

OLD AGE PENSIONS: May not limit the number of assistance checks sent to out-of-state addresses, and permit same to accrue until persons return to Missouri.

February 13, 1936. 2-21

Miss Reba E. Choate,
Assistant Commissioner,
Old Age Assistance Division,
Jefferson City, Missouri.



Dear Miss Choate:

This will acknowledge receipt of your request for an opinion which reads as follows:

"A situation has now developed upon which we would like the advice of your department. A number of persons on the Old Age Assistance Roll have removed to other states stating that they plan to spend the winter or some such length of time with relatives out of the state. Our office is contemplating a ruling pertaining to such cases limiting the number of assistance checks which will be sent to out-of-state addresses.

"Before making such a ruling, however, we would like to know whether or not it would in any way be contrary to law and whether or not, when the person returns to the state, he would have his accrued assistance. If he is entitled to accrued assistance when he returns to the state, it would be possible for him to come back once or twice a year, get the assistance and then be out of the state the rest of the time."

The fact that a person on the Old Age Assistance Roll leaves the State of Missouri to spend the winter or some such length of time with relatives out of the state

does not mean that he is no longer a "resident" of the State of Missouri and hence ineligible to receive assistance under the terms of the Old Age Assistance Act, as found in the Laws of Missouri, 1935, pages 308-315. This was pointed out in an opinion rendered your department under date of September 28, 1935, wherein the following conclusion was reached after citing numerous authorities:

"In view of the above authorities we think we can safely draw the following conclusions: That the word 'residence' as used in Section 6 of the Old Age Assistance Act, means the place where the family of any person shall permanently reside in this State, or, if such person has no family, where he or she shall generally lodge; that while the term 'domicile' and 'residence' are not synonymous that 'residence' does mean a fixed and determined home rather than a transient or temporary abode; that where a residence has been established, continuous personal presence thereafter is not essential to a continuous residence, especially when the person, whose residence is in question, has a family with whom he carries on family relations; that the continuity of a residence is not broken by a mere temporary absence with the intention of returning or without a definite intention of abandoning such residence; that if a person leaves his residence, and while absent forms the intent of not returning, the continuity of his residence is broken as though he had formed the intent at the time of removing. We call your attention to the fact that the question of 'residence' is a question of fact that must be determined in each individual case from all the facts and surrounding circumstances."

The question arises whether the State Board, as same is defined in the Act, can make a ruling limiting the number of assistance checks sent to out-of-state addresses.

Absent a finding by the State Board that a person on the Old Age Assistance Roll is not longer a "resident", he is

entitled to have his assistance check sent to any post office address that he desires, and any ruling withholding the issuance of an assistance check by reason of the fact that it goes to an out-of-state address would be void and contrary to the Act, as evidenced by Section 24, which provides in part that:

"* * * requisitions shall state among other things that the requisitioner is the recipient of the assistance personally and that he or she has the free and full use thereof, and that the same is devoted exclusively to his or her needs, giving his or her present address; and each applicant shall forward each requisition for assistance last accrued to the State Auditor who shall draw a warrant in favor of such applicant upon the State Treasurer for any monies in the treasury available therefor and forward same to the applicant or the legal guardian thereof at such post office address."

"His or her present address" cannot be interpreted by any stretch of the imagination to refer only to Missouri addresses. As stated by the court in the case of Johnston v. Ragan, 265 Mo. 420, 178 S. W. 159, l. c. 163:

"Statutes are not to be construed so as to result in an absurdity or to impose unnecessary burdens, and, in the absence of express terms, it will not be presumed that the Legislature intended to authorize and require an unreasonable proceeding. Neenan v. Smith, 50 Mo. 526."

Having come to the conclusion that a "resident" is entitled to have his assistance checks sent to any post office address he desires, it naturally follows that the checks cannot be held up and allowed to accrue to his benefit until he returns to the State of Missouri. Such fact is evidenced by Section 12 of the Act, which contemplates that all applicants who have all the qualifications and have been approved should be paid monthly, thus:

"The county board shall issue to each applicant to whom assistance is allowed a certificate for one year, stating the amount of each installment, which shall be paid monthly."

The language of the statute is plain, clear and unambiguous and hence must be given effect, and a departure from its natural meaning is not justified by any consideration of consequences or public policy. Our court in the case of *Betz v. K. C. Southern Ry. Co.*, 314 Mo. 390, 284 S. W. 455, l. c. 461, gave expression to the above language when it said:

"In 36 Cyc. 1106, it is said: 'The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority.' And in 36 Cyc. 1114, it is furthermore said: 'In the interpretation of statutes, words in common use are to be construed in their natural, plain, and ordinary signification. It is a very well-settled rule that so long as the language used is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy, and it is the plain duty of the court to give it force and effect.' Ragland, J., speaking for this court, in banc, in *Grier v. Railway Co.*, 286 Mo. l. c. 534, reviewing the selfsame statute, recognized the well-settled rule when he 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. In such case there is no room for construction.' And, in *Clark v. Railroad Co.*, 219 Mo. l. c. 534, Lamm, P. J., speaking for this division of our court, aptly and pointedly said: 'Courts have no right, by construction, to substitute

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their ideas of legislative intent for that unmistakably held by the Legislature and unmistakably expressed in legislative words. Expressum facit cessare tacitum. We must not interpret where there is no need of it. (McCluskey v. Cromwell, 11 N. Y. 1. c. 601-2.)"

From the foregoing, we are of the opinion that a ruling by your department limiting the number of assistance checks which will be sent to out-of-state addresses and permitting same to accrue until the person returns to the State of Missouri would be void. We are of the opinion that a person having all the qualifications to bring him within the terms of the Old Age Assistance Act and who has had his application approved is entitled to receive his assistance check monthly, whether his post office address is in Missouri or in a foreign state.

Respectfully submitted,

J. E. TAYLOR,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN,
(Acting) Attorney General.

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