

X
BLIND PENSIONS:

"Income," as found in Section 8893, R. S. 1929,
discussed and defined.

February 28, 1936.

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

Dear Miss Finan:

This is to acknowledge your letter dated February 21, 1936, wherein you request an opinion relative to the words "income" and "recipient," found in Section 8893, R. S. Mo. 1929. Your letter reads in part as follows:

"A previous ruling provides no distinction between net or gross income and based on this ruling we have been striking from the roll pensioners engaged in business who have been the recipients of more than \$600.00 per year, or whose sighted spouses have been the recipients of \$600.00 or more per year from any source whatever. We have likewise, rejected the applications of persons whose income or whose sighted spouses income is more than \$600.00 per year.

"We now have a case of a pensioner whose sighted wife operates a store and who states her daily receipts amount to \$6.00 or \$8.00 per day which of course is gross, and he is protesting the action of the Commission in striking him from the roll.

"Will you please be so kind as to furnish us with an opinion covering this section of the law."

Section 8893, referred to in your letter, lists the qualifications for persons eligible to receive pensions and no person is entitled to a pension unless such have the necessary qualifications. The Legislature provided that a person having an income or the recipient of \$600.00 per annum, would not be entitled to the benefits of the blind pension act; Section 8893, supra, having this proviso:

"Provided, that no such person shall be entitled to a pension under this article who has an income, or is the recipient, of six hundred (\$600.00) dollars or more per annum from any source whatever, * * * * or who lives with a sighted husband or wife who has an income or is the recipient of six hundred (\$600.00) dollars or more per annum from any source whatever * * *"

A reading of the sections pertaining to pensions for deserving blind people show that the Legislature intended the pension to be used for the purpose of maintaining and supporting said persons. It follows that a person who is being maintained, or has sufficient income or funds with which to supply daily wants, would not be eligible to the pension.

A pension is in no sense a contractual obligation. It is merely a bounty, a gratuitous allowance which arises purely from the graciousness of the State. One has neither a property nor a vested right in it. Corpus Juris, Vol. 48, page 786, enunciates the above rule as follows:

"Pensions, it is said, are mainly designed to assist the pensioner in providing for his daily wants. A pension is not a matter of contract, and is not founded upon any legal liability. No man has a legal vested right to a pension; it is a mere bounty or gratuity given by the government * * * * * And although existing pension laws may entitle one to a pension

The government may, at its pleasure, at any time, change the amount thereof or revoke or destroy it altogether."

The narrow question presented for our opinion concerns the definition to be given to the words "income" and "recipient," found in Section 8893, supra. We do not find any case in Missouri that defines the word "income" as used in Section 8893. However, Corpus Juris, Vol. 31, page 396, says the following in defining "income":

"'Income' is a broad, comprehensive, flexible, inclusive, and generic term, capable of definition. Although it has a well defined meaning, not only in common speech, but also under judicial construction, there appears to be some difficulty about its precise and scientific definition. * * * Generally the term may be defined as meaning all that comes in; * * * that which has come in; * * * that which comes in, not that which comes in less an outgoing; * * * the gross amount received by a person; * * * what a person can add to his stock or spend; what comes in; what has come in; * * *"

Corpus Juris in the same volume also calls attention to the fact that there are two kinds of income, namely, gross income and net income, and "gross income" is defined at page 401, Vol. 31, as follows:

"'Gross Income. A term whose construction and meaning depend upon the context and subject matter; the entire amount that the use of the principal yields; the total receipts from a business before deducting expenditures for any purpose. As applied to a partnership, the entire profit arising from the conduct of the business. It may be equivalent to

'gross proceeds' or 'gross receipts.'
However, the words 'gross income' may
not mean 'gross receipts.'"

"Net income" is defined at page 402, Corpus Juris,
supra, as follows:

"Net Income. While generally the
word 'income' has a different signi-
fication from 'net income,' the usual
and ordinary meaning of the word, when
used alone, may be 'net income;' and
in the ordinary commercial sense, the
term may, especially when connected with
the word 'rent,' mean net or clear income.
'Net income' imports a 'gross income,'
and the difference between the two
implies the expenditure of income for
some purpose. 'Net income' cannot be
understood to mean 'gross profits.'
Dividends are not 'net income.' * * *"

"Recipient" is defined by Webster's New International
Dictionary as follows:

"to receive; a receiver; also the
recipient of a favor; now commonly
used of persons only;"

We believe that the Legislature did not intend to
definitely define "income" as used in Section 8893, supra, or
to prescribe any hard and fast definition thereof, but left
it flexible and to the particular case; in other words, if a
pensioner was the recipient of having his daily wants supplied,
the value of such would be a factor and considered "income."
If a person is working on a salary and receives a stipulated
sum per month, and the amount received per month would exceed
\$600.00 per annum, clearly that person would not be entitled
to a pension. Of course, the amount the pensioner received
would be used by him to supply his daily wants, such as food,
clothing, fuel etc. If a pensioner was engaged in business

and the business yielded an amount exceeding \$600.00 per annum, then said pensioner would be the recipient of a sum of money from a business.

In the case you present, nothing is shown as to what amount of money the store gives to pensioner's sighted wife. True, the store might take in \$6 or \$8 per day but that would be gross income taken in by the store and not by the pensioner. Thus if pensioner did not receive \$600.00 per annum by virtue of the operation of the store, then, clearly, pensioner would not be the recipient of a sum sufficient to strike his name from the pension roll. You will readily understand then that it is a matter of applying the facts to ascertain the income the pensioner receives. In this connection we are constrained to the statement found in Corpus Juris, supra, page 402, wherein it says:

"While generally the word 'income' has a different signification from 'net income,' the usual and ordinary meaning of the word, when used alone, may be 'net income;'"

We also invite your attention to an opinion rendered to your Commission on December 2, 1933, wherein we held:

"The \$600.00 per annum is merely a yard stick to measure the need of the person, and whether the amount is received for an actual calendar year or is received for a space of time consecutively aggregating a year is of no importance.

While the statute uses the words "Six Hundred Dollars", we believe that if a pensioner has a store that is supplying daily wants, such as food, clothing, fuel etc., that the items so supplied for necessities by the store could be calculated and the value of such considered "income," and as authority for said statement we invite your attention to State ex rel. Bolen v. Frear, 148 Wis. 456, 134 N. W. 673, wherein the court, at page 691, said the following:

"In this connection, though not perhaps in its logical order, may be considered the objection to that provision of the act which directs that the estimated rental of residence property occupied by the owner shall be considered as income. It is said that this is not income, and that calling it income does not make it income. It may be conceded that things which are not in fact income cannot be made such by mere legislative fiat, yet it must also be conceded, we think, that income in its general sense need not necessarily be money. Clearly it must be money or that which is convertible into money. The Century Dictionary defines it as that which 'comes in to a person as payment for labor or services rendered in some office, or as gain from lands, business, the investment of capital,' etc. The clause was doubtless inserted in an effort to equalize the situation of two men each possessed of a house of equal rental value, one of whom rents his house to a tenant, while the other occupies his house himself. Under the clause in question, the two men with like property are placed upon an equal footing, and in no other way apparently can that be done. Under the English income tax laws, it has been held that where a man has a residence or right of residence which he can turn into money if he chooses, and he occupies the residence himself, the annual value of the rental forms part of his income. *Corke v. Fry*, 32 Scottish Law. Rep. 341. We discover no objection to the provision in question."

Yours very truly,

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Assistant Attorney-General

APPROVED:

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