

ALL APPLICANTS FOR OLD AGE ASSISTANCE MUST HAVE RESIDED WITHIN THIS STATE FOR FIVE YEARS OR MORE, WITHIN THE NINE YEARS IMMEDIATELY PRECEDING THE FILING OF THE APPLICATION FOR ASSISTANCE. ALSO MUST HAVE BEEN A RESIDENT OF THE STATE FOR ONE YEAR NEXT PRECEDING THE FILING OF SAID APPLICATION FOR ASSISTANCE.

11-21
November 21, 1935



Mrs. Fannie Wooldridge, Secretary
Old Age Assistance Board
Wentzville, Missouri

Dear Madam:

We acknowledge receipt of your letter of November 12, as follows:

"The Statute providing for Old Age Assistance provides that as a condition of eligibility the applicant must have resided in the State of Missouri, one whole year next before the filing of the application; it further provides that applicant must have lived in the State at least five years, during the nine years immediately preceding the date of application. In view of the fact that the purpose of the law is to aid bonafide residents of the state.

The question has arisen in our mind as to whether or not the proviso that applicant shall live in the state five years out of the nine years immediately preceding the date of the application is for the purpose of preventing an influx of eligibility, in the first instance.

We are of the opinion that this question is going to be raised, by appeal to the Circuit Court in our County, provided the board rules that persons who have been bonafide residents of the State for one year next before the date of the application are also required to have lived in the state five years out of the next preceding the date of application; in other words, it is the contention of some that the five years proviso only applies to persons coming into the state after the Statute was enacted. If it is possible for us to have your opinion on this point, we shall appreciate it very much."

The Act in question is entitled, "PENSIONS AND RETIREMENT FUNDS: Providing for Assistance for Residents of the State over the age of 70 years under certain conditions and requirements."

The purpose of this Act, as stated under the above title, on page 308 Laws of Missouri 1935, is as follows:

"AN ACT to provide for, regulate and fix the conditions and requirements for assistance for residents of the State over the age of 70 years; etc."

As stated by the Court in *Betz v. Kansas City Southern Railway Co.* 287 S.W. 445, 314 Mo. 390, Judge Ragland, speaking for this court in banc, in *Grier v. Railway Co.* 286 Mo. 1.c. 534, said,

"The primary rule for the interpretation of statutes is that the legislative intention is to be

ascertained by means of the words it has used. All other rules are incidental and mere aids to be invoked when the meaning is clouded. When the language is not only plain, but admits of but one meaning, these auxiliary rules have no office to fill."

Section 4 of the Act provides:

"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."

From reading the above provision it is clearly stated that every aged person subject to the provisions of this Act, while residing in this State, shall be entitled to assistance. This provision does not exclude aged persons from the provisions of this Act who have, for any reason, come into this State having a good intention to become residents of the State of Missouri who later qualify for the old age pension. This would work a great injury or hardship upon such people and be against public policy; furthermore, it would, in many instances, prevent them from migrating to this State. No doubt the requirements as to the time the applicant must be a resident of the State and reside herein prior to the filing of the application, is so included in this Act for the purpose of preventing many persons from other

states moving here for the sole purpose of obtaining the old age pension. However, there is no distinction made in the whole of the Act as to people now residents of Missouri, and to anyone who may later become a resident of this State. It is a fundamental rule of construction as held in State ex rel. Gass v. Gordon 266 Mo. 394, that the statute should receive a sensible construction such as will effect the legislative intention, and, if possible, so as to avoid an unjust and absurd conclusion.

Section 6 of the Act 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), is 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."

The above section provides that an applicant to qualify must have resided in this State for five years or more within the nine years immediately preceding application for assistance, and one year next preceding the date of application for assistance.

This section does not require the applicant to have resided in this State prior to the enactment of this law. If this were true then it would follow that no one later becoming a resident of Missouri could thereby qualify. However, the law refers to the time applicant has resided in the State prior to the filing of his application in every instance.

Section 9 of the Act provides,

"An applicant for assistance shall deliver his claim, in writing, to the county board, in the manner and form prescribed by the State Board. All statements in the application shall be sworn to or affirmed by the applicant, setting forth that all facts are true in every material point."

This section of the Act provides the manner and form in which applicant is to deliver the application.

Section 14 of the Act provides,

"The assistance, if allowed, shall commence on the first day of the calendar month, following that on which the petition was received by the county board."

The above section merely states when such assistance shall commence, if same shall be allowed. Nowhere embodied in this Act is there any stipulation as to what time these applications shall be filed. We conclude that same may be filed any time after the effective date of the act.

Mrs. Fannie Wooldridge

-6-

November 21, 1935

CONCLUSION

Therefore, from the foregoing, we are of the opinion that the old age assistance law clearly and expressly provides all applicants for such pension must have resided within this State for five years or more, within the nine years immediately preceding the filing of application for assistance, and must have been residents of this State for one year next preceding the filing of applications for assistance.

Respectfully submitted,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

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

JET/ ARH: LC