

OLD AGE ASSISTANCE: Senator or Representative prohibited from being appointed to position of State Old Age Assistance Commissioner or to position on county old age assistance boards.

7-9
July 8, 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 July 2 requesting an opinion as to the following state of facts:

"I have heard it said that neither a senator or representative who had been elected by the people for a definite term of office would not be eligible for appointment under the Old Age Assistance Board or any other administrative department of the state.

"I have even heard it said that they could not tender their resignation and be eligible.

"I would like for you to write me on this subject for I have occasion to answer letters almost every day in regard to this matter."

Section 12, Article IV of the Constitution of Missouri provides as follows:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to

any office under this State, or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof (militia officers, justices of the peace and notaries public excepted), shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such office or seat in either house of Congress."

In the case of *Hastings v. Jasper County*, 314 Mo. 144, l.c. 149, the Court said:

"A public office is defined to be 'the right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be by him exercised for the benefit of the public' (*Mechem, Public Officers*, 1; *State ex rel. Walker v. Bus*, 135 Mo. 326) * * * The authorities all agree, substantially, that if an officer receives his authority from the law and discharges some of the functions of government, he will be a public officer."

And in the case of *State ex rel. Zevely v. Hackmann*, 300 Mo. 59, the Court, in holding the Secretary of the State Tax Commission a public officer of the state, said:

"A public officer is an individual who has been elected or appointed in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the office assigned to him by law."

Sec. 2 of Committee Substitute for Senate Bill No. 7 as passed by the 58th General Assembly provides:

"The Governor shall appoint a State Old Age Assistance Commissioner, by and with the advice and consent of the Senate, who shall be qualified by character, training, and experience, and who shall have been a resident tax-paying citizen of the State of Missouri for five years next preceding his appointment. The State Board shall fix the salary of the State Commissioner which shall not exceed \$3,600.00 per annum. 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. Each member of the State Board shall receive not to exceed \$50.00 per month for his services as such in addition to all other compensation provided by law."

The "State Board" referred to in Sec. 2 means the Board of Managers of the Eleemosynary Institutions.

Sec. 3 of said Act provides:

"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, except that of the members first appointed, one shall be appointed for a term of two years and one for a term of three years. Vacancies shall be filled in the same way in which the original appointment was made. The members of the county

July 8, 1935.

board shall serve without compensation, except that the necessary expenses incurred while in the performance of their duties shall be paid to them."

CONCLUSION

In view of the foregoing, it is the opinion of this department that by reason of the prohibition contained in Sec. 12, Article IV of the Constitution of the State of Missouri, a senator or representative may not be appointed to the position of State Old Age Assistance Commissioner, or to a position on the respective county old age assistance boards.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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