

OLD AGE ASSISTANCE:  
REAL PROPERTY:  
DEED:

Eligibility of applicants for old age assistance and recipients to continue to receive benefits under State Social Security Act governed by provisions of said Act and not by decision rendered in St. Louis County National Bank vs. Fielder, 260 S.W.2d 483.



March 23, 1955

Honorable Noel Cox  
Missouri State Senate  
State Capitol Building  
Jefferson City, Missouri

Dear Senator Cox:

This will acknowledge receipt of your recent request for an opinion as to whether an old age pensioner may now dispose of his property by deed without violating the rule laid down by the State Social Security Commission in view of the decision rendered in St. Louis County National Bank vs. Fielder, 260 S.W.2d 483.

We have read that decision, which merely provides that a conveyance was made by deed, even though it may only convey a defeasible fee, when subject to grantor retaining the right and power to sell, rent, mortgage, lease or otherwise dispose of same; that the present trend is to hold such conveyance by deed with such reservations, valid, and upon termination of the life estate of the grantor where the power to revoke was not exercised, the grantee becomes absolute owner.

The foregoing decision does not hold that there was any consideration given for executing such a conveyance. This may be important, in view of the provisions of Section 208.010, RSMo Cum. Supp. 1953, which disqualifies an applicant or recipient who disposes of property without a consideration in order to qualify for benefits thereunder.

We are unable to find any rule of said commission or the Division of Welfare of the Department of Public Health and Welfare, successors in office to the State Social Security Commission, relative to the transfer of such property other than when such property is considered by such body as a resource. However, Section 208.010, RSMo Cum. Supp. 1953, is pertinent to your request and is probably the statute you refer to in this instance. It reads, in part:

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"In determining the eligibility of a claimant for public assistance under this law, it shall be the duty of the division of welfare to consider and take into account all facts and circumstances surrounding the claimant, including his earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the claimant is not found to be in need, assistance shall be denied. The amount of benefits when added to all other income, resources, support and maintenance shall provide such persons with reasonable subsistence compatible with decency and health in accordance with standards developed by the division of welfare. In determining the need of a claimant in federally aided programs, such amounts per month of earned income shall be disregarded in making such determination as shall be required for federal participation by the provisions of the Federal Social Security Act (42 USCA 301 et seq.), or any amendments thereto. Irregular, casual, and unpredictable income received by a claimant from performing odd jobs shall be excluded in calculating income. Benefits shall not be payable to any person who:

"(1) Has made, or whose spouse has made, a voluntary assignment, conveyance or transfer of property within five years for the purpose of rendering himself or spouse eligible for benefits or for the purpose of increasing his or their need for benefits. Any person who has assigned, conveyed or transferred property without receiving fair and valuable consideration therefor within five years preceding the date of the investigation shall be presumed to have made such assignment, conveyance or transfer for the purpose of rendering himself or spouse eligible for benefits or to increase his or their need for benefits. 'Fair and valuable

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consideration' as used herein shall not, for the purpose of this section, be construed to include past support, contributions or services rendered by a relative to a claimant;

"(2) Owns or possesses cash or securities in the sum of five hundred dollars or more; provided, however, that if such person is married and not separated from spouse, he or they, individually or jointly, may own cash and securities of a total value of one thousand dollars; and provided, further, that in the case of an aid to dependent children claimant the provisions of this subsection shall apply only to the cash and securities owned by the parent and child or children, who may own cash and securities of a total amount not to exceed one thousand dollars, and not to other relatives with whom the child may reside;

"(3) Owns or possesses property of any kind or character, or has an interest in property, the value of which, as determined by the division of welfare, exceeds five thousand dollars, or if married and actually living with husband or wife, if the value of his or her property, or the value of his or her interest in property, together with that of such husband or wife, exceeds said amount; provided, however, that in the case of an aid to dependent children claimant this limitation shall apply only to property owned by parent and child or children and not to other relatives with whom the child may reside;

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"(5) Has earning capacity, income, or resources, whether such income or resources is received from some other person or persons, gifts or otherwise, sufficient to meet his needs for a reasonable subsistence compatible with decency and health."

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Your request is very general and does not relate to any specific set of facts which, if we had, would be much easier to pass upon.

At the moment we can think of certain instances wherein such a conveyance might not in any manner affect the rights of a recipient to old age assistance; however, in many other instances it might affect their right to receive such benefits.

The decision referred to, namely, St. Louis County National Bank v. Fielder, supra, was not based on any provision of the State Social Security Act, and Section 208.010, supra, was not taken into consideration in rendering the same. Had the grantor therein been an old age recipient there would be no question under said decision as to his right to convey said property as provided therein, and it would have been a conveyance of a defeasible fee, but that decision does not settle any question as to whether or not in so doing he would have disqualified himself to longer remain upon the old age assistance roll or receive benefits thereunder. In other words, the decision in no way finally determines the grantor's qualifications to receive benefits under the State Social Security Act. That must be determined only from a review of the Act itself.

Under the Act, Section 208.010, supra, clearly disqualifies any applicant or recipient who has made or whose spouse has made a voluntary assignment, conveyance or transfer of property within five years for the purpose of rendering himself or spouse eligible for benefits or for the purpose of increasing their needs for such benefits. Furthermore, any person who has assigned, conveyed or transferred property without receiving a fair and valuable consideration therefor, within five years preceding the date of investigation, shall be presumed to have assigned, conveyed or transferred for the purpose of rendering himself or spouse eligible for benefits or to increase their need for benefits. Said statute further defines "fair and valuable consideration," and provides that it shall not, for the purpose of this section, be construed to include past support, contributions or services rendered by a relative to a claimant.

In the absence of such limitations placed upon applicants or recipients of or for old age assistance benefits, fair and valuable consideration would have an entirely different meaning; even love and affection has been held to be a valuable consideration for such a transfer. However, the appellate courts of

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this state have repeatedly held that such benefits are merely gratuities given by the legislature and that same may likewise be modified or taken away by the legislature. Howlett v. Social Security Commission, 149 S.W.2d 806, 347 Mo. 784; Hardy v. State Social Security Commission, 187 S.W.2d 520.

Formerly Section 208.010 contained no such restriction on such persons desiring to convey their property, or at least it was very general and provided only that no such persons should dispose of their property in order to qualify or receive increased benefits. The legislature, in order to prevent abuses, has put some teeth in the present law and has defined "fair and valuable consideration" for the purpose of the State Social Security Act, and further added the presumption hereinabove mentioned, that such disposition of property within five years preceding the date of investigation was made for the purpose of rendering himself or spouse eligible for old age assistance or increased grant.

Section 208.010, supra, is more in the nature of a special statute, dealing particularly with conveyances or disposition of their property, as it affects their eligibility for benefits under the State Social Security Act, and does not apply to anyone not applying for benefits or only receiving benefits under said Act. Therefore it is an exception to the rule or any general law normally affecting all persons. Menemeyer v. Hart, 221 S.W.2d 960, 359 Mo. 423.

In view of the provisions of Section 208.010, supra, we believe the decision referred to in your request is not applicable to conveyances or disposition of property made by applicants for old age assistance or recipients of benefits under the State Social Security Act, for the purpose of determining their eligibility for benefits or increased grants.

#### CONCLUSION

Therefore, it is the opinion of this department that while applicants for old age assistance and recipients now receiving old age assistance benefits under the State Social Security Act may dispose of their property in accordance with the decision

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rendered in St. Louis County National Bank v. Fielder, 260 S.W.2d 483, their right to eligibility for such benefits, and to continue to receive same, will be governed by the provisions of Section 208.010, RSMo Cum. Supp. 1953.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton  
Attorney General

ARR/vtl