PENSIONS:
STATE SOCIAL SECURITY COMMISSION:

Regulation refusing to permit persons 65 years of age to file application for six months is unreasonable and contrary to law.

February 20, 1940 7/22

FILED 37

Hon. Roy Hamlin
Majority Floor Leader
Missouri House of Representatives
Sixtieth General Assembly
Hannibal, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion under date of February 7, 1940, which reads as follows:

> "The Hannibal office of the Social Security Commission are refusing to give applications for Old Age Assistance to persons sixty-five and over unless they are on relief until after June 1st.
>
> "I have had numerous complaints recently in reference to this and am writing this letter asking your opinion as to whether or not the Social Security Commission can refuse to allow persons sixty-five and over to apply for assistance at this time, or if they have the authority to refuse to permit them to apply for six months longer."

A cardinal rule of construction of statutes is to ascertain and give effect to lawmakers' intent and this should be done from words use, if possible, considering the language honestly and faithfully. Wallace v. Woods, 102 S. W. (2d) 91, 340 Mo. 452.

Under the Federal Act it was mandatory that the State of Missouri reduce the age for persons qualifying for old age assistance to sixty-five years by January 1, 1940, or forfeit federal participation.

Under the Federal Social Security Act an appropriation was made available to be used for making payments to states which have submitted and had approved by the Federal Social Security Board state plans for old age assistance. Section 301, Title I, Chapter 7 of the Federal Social Security Act reads as follows:

"TITLE I -- GRANTS TO STATES FOR OLD-AGE ASSISTANCE

Section 301. Appropriations

"For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to aged needy individuals, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $49,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of sections 301 to 306 of this chapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Social Security Board established by section 901 of this chapter (hereinafter referred to as the 'Board'), State plans for old-age assistance. (Aug. 14, 1935, c. 531, Title 1, Sec. 1, 49 Stat. 620.)"

Under Section 302 of this same Act it provides under what conditions the Federal Social Security Board shall approve any state plan and one of the pre-requisites for approval is that it shall not accept and approve any plan which imposes as a condition of eligibility for old age assistance an age requirement of more than sixty-five years after January 1, 1940, and reads, in part, as follows:

> "(a) A State plan for old-age assistance must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Board shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Board to be necessary for the proper and efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from

time to time find necessary to assure the correctness and verification of such reports; (7) effective July 1, 1941, provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming old-age assistance; and (8) effective July 1, 1941, provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of old-age assistance.

"(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for old-age assistance under the plan--

"(1) An age requirement of more than sixty-five years, except that the plan may impose, effective until January 1, 1940, an age requirement of as much as seventy years; or

* * * * * * * * * * * * * * * * * * * *"

At the general election held on November 8, 1938, the qualified voters of this State, by a majority of votes, almost two to one, adopted the following Constitutional Amendment:

"Amendment to Article IV, Section 47, Constitution of the State of Missouri-

"That Section 47 of Article IV of the Constitution, be and the same is hereby amended by striking out the last proviso from said section relating to pensions for persons over seventy years

> of age, and by inserting in lieu thereof the following: Provided, further, that nothing in this Constitution contained shall be construed as prohibiting the General Assembly from granting or authorizing the granting, under such conditions and regulations as may be provided by law, of pensions or assistance to persons over sixty-five years of age, who are incapacitated from earning a livelihood and are without means of support."

In compliance with the Federal Act and the Constitutional Amendment adopted by the voters of this State on November 8, 1938, the Sixtieth General Assembly repealed Section 12, page 474, Laws of 1937, which provided old age assistance shall be granted to persons who were seventy years of age and over, and enacted in lieu thereof a new section 12, page 735, Laws of 1939, with an emergency clause, which reads as follows:

> "Pensions or old age assistance shall be granted under this Act to any person who:
>
> "(1) is 70 years of age or over, which provision as to age shall be effective up to and including December 31, 1939; and after that date the provision as to age for the purpose of qualifying for a pension or old age assistance under the provision of this section shall be 65 years of age or more;
>
> "(2) is incapacitated from earning a livelihood and has not sufficient income or other resources, as described in Section 11, to provide a reasonable

subsistence compatible with decency and health, and is without adequate means of support;

"(3) has resided in the State for five years or more within the nine years immediately preceding application for assistance and for the one year next preceding the date of application for assistance."

The above provision became effective on the 28th day of February, 1939.

In view of the foregoing, it was evidently the full intention of the qualified voters at the general election on November 8, 1938, as well as the Sixtieth General Assembly, that Section 12, Laws of 1939, supra, shall become effective on the 28th day of February, 1939, and that after March 1, 1940, persons sixty-five years of age and over may apply for old age assistance. This was done so that the State of Missouri may receive federal participation.

The State Social Security Commission has been specifically granted powers to adopt rules and regulations in administering this Act. However, said rule and regulation shall not be inconsistent with the Constitution and the Laws of this State.

Section 4, page 470, Laws of 1937, reads in part as follows:

* * * * * * * * * * * * * * * * * * * *

"The State Commission shall also have power and it shall be its duty:

"(1) To adopt, amend, and repeal rules and regulations not inconsistent with the Constitution or laws of this State.

* * * * * * * * * * * * * * * * * * * *"

Section 14, Laws of 1937, page 474, provides an application shall be filed in the county office, and reads as follows:

> "Application for any benefits under any law of this state administered by the State Commission acting as a state agency shall be filed in the county office. Application for aid to dependent children shall be made by the person with whom the child will live while receiving aid. All applications shall be in writing, or reduced to writing upon blank forms furnished by the State Commission, and shall contain such information as may be required by the State Commission or by any federal authorities under the Social Security Act and amendments thereto. The term benefits as used herein or in this Act shall be construed to mean:
>
> "(1) Pensions or old age assistance;
> (2) aid to dependent children;
> (3) aid or public relief to individuals in cases of public calamity;
> (4) money or services available for child welfare services;
> (5) any other grant, aid, pension or assistance administered by the State Commission."

Section 15, page 475, Laws of 1937, provides when the application is received an investigation and record shall be promptly made, and reads as follows:

> "Whenever the county office receives an application for benefits an investigation and record shall be promptly made of the circumstances of the applicant by the county office in order to ascertain the facts supporting the

> application. Upon the completion of such investigation the State Administrator, or some one designated by him, shall decide whether the applicant is eligible for benefits and if entitled to benefits determine the amount thereof and the date on which such benefits shall begin. The Secretary of the County Commission shall notify the applicant of the decision."

Section 16, page 736, Laws of 1939, in part, reads as follows:

> "If an application is not acted upon within a reasonable time after the filing of the application or is denied in whole, or in part, or if any benefits are cancelled or modified under the provisions of this Act, the applicant for pensions, or old age assistance, or aid to dependent children, shall be notified at once and may appeal to the State Commission, * * *"

These statutory provisions all clearly indicate the Legislature never contemplated the State Social Security Commission should refuse at any reasonable time to permit any person to file an application for old age assistance. It does, however, under Section 16, provide for an appeal if the application is not acted upon within a reasonable time after the filing of same.

In answering your request, we are assuming that the State Social Security Commission has adopted a rule or regulation denying persons sixty-five years of age and over the right to apply for old age assistance for at least six months. To answer this request, we must try to determine what would be a reasonable regulation, and whether or not said regulation super-

sedes the Constitution and the Laws of the State.

It is fundamental that to deny the Legislature the right to delegate the power to determine some fact upon which the enforcement of an enactment depends would stop the wheels of government.

Cooley's Constitutional Limitations, Vol 1, 8th Ed. page 231, makes the following statement regarding the important part boards and commissions now play in the administration of our laws, as follows:

> "Boards and commissions now play an important part in the administration of our laws. The great social and industrial evolution of the past century, and the many demands made upon our legislatures by the increasing complexity of human activities, have made essential the creation of these administrative bodies and the delegation to them of certain powers. Though legislative power cannot be delegated to boards and commissions, the legislature may delegate to them administrative functions in carrying out the purposes of a statute and various governmental powers for the more efficient administration of the laws."

Volume 12, C. J. page 845, Section 329, in part, lays down the well settled law in this State as to just how far a board or commission may go in promulgating rules and regulations for the enforcement of any statutory provision, which reads as follows:

> "Especially may the legislature authorize an administrative officer or body to make rules and regulations relating to the administration or enforcement of the law. Thus congress may confer on the president authority

to make rules and regulations for the government of the militia and for calling them into active service, on the secretary of the treasury the power to establish standards to which imported articles of a certain kind must conform, on the secretary of agriculture authority to establish regulations to prevent the spread of contagious diseases of animals, on the secretary of war authority to prescribe rules and regulations for the use, administration, and navigation of canals operated by the government, and to determine whether bridges across navigable streams constitute unreasonable obstructions to navigation, on harbor supervisors power to prescribe limits within which refuse and other material may be dumped, and on certain executive officers, such as the secretary of the interior and the secretary of agriculture, authority to prescribe rules governing the forest reservations, and may require such executive officers to enforce their opinions and rulings by proceedings in the courts; and a state legislature may authorize executive officers to regulate the packing and marking of oleomargine, to fix minimum standards and define specific adulterations under a pure food and drug act, to regulate transportation of live stock within the state, and to make pilotage regulations. The power conferred to make regulations for carrying a statute into effect must be exercised within the powers delegated, that is to say, must be confined to details for regulating the mode of pro-ceeding to carry into effect the law as it has been enacted, and it cannot be extended to amending or adding to the requirements of the statute itself; but it is presumed that regulations adopted were to carry out only

> the provisions of the statute and not to embrace matters not covered, not intended to be covered, thereby. Rules that operate to subvert the statute may not be framed under a delegation of power to the executive."

Volume 12, C. J. page 847, Section 330, reads as follows:

> "While the power to make laws may not be delegated to a board or commission, nor may the legislature, without prescribing any standard of exemption, leave it wholly to the discretion of a commissioner to exempt persons from the operation of a statute, yet, a certain policy or rule having been prescribed by statute, matters of detail in carrying out the executive duty of giving effect to the legislative will may be left to boards or commissioners. The interstate commerce commission is a conspicuous illustration of this rule."

In Gregory v. Kansas City, 244 Mo. 523, l. c. 550-51, the court said:

> "Respondents also assail the constitutionality of the civil service provisions of the new charter of Kansas City, on the ground that the said charter delegates legislative powers to the board of civil service commissioners therein provided for, citing article 9, section 17, Constitution of Missouri, which provides that cities adopting special charters must have a mayor and 'two houses of legislation.'

> "The power granted to the civil service commissioners to prepare and promulgate rules for conducting the examination of applicants for appointment in the competitive class of the classified civil service of Kansas City does not confer upon said civil service commissioners legislative powers.
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> "The right of legislative bodies (or the people) to confer authority upon executive boards to prescribe rules for putting in force the powers and duties conferred upon such boards is fully recognized in the following cases: State v. Hathaway, 115 Mo. 36, l. c. 47; State v. Doerring, 194 Mo. 398; Opinion of the Justices, 138 Mass. 601; The People v. Kipley, 171 Ill. 44; State ex rel. v. Frear, 146 Wis. 291; People v. Chicago, 234 Ill. 416."

In Wyeth v. Thomas, 23 L. R. A. New Series, 147, l. c. 151 and 152, the Board of Embalmers in the State of Massachusetts promulgated a rule that no one could reform the duties of an undertaker without having procured a license of the Board of Registration in Embalming. Regarding the validity of this rule, the Supreme Court of Massachusetts said:

> "We can see no such connection between requiring all undertakers to be licensed embalmers and the promotion of the public health, as to bring the making of this regulation by the board of registration in embalming, or the refusal of a license by the board of health on account of the regulation, within the exercise of the police power by the state. If such a regulation had been made by an act of the legislature, with all the strong presumptions of constitutionality which attach to legislative action, we should hesitate to

affirm the constitutionality of the act. But action by such a board, under mere general authority to make rules and regulations, does not carry with it these strong presumptions. We consider this action without foundation in law or reason, and in violation of the constitutional rights of our citizens.

* * * * * * * * * * * * * * * * * * * *

"We decide that the refusal of the respondents to grant the petitioner a license as an undertaker, solely for the reason that he is not licensed as an embalmer, is unwarranted, improper, and illegal. According to the report upon this determination of the question of law, a writ of mandamus is to issue. * * * * * * *"

Also, in United States v. Grimaud, 55 L. Ed. 563, l. c. 569, the court held that the Legislature cannot delegate its power or make a law but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend.

"And again he said in Marshall Field & Co. v. Clark, 143 U. S. 694, 36 L. ed. 310, 12 Sup. Ct. Rep. 495:

* 'The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise

> and useful legislation must depend which cannot be known to the lawmaking power, and must therefore be a subject of inquiry and determination outside of the halls of legislation.' * * * **"

* *

"That 'Congress cannot delegate legislative power is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution.' Marshall Field & Co. v. Clark, 143 U. S. 692, 36 L. ed. 309, 12 Sup. Ct. Rep. 495. But the authority to make administrative rules is not a delegation of legislative power, nor are such rules raised from an administrative to a legislative character because the violation thereof is punished as a public offense."

In Field v. Clark, 12 S. Ct. Rep. 495, l. c. 505, the court said:

"'The true distinction,' as Judge Ranney, speaking for the Supreme court of Ohio, has well said, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' Railroad Co. v. Commissioners, 1 Ohio St. 88. In Moers v. City of Reading, 21 Pa. St. 202, the language of the court was: 'Half the statutes on our books are in the alternative, depending on the discretion of some person or persons to whom is con-

> fided the duty of determining whether the proper occasion exists for executing them. But it cannot be said that the exercise of such discretion is the making of the law.' So, in Locke's Appeal, 72 Pa. St. 491; 'To assert that a law is less than a law because it is made to depend on a future event or an act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.' The proper distinction, the court said, was this: 'The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must therefore be a subject of inquiry and determination outside of the halls of legislation.'
>
> "What has been said is equally applicable to the objection that the third section of the act invests the president with treaty-making power."

While we have not found any case wherein this identical question was raised, we do conclude from what has been heretofore said and the decisions hereinabove cited, that the Legislature never contemplated that the State Social Security Commission should refuse to permit any person to file his application for six months after the request to file same was made. There might be some extenuating circumstances for refusing to permit a person to file an application as of the day he appears to make known his desire to file his application. We are of the opinion that the Commission may prescribe and regulate the

manner in which this may be done. It is within their discretion to prescribe some systematic manner of filling out and receiving said application in order to avoid such confusion and disorder. But such regulations must be reasonable and not capricious or arbitrary and must conform to the law.

To hold that the State Social Security Commission is authorized to refuse to permit the filing of an application for six months would defeat the very purpose of the recent constitutional amendment by the qualified voters of this state, and the recently enacted amendment to the State Social Security Act permitting one sixty-five years of age and over to apply for old age assistance on and after the 1st day of January, 1940. In fact, this would be, in effect, legislating. It would supersede the law as enacted by the Legislature.

Therefore, it is the opinion of this Department that such a regulation does not conform to the State Social Security Act, but supersedes it and is invalid.

Respectfully submitted,

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APPROVED:

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ARH:RV