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BLIND PERSONS)
BLIND PENSIONS:)

In an estate by the entirety each
owns the whole.

February 14, 1936. 2-15



Miss Marie M. Finan
Pension Secretary
Missouri Commission for the Blind
4342 McPherson Avenue
St. Louis, Missouri

Re: Emmett N. Sage
#20 Shelby County.

Dear Miss Finan:

This is to acknowledge your letter which, in part,
reads as follows:

"The above has been on the blind pension roll since March 4, 1930. We were advised his wife had inherited some money from her mother who passed away in October 1934 and made an investigation of the case. We learned that the total estate of the deceased mother was \$4326.70 and after all expenses were paid there was a balance of \$3630.84 which was inherited by Mrs. Sage as the only heir. Part of this was a house in which Mr. & Mrs. Sage are now living and which has been appraised at \$500.00.

"In addition to this inheritance of \$3630.84 our investigation disclosed that Mr. & Mrs. Sage owned jointly an 80 acre farm valued at \$2150.00 and a house and ten acres valued at \$1190.00. Mrs. Sage advised our investigator she had been forced to sell some of the bonds which she had inherited and at the time of our investigator's call on November 14, 1935, Mrs. Sage advised she still had \$3400.00 of her inheritance.

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"We, therefore, notified Mr. Sage that it would be necessary to strike his name from the blind pension roll, since the blind pension law under Section 8893 provides that no blind person who lives with a sighted husband or wife who has property or an interest in property to the value of \$5000.00 or more shall be eligible to receive the pension.

"We further advised him that Mrs. Sage had property because of this inheritance in the amount of \$3400.00 which plus the farm at \$2150.00 and the house and ground at \$1190.00 made a total of \$6740.00 which is more than the \$5000.00 limit allowed by the blind pension law.

* * * * *

"We will much appreciate if you will advise whether or not under the circumstances Mr. Sage is eligible to receive the blind pension, and if we have interpreted the law relative to property owned jointly and have erred in notifying him he is to be stricken."

Section 8893, R. S. Mo. 1929, provides in part as follows:

"Provided that no such person shall be entitled to a pension under this article * * * * who lives with a sighted husband or wife who * * * * has property or an interest in property to the value of five thousand (\$5000) dollars or more."

You will note that the above statute uses the words "has property or an interest in property."

The facts in your letter show that Mr. Sage is blind and has a sighted wife who inherited and now has a separate estate of the value of \$3400.00; that pensioner Sage and his wife own as tenants by the entirety, property of the value of \$5340.00. Therefore, does Mrs. Sage, the sighted wife of pensioner, have property or an interest in property to the value of \$5000.00 or more?

There is no question but that Mrs. Sage's separate estate amounts to \$3400.00 as shown by your letter, and that she likewise has an interest in an estate by the entirety. And if her interest in said estate by the entirety amounts to \$1600.00, or more, pensioner would not be entitled to remain on the pension roll. Thus, the only question presented for determination is to ascertain Mrs. Sage's interest in property held by the entirety or jointly with her husband.

Section 3114, R. S. Mo. 1929, provides as follows:

"Every interest in real estate granted or devised to two or more persons, other than executors and trustees and husband and wife, shall be a tenancy in common, unless expressly declared, in such grant or devise, to be in joint tenancy."

In *Wharton et ux. v. Citizens Bank of Bosworth*, 15 S. W. (2d) 860, the Kansas City Court of Appeals, in discussing "estates by the entirety," said the following (page 862):

"At common law man and wife were considered as one. In Missouri the enabling statutes have given a married woman power to contract and to convey her property; but so far as estates by the entirety are concerned, the ancient conception of man and wife still lives. As one, they are endowed with characteristics of a legal entity that has power to own real and personal property, subject the property to liens and charges,

and to contract debts, which, when reduced to judgment against the entity (a joint judgment against both spouses), will permit its property to be sold under an execution on that judgment. None of these things may be accomplished by dealing with or against either spouse, but only by dealing with or against them jointly. But man and wife do not constitute an artificial person. It is impossible to obtain a judgment against the entity, independent of a judgment against its natural members. The judgment must be against the husband and wife. Such a judgment has all the characteristics of a joint judgment against codebtors, so that the property of each may be seized under execution for the satisfaction of the full amount of the judgment. But it has another characteristic. It will support the levy of an execution upon the estate by the entirety. There is no other method of subjecting this estate to the satisfaction of a debt, without the aid of a lien voluntarily created by the husband and wife."

In *Wimbush v. Danforth et al.*, 238 S. W. 460, the Supreme Court of Missouri said the following (l. c. 466):

"The character of the estate known as an estate by the entirety has long been firmly entrenched in the law of this state * * * * *
With the adoption of the common law doctrine, there was necessarily adopted the attributes of the estate, viz: That neither the husband nor wife was seized of moieties but of entireties, each being the owner of the entire estate * * * *. In *Wilson v. Frost*, 186 Mo. l. c. 319, 85 S. W. 377, 105 Am. St. Rep. 619, 2 Ann. Cas. 557, Judge Valliant, in speaking of this

estate said:

"In an estate of the entirety, the husband and the wife during their joint lives each owns, not a part, or a separate or a separable interest, but the whole, and therefore the death of one leaves the other still holding the whole title as before, with no one to share it."

See also: Locksmax v. Cramer et al., 216 S. W. 575; Frost v. Frost, 200 Mo. 474; Otto F. Stifel's Union Brewing Co. v. Saxy, 273 Mo. 159.

The Court of Civil Appeal of Texas in the case of Mercury Fire Insurance Co. v. Duneway, 74 S. W. (2d) 418, l. c. 419, said:

"The rights of the husband and wife in community property are unified and equal and their title thereto and interest therein is the same. (Cases cited.)"

What, then, is Mrs. Sage's interest in property held by the entirety with her husband?--a one-half interest?-- a one-third interest?-- or a whole interest?-- or any interest?

The Missouri decisions are unanimous to the effect that in estates by the entirety each owns the whole interest. Note the language of the court in *Wimbush v. Danforth*, supra, to the effect that the husband and wife in an estate by the entirety each owns, not a part, or a separate or a separable interest, but the whole of the estate. Thus, if Mrs. Sage owns the whole of the estate, then, of course, her interest in the estate amounts to the full value of the estate, or, as stated in your letter, the sum of \$3340.00.

The pension law is for the aid of indigent deserving blind persons. The Legislature, in our opinion, did not intend that persons having property or an interest in property exceeding the value of \$5000.00 should be entitled

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to the benefits of the pension act. Using the figures contained in your letter, as to the interest Mrs. Sage has in property, shows a total amount of \$6,740.00, and, if said figures are true and correct, it would be our opinion that under and by virtue of Section 8896, R. S. Mo. 1929, that said pensioner should be removed and stricken from the pension rolls. While it might be a harsh act to remove pensioner, yet no alternative is permitted. In this connection, we are reminded of the language of the Supreme Court of Missouri, en banc, in the case of State ex rel. Palmer v. Thompson, 297 S. W. 62, when the court said:

"Respondent simply did his unpleasant duty under the law when he struck the name of relator from the blind pension rolls under the circumstances."

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JLH:EG