OLD AGE PENSIONS: There is no legal duty on child to support parents under clause in Section 6 of Act "has no child or other person responsible under the law of this state and found by the state board or by the county board able to support him."

June 24, 1935.

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Honorable Ray Mabee,
Senator 4th District,
Unionville, Missouri.

Dear Senator:

This department is in receipt of your letter of June 18 wherein you make an inquiry regarding a situation which has arisen under Senate Bill No. 7, same being the Old Age Assistance Act. Your letter is as follows:

> "You will note that on page 3 and 4 of C.S.S.B. 7, which is the Old Age Assistance Act of the 58th General Assembly, there appears the following language:
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> > Lines 14, 15 and 16: 'and has no child or other person responsible under the law of this state, and found by the State Board or by the County Board able to support him.'
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> "I am at loss to know just how to interpret these lines. I do not recall any law which compels a child to support a parent.
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> "We have several cases here of an aged mother whose sole means of support has been a son who is on relief, and scarcely able to support himself. If the law contemplates the boy spending all his earnings keeping the parent, it appears that the law will fall short of accomplishing its aim. I have in mind a case of two very old people who have an unmarried son doing some work for the State Highway. If the burden of keeping

> the parents is to continue on this boy, it is apparent that he will never be able to get ahead and establish a home for himself.
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> "It seems to me that if the interpretation of this language is to be left to these various county boards, we are going to run into difficulty; several deserving will go without, while several undeserving will be placed on the rolls. I would appreciate your thought about this, in order that I might advise our local board as well as county board."

Knowing that you are familiar with the provisions of the Act, we shall confine this opinion to the one question contained in your letter, i.e., the obligation of a child to support its parents.

Section 6 of the Old Age Assistance Act provides as follows:

> "Old age assistance may be granted only to an applicant who has attained the age of 70 years or upwards, is incapacitated from earning a livelihood and is without adequate means of support, is a citizen of the United States, has resided in the State for 5 years or more within the 9 years immediately preceding application for assistance and for the one year next preceding the date of application for assistance (absence in the service of the State or of the United States shall not be deemed to interrupt residence in the state if domicile be not acquired outside of the state), is not at the date of making application or of receiving aid an inmate of any prison, jail, insane asylum, or any other public reform or correctional institution, and has no child or other person responsible under the law of this state and found by the

> state board or by the county board able to support him."

Let us assume, for the sake of argument, that an applicant for an old age pension possesses all the qualifications entitling him to the same with the exception of "has no child or other person responsible under the law of this state and found by the state board or the county board able to support him." What, if any, legal effect does this have towards preventing such an applicant from receiving the pension?

We cannot discern what was in the minds of the legislators when this provision was placed in the Act unless it was that the Legislature was intending to invoke the moral law that children of aged parents who are without support, should, due to the love and affection justly due parents, support them rather than deny the moral responsibility and permit them to become more or less state charges. However, disregarding the moral feature, we are confronted with this question: Can a son or daughter be compelled legally to support his or her parents? And this is the interpretation we place on the words "no child or other person responsible under the law of this state".

In the case of McCullough v. Powell Lumber Company, 205 Mo. App. 15, the Court in passing on this question, said (l.c. 26-27):

> "Plaintiff alleges that the deceased for a long time prior to his death contributed his earning to his mother, father, brothers and sisters, and that such contribution was necessary for their support and maintenance. The test in view of the facts of the instant case is: Were the persons named in the petition as the beneficiaries, so far as concerns the question of damages, pecuniarily injured by the death of the deceased, or would they have pecuniarily benefited by the continuing life of deceased? If these beneficiaries were pecuniarily injured by the death of the deceased, then plaintiff may maintain this cause of action, otherwise he cannot. Recovery will not be sustained for the death of an adult where there is no evidence that the beneficiary was receiving any pecuniary benefits

from the deceased at the time of his death. Dependency as used in cases falling under our damage act means dependency in fact, and not necessarily a strict legal dependency making the deceased legally liable to furnish support. (6 Thompson on Negligence, sec. 7049; Bowerman v. Lackawanna Mining Company, 98 Mo. App. 308, 71 S.W. 1062). The fact of pecuniary benefit does not require definite and exact proof, but wherever there exists a reasonable probability of pecuniary benefit to one from the continuing life of another, however, arising, the untimely extinction of that life raises a presumption of pecuniary injury. (6 Thompson on Negligence, sec. 7050; McKay v. New England Dredging Company, 43 Atl. (Mo.) 29; Baltimore Railroad Company v. State, 63 Md. 135).

"It is held in Barth v. Railway Company, 142 Mo. l.c. 559, 44 S.W. 778, that the phrase 'necessary injury' in our statute is broad enough to include any damages which may be estimated according to a pecuniary standard whether present, prospective or proximate. We realize that the facts in the case at bar, relative to damages that plaintiff may recover, render uncertain and somewhat vague the measure by which to determine the amount of such recovery. This is not like a case where a parent is suing for the death of a minor child, or husband for wife, or the wife or the husband, where it is always possible to have some definite standard by which damages may be estimated. The deceased was under no legal obligation to support his father and mother, brothers and sisters, and therefore neither of them had any legal claim upon him for support, and his contribution to their support and maintenance was at the time of his death wholly voluntary. But the fact is, according to the record, that deceased had been contributing to their support and was

> so doing at the time of his death, and as held in Bowerman v. Lackawanna, supra, it is not necessary that there be a legal dependency making the deceased liable to furnish support for the beneficiaries in order to establish the pecuniary injury. In discussing the question of pecuniary injury or damages in a case under the damage act, Ellison, J., for the Kansas City Court of Appeals in Hickman v. Missouri Pacific Railway Company, 22 Mo. App. l.c. 350, says: 'If a child, over the age of twenty-one years at the time he may be killed by negligence, is actually, at that time, engaged in the service of his parents as a member of the family, a different question would be presented. It was said in North Pennsylvania Railway Company v. Kirk, 90 Pa. St. 15, that "if there be reasonable expectation of pecuniary advantage from a person bearing the family relation, the destruction of such expectation by negligence occasioning the death of the party from whom it arose will sustain the action." The son in that case was twenty-eight years old and was, at the time of his injury, engaged in the service of his father, without compensation. Such question, however, is not presented in the present case.'"

This question is again discussed in the case of Falls v. Jones, 107 Mo. App. 357, l.c. 361:

> "The common rule derivable from the authorities in general and recognized by the decisions of this State, may be stated to be that when a parent resides in the household or family of a child, the presumption prevails that no payment is expected for services rendered or support by such child. This, however, is not a conclusive inference, but may be overcome by evidence of an express agreement to pay,

> or by implication from such facts and circumstances as satisfactorily establish, that the parent expected to pay and the child to charge the reasonable value of such services or maintenance. In absence of such agreement, expressly had or reasonably implied from the attending facts and conditions, the legal inference arises that the services performed, or the maintenance afforded, were gratuitous and in natural response to the promptings of filial affection and duty. Lawrence v. Bailey, 84 Mo. App. 107; Earhart, Admr., v. Dietrick, 118 Mo. l.c. 431; Kostuba v. Mitler, 137 Mo. l.c. 175; Penter v. Roberts, 51 Mo. App. 222; Louder v. Hart, 52 Mo. App. 376. There was evidence, the weight of which was for the jury, from which an obligation to reimburse the claimant for the support of the deceased might be inferred, sufficient to sustain the verdict in that regard."

At common law a child was not bound to support its parents and no promise on the part of a child to support or maintain its parents was implied from the mere existence of the relation. This remains the law of every state except wherein statutes have been enacted imposing on children the duty to support indigent parents.

We are loathe to convict the Legislature of including in the Act a vain, useless and idle provision and one which would have no force or effect; therefore, we shall pursue the question bearing in mind that there may be exceptions to the general rule that children are not liable for the support of their parents.

Section 5 of the Act is as follows:

> "The amount of assistance shall be fixed with due regard to the conditions in each case, but in no case shall it be an amount which, when added to the income of the applicant from all other sources, shall exceed a total of $30.00 per month. In calculating the income of the applicant, earnings of the applicant which do not exceed $150.00 in any calendar year shall not be considered."

By the terms of Section 10 it is the duty of the County Board to make investigation of the facts surrounding each application. We are therefore of the opinion that the qualification or disqualification in question will be considered by the county board in making its recommendations.

We shall next consider what, if any, relation there is, insofar as support of parents is concerned, between minor children and their parents. Section 375, R.S. Mo. 1929 is as follows:

> "In all cases not otherwise provided for by law, the father and mother, with equal powers, rights and duties, while living, and in case of the death of either parent, the survivor, or when there shall be no lawful father, then the mother, if living, shall be the natural guardian and curator of their children, and have the custody and care of their persons, education and estates; and when such estate is not derived from the parents acting as guardian and curator, such parents shall give security and account as other guardians and curators, and if such parents shall refuse or neglect to give such bond the probate court, or judge in vacation, shall appoint some competent person as curator to take charge of and manage such property. The parents of such minor child or children acting as such natural guardian and curator shall be entitled to receive and collect the earnings of such minors, until they reach their majority, and be liable for their support to the extent of such earnings: Provided, that this law shall not be so construed as to exempt the father of such minors from liability for the support of his children."

Another section bearing on the earnings from services of minor children is Section 1362, R.S. Mo. 1929, which provides:

> "The father and mother living apart are entitled to an adjudication of the circuit court as to their powers, rights and duties in respect to the custody and control and the services and earnings and management of the property of their unmarried minor children without any preference as between the said father and mother, and neither the father nor the mother has any right paramount to that of the other in respect to the custody and control or the services and earnings or of the management of the property of their said unmarried minor children, pending such adjudication the father or mother who actually has the custody and control of said unmarried minor children shall have the sole right to the custody and control and to the services and earnings and to the management of the property of said unmarried minor children."

A further section relating to this question is Section 2993, R.S. Mo. 1929, which provides:

> "Such married women, during the period her husband shall fail to provide for her support, as stated in section 2989, shall be entitled to the proceeds of the earnings of her minor children; and the same shall be under her sole control and shall not be liable in any manner for his debts."

CONCLUSION

It is the opinion of this department that there is no legal obligation on a son or daughter over the age of twenty-one years to support his or her parents, there being no statute in Missouri which imposes such an obligation. However, a son or daughter may become obligated by contract or agreement to support his or her parents.

In the case of minor children supporting their parents, while the statutes referred to here entitle the parents to the earnings of minor children, yet it is not mandatory on parents to exercise their rights by claiming the earnings of their children.

The County Old Age Assistance Board appears to have discretionary powers in making recommendations for pensions. Therefore, we are of the opinion that where parents are entitled to the earnings of their minor children, or where parents are the natural guardians and curators of children who have property, and the parents derive their living from the property of their children, such elements may be taken into consideration by the County Old Age Assistance Board in determining whether or not old age persons may secure the benefits of the Act.

Respectfully submitted,

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APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General