

OLD AGE ASSISTANCE:

House Concurrent Resolution No. 16 in Senate Journal, p. 580, as it applies to Old Age Assistance and the Old Age Assistance Department.

May 13, 1937.

5-13



Honorable Allen M. Thompson
Commissioner
Old Age Assistance Department
Jefferson City, Missouri

Dear Sir:

This Department is in receipt of your letter of May 1, 1937, requesting an opinion as follows:

"Joint Resolutions of the House and Senate, No. 3 and No. 16, were unanimously adopted authorizing the various state departments to proceed with their usual payments of salary and other expense incidental to the operation of their offices. I assume that you have copies of both Resolutions referred to, and you will note that the usual limit was not placed on Old Age Assistance grants and administration.

"I would like to inquire if this means that we are to be confined to the 1935 and 1936 appropriation of \$2,500,000.00, likewise to the amount allowed for administration for that period."

This question necessarily calls for an interpretation of what was the intention of the Legislature when it passed said Resolution. A part of House Concurrent Resolution No. 16 in the Senate Journal, at page 580, is as follows:

"Be it resolved by the House of Representatives, the Senate concurring therein, That the State Auditor be requested to

audit and the State Treasurer to pay only such claims against the state as are authorized by the statutes for salaries and necessary expenses, including traveling expenses and postage maintaining and operating the office of * * * * * Old Age Assistance Department, Old Age Assistance, * * * * *; be it further

"Resolved that the State Auditor is hereby requested to only audit an amount not to exceed one-twenty-fourth, for each of the months of April, May and June of the appropriation made for these various institutions and departments for the last biennial period, except that he is requested to audit an amount not to exceed one-eighteenth of said appropriation for each of said months for the State School for the Deaf and for the State School for the Blind, and one-twelfth per month for Governor's Office and provided further that this paragraph shall not apply to the Old Age Assistance Department or Old Age Assistance; * * * * *"

We do not find any precedent in this State to be used as a guide in the construction of resolutions such as this, but in other jurisdictions resolutions of legislatures have been before the courts. In *Hawes & Co. v. Trigg & Co.*, 65 S. E., l. c. 553, the Supreme Court of Virginia, in speaking of Joint Resolutions of Congress, said:

"The difference between an act of Congress and a joint resolution is that the former governs all persons under the jurisdiction of the enacting power, while the latter is but a rule for the guidance of the agents and servants of the sovereign."

It is clear then that the Joint Resolution in the instant case is not a law by which the funds available for Old Age Assistance, and the Old Age Assistance Department are to be determined, but is merely a rule to be used as a guide.

In *Ann Arbor R. Co. v. United States*, 74 L. Ed., l. c. 1103, the Supreme Court of the United States said:

"The measure that is before us is the joint resolution which emerged from the legislative deliberations and proceedings. It is brought here to the end that we may determine its proper construction, which of course is to be done by applying to it the rules applicable to legislation in general."

That part of the Resolution with which we are concerned is in two paragraphs which we have set out, supra. The first requests the Auditor to audit and the Treasurer to pay those claims against the State that are authorized by statute and enumerates the various departments and institutions of which the salaries and expenses are to be paid.

The second paragraph requests the auditor to audit for the months of April, May and June, only a certain amount for each department or institution, this amount to be ascertained by taking a certain per cent. of that department's or institution's appropriation for the last biennial period. It is further provided that this paragraph shall not apply to the Old Age Assistance Department or Old Age Assistance.

The question now arises, as to what is meant by the proviso in the second paragraph relating to Old Age Assistance Department and Old Age Assistance? Does this proviso place a restriction on these two agencies as to the amount of money they are to receive, and if so, to what amount, if any, are they restricted?

In the *Ann Arbor R. Co.* case, supra, the rules which apply to the construction of statutes are made applicable to the construction of resolutions, and with this in mind we will attempt to construe said Resolution.

In *State v. City of St. Louis*, 73 S. W., l. c. 629, the Supreme Court of Missouri, in construing a proviso in a statute, said:

"A proviso is something ingrafted upon an enactment, and is used for the purpose

of taking special cases out of the general act, and providing specially for them. An exception is a clause similar to the proviso, exempting from the operation of an enactment that which, but for it, would have been included. A saving clause is an exception of a special thing out of general things mentioned in the statute. It is ordinarily a restriction in a repealing act, and saves rights, pending proceedings, penalties, etc., from the annihilation which would result from unrestricted repeal. The particular intent expressed in a proviso or exception will control the general intent of the enactment. The proviso should be confined to what immediately precedes, unless a contrary intent clearly appears, and should be construed with the section with which it is connected. This rule is not, however, absolute, and, if the context requires, the proviso may be construed as a limitation extending over more than what immediately precedes, or may amount to an independent enactment. * * * * *. Neither grammatical construction, punctuation, nor relative arrangement of the several parts of the section must be allowed to absolutely control. A common-sense interpretation is the safest and surest to apply, bearing always in mind the mischiefs to be remedied and the benefits to be secured by the law."

In *Brown v. Patterson*, 124 S. W. 1, it is said:

"In 32 Cyc. P. 743 the following outline of the purposes of a proviso to a law is given:

"A clause which generally contains a condition that a certain thing shall or shall not be done in order that something in another clause shall take effect; something ingrafted upon a preceding enactment, generally introduced

by the word 'provided'; something grafted upon a preceding enactment, and is legitimately used for the purpose of taking special cases out of the general enactments, and providing specially for them; something taken back from the power first declared."

In 2 Lewis' Sutherland Statutory Construction, p. 673, it is said to a like effect:

"The natural and appropriate office of the proviso being to restrain or qualify some preceding matter, it should be confined to what precedes it, unless it clearly appears to have been intended to apply to some other matter. It is to be construed in connection with the section of which it forms a part, and it is substantially an exception. If it be a proviso to a particular section, it does not apply to others unless plainly intended. It should be construed with reference to the immediately preceding parts of the clause to which it is attached. In other words, the proviso will be so restricted in the absence of anything in its terms, or the subject it deals with, evincing an intention to give it a broader effect. It is not an arbitrary rule to be enforced at all events, but is based on the presumption that the meaning of the lawmaker is thereby reached."

Applying these rules, as stated in the cases quoted from, supra, to the proviso in question, it necessarily follows: That the first paragraph of said Resolution requests that claims authorized by statute for salaries and necessary expenses etc., for Old Age Assistance, and the Old Age Assistance Department be audited and paid. The second paragraph requests, and fixes, the amount to be audited and paid to the various agencies and institutions mentioned in the first paragraph and provides that this paragraph shall not apply to Old Age Assistance and the Old Age Assistance Department.

Following the rules of construction, we think this proviso applies to that which immediately precedes the proviso, unless a contrary intention appears, and we are unable to ascertain anything to the contrary by a careful reading of said Resolution, keeping in mind the rules of construction which are set forth in the cases cited, supra. The particular intent expressed by the proviso will control the general intent expressed in the Resolution. The general intent of this Resolution is to provide funds in order that these various agencies and institutions may continue to carry out their usual functions until the Legislature shall make their appropriation for the ensuing biennial. For each of the institutions and agencies a definite amount was fixed, but the proviso in the second paragraph of said Resolution took Old Age Assistance and the Old Age Assistance Department out of the general enactment as to amounts the other agencies and institutions were to be restricted, and by doing so placed no definite restriction on the amount these two agencies are to receive.

Said Resolution could have no other meaning, if it is construed to mean that said proviso does not exempt Old Age Assistance and the Old Age Assistance Department from the definite amount of one-twenty-fourth of their last biennial appropriation, it would paralyze the functions of said agencies due to present lack of funds.

For example, if this proviso does not have the meaning which we have attached to it, we can see that these two agencies are limited to one-twenty-fourth of their last biennial appropriation for each month. The last biennial appropriation for these agencies, as we are informed, was approximately \$2,500,000. One-twenty-fourth of this amount would be approximately \$104,000 per month, which would be available to carry out the functions of the Old Age Pension laws. Our information is that at present the Old Age Assistance requires approximately \$600,000 per month, not including the expenses of the Old Age Assistance Department. If this proviso was not intended to give these agencies such money as is necessary, then the Legislature has, indirectly, literally rendered useless our Old Age Pension laws. We think a common-sense construction is best, safest and surest, to apply here, yet, keeping in mind the rules of construction above set out, we think the interpretation to be given this Resolution, as

May 13, 1937.

indicated by the proviso, is that the Old Age Assistance and the Old Age Assistance Department are not limited to one-twenty-fourth of their last biennial appropriation but are to be allowed such funds as may be necessary to carry out their functions.

Therefore, it is our opinion, in view of the premises, that this proviso applies to the second paragraph of said Resolution, beginning with the word "Resolved," and takes Old Age Assistance and the Old Age Assistance Department out of said second paragraph in so far as it limits these two agencies to any definite amount which is to be available for the months of April, May, June, 1937, and further that the purpose of said proviso is to permit these agencies to expend as much as may be necessary to meet Old Age Assistance Pension payments and to pay legitimate expenses of the Old Age Assistance Department.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

(Acting) J. E. TAYLOR
Attorney-General

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