SOCIAL SECURITY, APPEALS: A procedural statute is applicable to actions which have accrued or are pending as well as to future actions.

June 2nd, 1939.

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Hon. George I. Haworth,
Administrator,
State Social Security Commission,
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your request for an official opinion under date of June 1st, 1939, which reads as follows:

> "The Sixtieth General Assembly has enacted Senate Bill Number 31 which repealed and re-enacted Section 16 of the State Social Security Law. A number of appeals to this Commission were pending at the time Senate Bill 31 was enacted. There were also several cases pending in the circuit and appellate courts.
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> " Question: What law should govern the actions pending at this time? The statute in effect at the time the appeal was granted or the newly enacted statute?
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> "The Federal Social Security Board has made inquiry as to the manner in which litigation pending at the time of passage of Senate Bill Number 31 is to be handled, and we would appreciate receiving an opinion from you on the above question at your earliest convenience."

Your inquiry requires a careful consideration of Section 16, page 475, Laws of Missouri, 1937, which was the provision for appeal before same was amended by the Sixtieth General Assembly. Senate Bill No. 31 as passed by the present General Assembly carries an emergency clause, and the same has been signed by the Governor and is now the law in this state. Section 16, Laws of Missouri, 1937, p. 475, 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, may appeal to the State Commission in the manner and form prescribed by thethe State Commission. The State Commission shall upon receipt of such appeal give the applicant reasonable notice of and opportunity for a fair hearing. The State Commission shall determine all questions presented by the appeal. Any applicant aggrieved by the action of the State Commission in the denial of benefits in passing upon the appeal to the State Commission may appeal to the circuit court of his or her judicial circuit within ninety days from the decision appealed from, by giving the State Commission notice of such appeal. Such appeal shall be tried in the circuit court de novo on the sole question of whether the applicant is entitled to benefits

and not as to the amount thereof, and the circuit clerk shall notify the State Commission of such decision. If the judgment be in favor of the applicant, a certified copy of same shall be mailed to the State Commission. Appeals may be had from the circuit court as in civil cases."

Senate Bill No. 31, Section 16, reads as follows:

"If an applicant 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 dependant children, shall be notified at once and may appeal to the State Commission, said appeal from the State Administrator to the State Commission shall be filed in the office of the secretary of the county commission by the aggrieved applicant within ninety days from the date of the action and decision appealed from. Proper blank form for appeal to the State Commission shall, upon request, be furnished by the county office to any aggrieved applicant and every such appeal to the State Commission shall be certified and transmitted by the county office to the State Commission within ten days after same is filed with the county office. The State Commission shall upon receipt of such an appeal give the applicant reasonable notice of, and opportunity for, a fair and speedy hearing in the county of the residence of the applicant. Every applicant on appeal to the State Commission shall be entitled

to be present, in person and by attorney, at the hearing, and shall be entitled to introduce into the record at said hearing any and all evidence, by witnesses or otherwise, pertinent to such applicant's eligibility as defined under the provision of Sections 11 and 12 of this act and all such evidence shall be taken down, preserved and shall become a part of the applicant's record in said case, and upon the record so made the State Commission shall determine all questions presented by the appeal. Any applicant aggrieved by the action of the State Commission by the denial of benefits in passing upon the appeal to the State Commission may appeal to the circuit court of the county in which such applicant resides within ninety days from the date of the action and decision appealed from. The State Commission, upon a denial of benefits to the applicant, shall, upon request, furnish said applicant with proper form of affidavit for appeal from the said Commission to the Circuit court of the county in which the applicant resides. Upon the affidavit for appeal, duly executed by the applicant before an officer authorized to administer oaths, being filed with the State Commission within ninety days from the date of the said Commission's decision denying benefits to said applicant, the entire record preserved in the case at the time of the applicant's hearing, together with the appeal, shall, by the State Commission,

be certified to the circuit court of the county in which the applicant resides and said case shall be docketed as other civil cases except that neither party shall be required to give bond or deposit any money for docket fee on appeal to the Circuit Court. Such appeal shall be tried in the circuit court upon the record of the proceedings had before and certified by the State Commission, which shall in such case be certified and included in the return of the State Commission to the court. Upon the record so certified by the State Commission, the circuit court shall determine whether or not a fair hearing has been granted the individual. If the court shall decide for any reason that a fair hearing and determination of the applicant's eligibility and rights under this act was not granted the individual by the State Commission, or that its decision was arbitrary and unreasonable, the court shall, in such event, remand the proceedings for redetermination of the issues by the State Commission. Appeals may be had by either party from the circuit court upon the record in the same manner as provided herein for appeals from the State Commission to the Circuit Court and all appeals to the Circuit and Appellate Courts shall be advanced on the docket of said Courts for immediate hearing and determination. In no event when appeal is taken shall any person's name be removed from the rolls of public assistance under this act, until the case has been heard and determined by the State Social Security Commission. The file and record of

> every person whose name is duly entered upon the public assistance rolls of this state shall, at all reasonable times, be open to inspection by such individual and to any representative of such individual."

This request only goes to the proper manner of procedure on appeals, where litigation was commenced under the former provision and was pending when the amendment became effective.

Under the common law there was no right of appeal. Therefore, in the absence of any constitutional or statutory right of appeal, there is none.

3 C. J., Section 29, page 316, reads in part as follows:

> "The proceeding by appeal was entirely unknown to the common law. It is of civil-law origin, and was introduced therefore into courts of equity and admiralty. Consequently, the remedy by appeal in actions at law, and in this country in equity also, is purely of constitutional or statutory origin, and exists only when given by some constitutional or statutory provision."

The General Assembly may, in its discretion, take away this remedy or modify same. Section 30 of 3 C. J., page 318, reads as follows:

> "Where the remedy by appeal is not secured by the constitution, but is purely statutory, it is subject to the control of the Legislature, which may, in its discretion, grant or take away the

> remedy, and prescribe in what cases, under what circumstances, in what manner, and to or from what courts, appeals may be taken. It follows that the substantial requirements of statutes authorizing appeals must be complied with by parties wishing to avail themselves of the right conferred. But the legislature, of course, in taking away or regulating the right of appeal, can pass no valid act in conflict with constitutional provisions securing the right. When, however, the constitution merely recognizes the right of appeal or even defines the appellate jurisdiction of the supreme court, appeals are nevertheless creatures of statute and, in the absence thereof, do not exist, although in the latter case it has been said that the legislature cannot unreasonably restrict the right."
> (See Western Tie & Timber Co. v. Naylor Drng. Dist. 126 S.W. 499, l.c. 505, also Lacutt v. Toohey's Estate, 89 S.W. (2), 662.

In this state the law is well established and so long as one's rights are not impaired, the General Assembly may change the remedy without violating any constitutional amendment pertaining to enacting laws of a retrospective character.

In Lovell v. Davis, 52 Mo. App. 342, l. c. 345, 346, the court held that an appeal should follow the Act of 1891, which became effective subsequent to the commencement of this litigation. In so holding the court said:

"It appears from the record in the cause that, between the institution of the suit and the trial, the said act of 1891 took effect and became operative. It is contended by the defendants that the appeal was not authorized in this case by the said act of 1891, and that in order to make the act applicable a retrospective operation must be given to it which is forbidden by the constitution. We do not think this contention can be maintained. The act is remedial in its scope and character. It allows an appeal to be taken from the action of a court in granting a new trial which before its enactment was not allowed under our code of procedure. That the general assembly may change the remedy in such cases there can be no doubt. Judge Cooley in his Constitutional Limitations says: 'As a general rule every state has complete control over the remedies which it offers to suitors in its courts. It may abolish one class of courts and create another. It may give a new and additional remedy for a right already in existence. And it may abolish all remedies and substitute new.' It is always within the power of the state to change the remedy so long as it does not essentially affect the right embodied in the contract, and that such change thus made does not infract the rule forbidding the impairment of contracts.

"In Hoffman v. Quincy, 4 Wall. 535, it was declared by the Supreme Court of the United States that it is competent for the states to change the

> form of the remedy or to modify it otherwise as they may deem fit, provided no substantial right secured by the contract is thereby impaired. That provision of the bill of rights which prohibits the legislature from passing any law retrospective in its operation extends only to prohibiting legislation of a retrospective character which disturbs rights of a private nature. State v. Kemper, 9 Mo. App. 532; Ins. Co. v. Hill, 86 Mo. 466; State v. County Court, 34 Mo. 546; State v. Hager, 91 Mo. 452; Porter v. Mariner, 50 Mo. 364; Willshear v. Kelly, 69 Mo. 363; Ins. Co. v. Flynn, 38 Mo. 483; Bolton V. Lansdown, 21 Mo. 399; Tennessee v. Sneed, 96 Otto (U.S.) 69. It is too plain for argument that no vested right is taken away or impaired by the act, nor does it impair the obligation of any contract, so the defendants' objection is without force."
> (See also Sheehan v. The Southern Ins. Co. 52 Mo. App. 351.)

In Aetna Insurance Company v. Hyde, 315 Mo. 113, l. c. 127, the Superintendent of Insurance ordered a rate reduction in fire insurance in October, 1922. In November, 1922, several insurance companies filed their petition in the circuit court to review the order and set the same aside. The superintendent of insurance promulgated this order under sections 6283 and 6284, R. S. Mo., 1919. Subsequent to the filing of the petition in the circuit court, the legislature amended these statutory provisions under which the Superintendent of Insurance issued his order. These amendments became the law in June, 1923. The Supreme Court in holding the laws as amended were applicable to this case, had this to sayd:

> "The plaintiffs contend that the Act of 1923 is not applicable to this case because the act went into effect in June, 1923, long after the order of the Superintendent was made. The referee held that those provisions in the Act of 1923 set out above only related to the remedy, did not affect any vested right, and therefore were applicable to the case in hand.
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> "No doubt the referee was right in his statement of the law. A new enactment which only affected the remedy, has no effect upon vested rights, does not impair the obligation of contracts and may control in the decision of a case. (Gladney v. Sydnor, 172 Mo. l. c. 324; Clark v. Railroad, 219 Mo. l. c. 533.) Such an act does not offend against the constitutional restriction that no law retrospective in its operation can be passed by the General Assembly. (Sec. 15, Art. II, Mo. Const.)."

The above decision clearly indicates that so long as the new provision does not affect any vested right and does not impair obligation of contracts, it shall be controlling in the decision of the case. This new amendment merely goes to the procedure and does not violate any right.

In Aetna Insurance Company v. O'Malley, 118 S. W. (2d), 3, l. c. 8, the court, in holding a new statute dealing with procedure only, prima facie it applies to all actions, those pending and future, said:

"It is true that section 5874 was not in effect when the review action was brought. The review action was brought on November 10, 1922. The effective date of section 5874 was June 25, 1923. Although section 5874 was not in effect when the review action was brought, its applicability to that action depends upon whether ornot it is a procedural statute. If it deals with procedure only, it was applicable to and should have governed the case from its effective date, June 25, 1923. The rule governing the applicability of procedural statutes under such circumstances is stated by this court in Clark v. Railroad, 219 Mo. 524, 534, 118 S. W. 40, 43, as follows: 'No person can claim a vested right in any particular mode of procedure for the enforcement or defense of his rights. Where a new statute deals with procedure only, prima facie it applies to all actions - those which have accrued or are pending and future actions. What was before a subject of equitable relief may be made triable by jury without affecting vested rights. If, before final decision, a new law as to procedure is enacted and goes into effect, it must from that time govern and regulate the proceedings.' "

Therefore, in view of the above and foregoing, it is the opinion of this Department that the statutes in question being nothing more than procedural statutes, that Senate Bill No. 31 as passed by the Sixtieth General Assembly applies to pending litigation as well as litigation in the future.

Yours truly,

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Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

ARH Jr/rv