

FEDERAL OLD
SOLDIERS' HOME:

Board of Trustees of Federal Old Soldiers' Home at St. James, Missouri, is not authorized under Section 212.130, RSMo. 1949, to require a pensioned resident-member of the Home to pay out his or her pension into the Federal Soldiers' Home during the time of their membership in the Home.



January 14, 1954

Mr. W. W. Jackson
President, Board of Trustees
Federal Soldiers' Home
St. James, Missouri

Dear Sir:

This office is in receipt of a request from your department for an official opinion which reads:

"I am writing to you as the President of the Board of Trustees of the Federal Soldiers Home of Missouri, here at St. James.

"The Board of Trustees are preparing to revise their By-Laws, Rules and Regulations for the government of the Federal Soldiers Home. We prepare these rules, regulations and by-laws as provided for in Sec. 212.130 Missouri Revised Statutes of 1949.

"There is a question that has been bothering the Board of Trustees for some time and now that we are preparing a revision of the by-laws, rules, and regulations, it seems that we should have your opinion on this point.

"Does the Board of Trustees have the authority or power to require a pensioner to pay a portion or all of their pension to the Soldiers Home during the time they live at the Home as a member of it?

"I have learned that the Federal Government in their laws permit it and says that it is up to the State to make its own requirements. Also I find that at least the States of Iowa and Indiana do charge their members of the State Soldiers Homes a portion of their pensions.

Mr. W. W. Jackson

"The reason we are thinking of providing for a charge to the members who are Federal Pensioners is that we find a pensioner may be indigent from the standpoint that he is not able to care for himself on his pension, but if we admit him or her as a member of the Home and care for them, he or she does not need all of the pension the Federal Government is paying them and we think it right and proper that the Home charge at least a portion of the pension to help pay for his care and keep.

"So I am asking as president of the Board of Trustees whether we may make the charge as a part of our Regulations or is that a matter for the Legislature to decide?"

In order to determine the power and authority of the Board of Trustees to require a pensioner to pay a portion or all of a pension to the Soldiers' Home, we must first look back to the original law for the Federal Soldiers' Home at St. James, which is contained in Laws 1897, page 28, et seq. Section 1 thereof provided as follows:

"Section 1. That the governor of the state of Missouri be and he is hereby authorized and empowered to appoint, by and with the advice and consent of the senate, a board of trustees to be composed of nine members of whom six shall have served as soldiers or sailors in the volunteer army or navy of the United States, and three of the others may be members of the woman's relief corps of the state of Missouri, and who shall be citizens of the state of Missouri, and whose duty it shall be to establish and maintain a home in the state of Missouri for disabled and indigent soldiers and sailors and army nurses who enlisted, served and participated in the Mexican war and the war of the rebellion for the preservation of the union of the United States; and also for the aged wives of such soldiers and sailors."

Section 2, which provided for the organization of a Board and meeting place, the terms of, their appointment, is omitted here for purposes of brevity.

Section 3, on page 30, Laws 1897, is as follows:

Mr. W. W. Jackson

"The said board of trustees is hereby authorized and empowered to receive for a nominal consideration from the corporation known as the 'Women's relief corps soldiers' home' a good and sufficient conveyance of the property, comprising fifty-nine acres, more or less, in or near St. James, in the county of Phelps, known as the soldiers' home of said place, vesting the title to said property in the state of Missouri."

Omitting Section 4 it was provided in Section 5, as follows:

"That the soldiers and sailors who shall be entitled to admission into said home shall be citizens of the State of Missouri, who were honorably discharged from the service of the United States, and who are in indigent circumstances and from any disability (not received in any illegal act) are unable to support themselves by manual labor, and that the aged wife of such soldier or sailor, and army nurses who served with the armies of the United States, shall also be entitled to admission in said home, provided they be in indigent circumstances and unable to support themselves by manual labor."

The context of Laws of 1897, page 28, above, shows that the members of the Home were required by the Legislature as a condition for their admission to be indigent and since old soldiers under almost identical circumstances as provided in Section 5, supra, for admission to the Home were then entitled to federal pensions, it should be assumed that the Legislature had knowledge of the law at the time they originally provided for admission to the Home.

In the Matter of Hale v. Stimson, 198 Mo. 134, in 1906, Judge Henry Lamm said in that opinion as follows: (l.c. 153, 154)

"The General Assembly enacting that amendment passed two other acts (Laws 1897, pp.26 et seq.) --one of them pertaining to the Confederate Home at Higginville, the other to the Federal Soldiers' Home at St. James. They are twin enactments containing the same provisions, mutatis, mutandis, having the same motif-- the one, taking unto the State the ownership and management of an existing Confederate Home at Higginville, the other, an existing Federal Soldiers' Home at St. James. At one

Mr. W. W. Jackson

home, the infirm and indigent ex-confederate soldiers and sailors, their wives, widows and orphans had been maintained by private beneficence and were to be thereafter maintained by the State. At the other, there had been maintained by private means the disabled and indigent soldiers engaged in the civil war for the preservation of the union of the United States, and their aged wives, and thereafter these were to be maintained, as well as those who served and participated in the Mexican war, by the State. By the one, it was contracted that the Confederate Home should be maintained for a term of twenty years, or so long as shall be needed for the purposes of the act, and the consideration was the absolute transfer to the State of 362.86 acres of land near Higginville in Lafayette county, less a cemetery lot. The other act was also contractual in character and based on the consideration of the transfer by the 'Woman's Relief Corps Soldiers' Home' of a good and sufficient conveyance of 59 acres, more or less, in or near St. James in the county of Phelps. By the one, there seems to have been no limitation on the discretion of the board of managers to admit occupants to the Confederate Home, except, generally, that such occupants should be infirm and indigent ex-confederate soldiers and sailors, their wives, widows and orphans. By the other, there was a restriction, to-wit, the soldiers and sailors were required to be citizens of the State of Missouri who were honorably discharged from the service of the United States and who are in indigent circumstances and, from any disability (not received in any illegal act), are unable to support themselves by manual labor, providing further that the aged wives of such soldiers or sailors and army nurses who served with the armies of the United States, if indigent and unable to support themselves by manual labor, shall also be entitled to admission. By both acts, county courts or the friends of the applicants were required to pay the expenses of sending them to said homes."

The words of the learned Judge which summarized the above quoted Laws of 1897, are now to be found almost verbatim in Section 212.140, RSMo. 1949.

In the Hale v. Stimson case, supra, it was contended that the members of the Home were not entitled to vote under the prohibition

Mr. W. W. Jackson

that no person kept at any poorhouse or asylum at public expense shall be entitled to vote at any election under the laws of this state. It was assumed and admitted by Judge Lamm in that opinion that on account of the contract which the State consummated by the law of 1897, that the members of the Federal Soldiers' Home be kept without charge.

At this late date after sixty-six years of interpretation by the officers of this state and others, not only can it be said that from an interpretation of the actual words of the statute and its clear context but the history of construction as reported in *Hale v. Stimson*, supra, the only conclusion is that it was never intended that the members of the Federal Soldiers' Home be charged for their keep.

In *State v. Thompson*, 85 S.W.(2d) 594, at l.c. 600, our Supreme Court quoted from *State ex rel. White vs. Ferndorff*, 317 Mo. 579, 586, 296 S.W. 787, 789, this doctrine is approvingly quoted from Cyc. pages 1140, 1141:

"* * *The construction placed upon a statute by the officers whose duty it is to execute it is entitled to great consideration, especially if such construction has been made by the highest officers in the executive department of the government, or has been observed and acted upon for many years, and such construction should not be disregarded or overturned unless it is clearly erroneous." (Italics ours.)"

CONCLUSION

Therefore, it is the conclusion of this office that the Board of Trustees of the Federal Soldiers' Home at St. James, Missouri is not authorized under Section 212.130, RSMo 1949, to require a pensioned resident-member of the Home to pay out his or her pension into the Federal Soldiers' Home during the time of membership in the Home.

This opinion which I hereby approve, was written by my assistant, Mr. James W. Paris.

Yours very truly,

JOHN M. DALTON
Attorney General