

OLD AGE PENSIONS: All property, real and personal must be taken into consideration in determining qualifications for assistance.

November 15, 1935. 11-18



Mr. C. E. Larkins,
Member, Buchanan County Old Age Assistance Board,
County Court House,
St. Joseph, Missouri.

Dear Sir:

We wish to acknowledge your recent request for an opinion wherein you state as follows:

"Section 7 of the Old Age Assistance Act provides that no one shall receive assistance if the value of his or her property exceeds fifteen hundred dollars. In checking applications for assistance, we find a number of people who have cash in the bank, stocks and bonds, and property other than real estate that often totals as much as twelve or fourteen hundred dollars. We would be pleased to have your opinion as to just what is meant by the term 'property' in this Act. Should this apply to real property alone, or should all property, personal and real, be considered?

"It is our belief that a party having several hundred dollars in the bank is in no immediate need of assistance, but if this Act includes personal property, then, of course, it appears that the man with as much as fourteen hundred dollars in the bank might be eligible for assistance. However, we hardly believe that was the intention of the Act. On the other hand, a party might own

fifteen hundred dollars in real estate and have no income, and of course might need assistance. Early ruling on this question will be appreciated, as we are desirous of getting through with our work here as quickly as possible."

Section 7 of the Old Age Assistance Act, found in the Laws of Missouri, 1935, page 310, reads as follows:

"Old age assistance shall not be granted to a person if the value of his property or the value of his interest in property exceeds \$1,500.00, or, if married and actually supporting a husband or wife, if the value of his or her property or the value of his or her interest in property together with that of such husband or wife exceeds \$2,000.00, or if the claimant has deprived himself, directly or indirectly, of any property for the purpose of qualifying for old age relief. 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 to appraise such property at its true value."

We are asked to interpret the meaning of the word "property" as it appears in Section 7, supra.

In the case of Consolidated School District v. Hackmann, 258 S. W. 1011, 302 Mo. 558, 1. c. 560, the court sets out the following rules of statutory construction:

"The fundamental rule to be observed is to ascertain and give effect to the purpose of the Legislature. * * *

"In construing a statute, the legislative intent is to be determined from a general view of the whole Act, with reference to the subject matter to

which it applies and the particular topic under which the language in question is found. (36 Cyc. 1128)."

We are dealing with pensions and retirement funds providing for assistance for residents of the state over the age of seventy years under certain conditions and requirements.

We set out in part one of the conditions as same appears in Section 4 of the Act:

"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 * * * per month, shall, while residing in the State, be entitled to assistance in old age."

Again in Section 5 of the Act the following language is to be found:

"The amount of assistance shall be fixed with due regard to the conditions in each case, but 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 * * * per month."

It is evident from the above sections of the Old Age Assistance Act that the Legislature was primarily interested in the income of each individual as indicative of his ability to maintain himself, and as income is derived from earnings of property, we must necessarily take all property into consideration in determining the person's ability to maintain himself compatible with decency and health.

In the case of *Wire Co. v. Wollbrinck*, 275 Mo. 339, l. c. 352, the court defines the term "property" in the following manner:

"In law and in the broadest sense 'property' means 'a thing owned,'

and is, therefore, applicable to whatever is the subject of legal ownership. It is divisible into different species of property, including physical things, such as lands, goods, money; intangible things, such as franchises, patent rights, copyrights, trade-marks, trade names, business goodwill, rights of action, etc. In short it embraces anything and everything which may belong to a man and in the ownership of which he has a right to be protected by law."

Again in the case of *McAlister v. Fritchard*, 287 No. 494, 1. c. 498, the court said:

"Property is nomen generalissimum, and extends to every species of valuable right and interest. (6 Words and Phrases (1 series), 5693.)"

Construing the above definitions of the term "property" with reference to the subject matter to which it applies and the particular topic under which the language is found, we are of the opinion that the term applies to all property, both real and personal.

It is true that a man might have personal property in the amount of \$1400.00 in the bank and be eligible for assistance, and another have in excess of \$1500.00 and be ineligible for assistance. However, the Legislature has set the latter figure as a condition precedent to the right to a pension, and we cannot go into the equities of the matter. That the Legislature has the power to enact such laws cannot be questioned, in view of the language of the court in the case of *Stiles v. Pension Fund Commissioners*, 281 Ill. 636, 1. c. 641, 118 N. E. 202:

"We have repeatedly held that pensions are in the nature of bounties of the government, which it has the right to give, withhold, distribute or recall, at its discretion; that the pensioner has no vested right in a pension, and the legislature has full power to enact such laws and direct how the fund shall be raised and direct to whom it shall be paid. (*Eddy v.*

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Morgan, 216 Ill. 437; Pecoy v. City of Chicago, 265 Id. 78; Ryan v. Foreman, 268 Id. 175.) The same rule was first announced and has been uniformly followed by the Federal courts. (Walton v. Cotton, 19 How. 355; United States v. Teller, 107 U. S. 64; Frisbie v. United States, 157 Id. 106.) It was held in the case last above cited: "Congress having the liberty to give or withhold pensions may prescribe who shall receive them and determine all the circumstances and conditions under which any application therefor shall be prosecuted. No man has a legal right to a pension and no man has a legal right to interfere in the matter of obtaining pensions for himself or others. The whole control of that matter is within the domain of congressional power. United States v. Hall, 96 U. S. 343."

In conclusion, we wish to call attention to the fact that in addition to the property requirements, Section 5, supra, directs that the amount of assistance must be fixed with due regard to the conditions in each case.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

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

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