. Reese, 92 U.S. 214; 1 McArthur 169; 1 Abb. Dict. 223; Van Volkenburgh v. Brown, 43 Cal. 43. Accepting the definition put upon the word citizen by the highest authority, we must return an affirmative answer to the first two questions propounded by the record."

The only other element relative to whether or not an inmate of a poorhouse comes within the terms of the Act is that of residence. Again referring to Section 6, supra, we find that an applicant for old age assistance must have resided in the state for five years or more within the nine years immediately preceding application for assistance and for the one year next preceding the date of the application.

Section 7, Article VIII of the Constitution of Missouri is as follows:

"For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service either civil, or military, of this state, or of the United States; nor while engaged in the navigation of the waters of the State, or of the United States, or of the high seas, nor while a student of any institution of learning, nor while kept in a poorhouse or other asylum at public expense, nor while confined in public prison."

It has long been recognized in this state that residence is largely a matter of intention, and intention is to be deduced from the acts and utterances of the person whose residence is in issue. In Re Lankford's Estate, 272 Mo. 1.

Further pursuing the question in the negative, we have read the Act in its entirety and fail to find any provision in any section which precludes an inmate of a poorhouse from receiving benefits as contained therein.

Section 3 of the Act provides for the establishment of a County Old Age Assistance Board - Section 10 provides for the application of a person seeking the benefits to be made to said Board. It then becomes the duty of the Board to investigate the facts. If the Board approves the application, it makes a recommendation of the amount of assistance to be allowed, or it may disapprove. If the County Board disapprove, the applicant may then request a rehearing and the finding of the Board is then forwarded to the State Commissioner. If the State Commissioner and the County Board are unable to agree on the allowance or disallowance, or the amount of assistance, the records are then forwarded to the State Board, which is the Board of Managers of the Eleemosynary Institutions. The decision of the State Board is final, except for the right of appeal as contained in Sec. 25 of the Act.

Section 28 of the Act states that the State Board shall have authority to make such rules and regulations as are necessary to carry out the provisions of the Act.

Section 5 contains the provision that the amount of assistance shall be fixed with due regard to the conditions in each case, but that in no case shall it be an amount which, when added to the income of the applicant from all other sources, shall exceed a total of \$30.00 per month.

#### CONCLUSION

Under Section 6, supra, the Legislature saw fit to place certain qualifications on applicants for benefits under the Act and it enumerated certain institutions, the inmates of which were precluded from the benefits. In the instance of poorhouses and infirmaries, we conclude that by omitting such institutions, there was no intention on the part of the Legislature to disqualify the unfortunates in such institutions.

It was evidently the intention of the Legislature to prevent persons from becoming inmates of such institutions, and we do not believe that we are unreasonable in the conclusion that it was the further intention of the Legislature to make it

June 20, 1935.

possible for inmates possessing the necessary qualifications to be released from such institutions by receiving the benefits under the Act in the form of a pension; however, irrespective of the intention of the Legislature, the fact remains that the Act does not contain any provision which prohibits or precludes the inmates of poorhouses or infirmaries from receiving benefits.

Therefore, it is the opinion of this department that inmates of county infirmaries have the right to make application for benefits under the Old Age Assistance Act, and they are entitled to the same consideration as any other person possessing the necessary qualifications.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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

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