

SOCIAL SECURITY: Federal Act in relation to the Missouri  
Blind Pension Law.

12-29  
December 23, 1936

Hon. Allen McReynolds,  
Chairman of the Committee  
on Social Security,  
Jefferson City, Missouri.



Dear Sir:

We have received your request of recent date wherein you requested an opinion on the provisions of the Social Security Act and its relation to the constitutional and statutory law of Missouri.

*states* In this opinion, we will restrict ourselves to a review of the Title X of the act which deals with grants to ~~cities~~ for aid to the blind. This title under Section 1002 sets forth the requirements which the State plan must meet in order that the State may receive the federal grants. These requirements are as follows:

"(a) A State plan for aid to the blind 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 aid is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such informa-

tion, 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; and (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old age assistance under the State plan approved under section 2 of this Act.

"(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 aid to the blind under the plan--

"(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

"(2) Any citizenship requirement which excludes any citizen of the United States."

At the outset we wish to make it clear that this opinion does not in any way deal with the sociological aspect or the efficacy of the State plan, but only deals with the statutes as they are now and whether they will meet the requirements as set forth in the federal law. We are taking the federal requirements up in the order in which they appear in the Act.

#### I.

The Missouri Act sets forth the definition of "need" and the "blind". It is for the Federal Board to decide if these meet the federal requirements.

It is stated in Section 1001, Title X of the Social Security Act, which reads in part as follows:

"For the purpose of enabling each State to furnish financial assistance, as far

as practicable under the conditions in such state, to needy individuals who are blind, \* \* \*."

It is the rule followed by the federal courts that a statute should be construed so as to ascertain and give effect to the legislative intent expressed therein. As it was said in the case of *Ozawa v. United States*, 43 Sup. Ct. 65, 67 L. Ed. 199,

"It is the duty of this court to give effect to the intent of Congress."

The intent of Congress, as stated above, is to help needy individuals who are blind.

It is for the State Legislature to say what constitutes "need" and this is then passed upon by the Federal Board.

Section 8893, R. S. Mo. 1929, states:

\* \* \* \* that no such person shall be entitled to a pension under this article who has an income, or is the recipient, of six hundred (\$600.00) dollars or more per annum from any source whatever, or who owns property, or has an interest in property to the value of five thousand (\$5000.00) dollars or more, or who lives with a sighted husband or wife who has an income or is the recipient of six hundred (\$600.00) dollars or more per annum from any source whatever or has property or an interest in property to the value of five thousand (\$5,000.00) dollars or more, or who has a parent or parents, resident in this state who upon the investigation of the commission may be found to be able to provide for the reasonable support of such applicant; \* \* \*."

This is an expression on the part of the Legislature as to whom they deem "needy persons", that is, those who do not have incomes or are not the recipients of the amount stated in the statutes as above set forth. Whether such a definition of "needy" will be accepted by the federal board, this office is not in position to state, but it seems very probable that such a standard will be upheld.

The same is true of the statutory definition of what constitutes blindness which is laid down in Section 8894, R. S. Mo. 1929, as follows:

"No person shall be entitled to a pension under this article who has vision with or without proper adjusted glasses greater than what is known as light perception; that light perception as used in this section means not more vision than is sufficient only to distinguish light from darkness and recognize the motion (not the form) of the hand of the examiner at a distance not greater than one foot from the eye; and no person shall be entitled to receive a pension except upon scientific vision test supported by the certificate of a competent oculist, approved by the commission, that such person does not possess a greater vision than that provided above in this section; and every person passing the vision test and having the other qualifications provided in this article shall be entitled to receive a pension of three hundred (\$300.00) dollars per annum, payable quarterly."

Whether the federal board will accept this "light perception" test, we can not say.

## II.

The Missouri law agrees with the first requirement in that it is in effect in all political subdivisions of the State - It is not administered by these subdivisions.

Section 1002, Federal Social Security Act, supra, reads under subsection (a), point (1), as follows:

" \* \* \* It (the State plan) shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; \* \* \*."

Section 8893, R. S. Mo. 1929, sets forth those who are eligible for blind pension and reads in part as follows:

"Every adult blind person, twenty-one years of age or over, of good moral character, who shall have been a resident of the state of Missouri for ten consecutive years or more next preceding the time for making application for the pension herein provided, and every adult blind person, twenty-one years of age or over, who may have lost his or her sight while a bona fide resident of this state and who has been a continuous resident thereof since such loss of sight, shall be entitled to receive, when enrolled under the provision of this article.  
\* \* \*."

"Political subdivision" is defined in 49 Corpus Juris at page 1077, as "a term implying a division of a parent entity for some governmental purpose."

In the case of Standard Oil Co. v. National Surety Co., 107 So. 559, "political subdivision" is described as "a subdivision of a State to which has been delegated by law various functions of local self-government."

The Supreme Court of Missouri has held that counties, the City of St. Louis and townships are political subdivisions. (Missouri Tp., Chariton County v. Farmers' Bank of Forrest Green, 12 S. W. (2d) 763; Volz et ux. v. City of St. Louis, 32 S. W. (2d) 72, 326 Mo. 362; Barton County v. Walser, 47 Mo. 189.)

Therefore, the Missouri law, to comply with the federal requirement, must be in effect in every county, township and in the City of St. Louis. There is no statute that restricts the operation of the plan to any county or counties, locality or part of the State, but rather under Section 8893, supra, provides that it shall be available to every adult blind person who meets the residence requirements.

The question then presents itself whether the Missouri law provides for administration by these political subdivisions.

Section 8896, R. S. Mo. 1929, provides for the administration of the State plan and reads as follows:

"Any person who desires the benefits of this article shall apply to the judge of the probate court within his or her county or city or to the commission for the blind, who, if satisfied that the applicant comes within the provisions of this article, shall grant to the applicant a certificate of such fact and the certificates granted by the probate judges shall be certified to the Missouri commission for the blind at its office in St. Louis, Missouri, which shall consider the merits of such application and if approved by the commission, it shall certify same to the state auditor. \* \* \* \*"

The administration is therefore carried on only by the State Commission for the Blind and the Probate Judges of the various counties. The status of the latter group seems to be one of local representatives of the commission whose duties are to interview the petitioners and refer them to the commission. Therefore, the political subdivisions, mentioned above, have nothing to do with the administration of the pensions and consequently the law cannot be mandatory upon them. *Ragan v. Commission for the Blind*, 271 S. W. 1014.

It appears that the Missouri Blind Pension Law meets all the requirements as set forth in the first stipulation of the federal act.

### III.

Financial participation by the State  
is provided for by the Constitution  
of Missouri.

Section 1002, Article X of the Federal Social Security Act, states that the State plan must "provide for financial participation by the State."

Article IV, Section 47, of the Constitution of Missouri reads as follows:

"That the General Assembly of the State of Missouri shall cause an annual tax of not less than one half of one cent nor more than three cents on the one hundred dollars taxable property of the State to be levied for the purpose of providing a fund to be devoted in the manner provided by law to the pensioning of the deserving blind."

Section 8903, R. S. Mo. 1929, provides in part as follows:

"In accordance with an amendment to section 47 of article IV of the Constitution of the state of Missouri, adopted by the qualified voters of the state on November 2, 1920, there is hereby levied during each year until otherwise ordered by the general assembly an annual tax of three cents (3c) on each one hundred (\$100.00) dollars valuation of taxable property in the state of Missouri to provide a fund out of which shall be paid the pensions for the deserving blind as herein provided."

The above quoted provision and section provides for the financial participation which will be matched by the federal government.

#### IV.

The Missouri Act provides for a single State agency to administer the plan.

The federal statute under Point (3) provides that there must be a State agency to administer the plan.

Chapter 50, R. S. Mo. 1929, Sections 8889 to 8891 inclusive, Section 8888 and Section 8892, Laws of Missouri, 1933, page 191, provide for a Commission for the Blind, setting forth their appointment, duties and rights. Section 8888, supra, reads as follows:

"The Missouri Commission for the Blind shall hereafter consist of the Members of the Board of Managers of the State Eleemosynary Institutions as now or hereafter provided for and constituted by Article 1, Chapter 46, Revised Statutes of 1929, and wherever in any law the Commission for the Blind is referred to it shall, after the taking effect of this act, be construed as referring to the members of the said Board of Managers of the State Eleemosynary Institutions, who are by this act designated and constituted the members of said Commission for the Blind. The officers of the Board of Managers of the State Eleemosynary Institutions shall be the officers of the Commission for the Blind as herein constituted. "

Missouri, therefore, has a State agency which can administer the plan, thereby meeting the requirements of the third stipulation.

V.

The Missouri Blind Statutes provide for granting to an individual whose claim for aid is denied an opportunity for a fair hearing before such State agency.

Section 1002, Article X, of the Social Security Act states that the State plan must "provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency."

Section 8896, R. S. Mo. 1929, provides:

"Any person who desires the benefits of this article shall apply to the judge of the probate court within his or her county or city or to the commission for the blind."



Section 8901, R. S. No. 1929, reads as follows:

"Any person claiming the benefits of this article who is aggrieved by the action of the commission for the blind as to his or her property or income, residential or moral qualifications to receive the benefits of the article, may appeal from its decision to the circuit court of his or her judicial circuit \* \* \*."

It may appear from the reading of Section 8896, supra, wherein it states that persons shall apply to the judge of the probate court or the Commission for the Blind, that the applicant who elects to appear before the probate court and his application has been refused, does not have the right to have his case heard before the Commission for the Blind.

However, this point was determined in the case of Ragan v. Commission for the Blind, 271 S. W. 1014, which involved an appeal to the circuit court direct from the decision of the probate judge refusing the application of the appellant. The court said:

"It would seem that the presentation of the application to, and the hearing before, the probate judge is in the nature of a mere preliminary matter for the convenience of the blind person, who is permitted to make his application there first, if he chooses, for the commission is the body which is to pass on the merits of all applications, even those made to the probate judge; and, this being the case, and the statute being silent as to the procedure to be had by the applicant where the probate judge refuses a certificate, the only thing the applicant can do would seem to be to take the matter from there to the commission itself; that is, by availing himself of the other privilege of applying to the commission."

The court held that the applicant could appeal to the circuit court only from the order of the commission under Section 8901, and therefore if refused by the probate judge, he should apply

to the commission, and then if refused by the commission, he could ask the circuit court to review the order of the commission.

In view of the above case, it seems that the Missouri law allows for a hearing before the State agency if the claim for aid before the probate judge is denied. However, it is the opinion of this department that it would be more salutary if Section 8901 were amended so that the right to a review before the State agency by one refused by the probate judge be explicitly set forth in the statute. The reason is that the statute does not give the right in so many words, but it must be inferred by judicial interpretation. Also, the case quoted above is a decision of the Kansas City Court of Appeals, which may not be final authority.

The question next presents itself whether the Missouri law affords an opportunity for a fair hearing by the State agency if the applicant presents his claim to the Commission for the Blind in the first instance and is refused. The Federal act states that one "whose claim for aid is denied" must have "an opportunity for a fair hearing" before the State agency.

The Missouri law gives one the right to apply in the first instance to the State agency, i. e., the Commission for the Blind. Section 8896, supra. If he is aggrieved by its ruling he may then apply to the circuit court for review. Section 8901. Nowhere is mention made of a "hearing" before the Commission on its own ruling. While such a proceeding might seem to be a repetition and duplication, still it appears necessary in order to comply with the federal requirement.

It is, therefore, the opinion of this department that Section 8901, R. S. Mo. 1929, should be amended so that a hearing before the Commission for the Blind should be allowed to one whose application has been refused by the probate judge or the Commission.

## VI.

### Missouri plan provides for an efficient administration.

Section 1002, supra, of the Federal Social Security Act provides that the State plan must "provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; \* \* \*".

Section 8889, R. S. Mo. 1929, reads as follows:

"The duties of said commission shall be to prepare and maintain a complete register of the blind persons within this state and to collate information concerning their physical condition, cause of blindness and such additional information as may be useful to the commission in the performance of its other duties as herein enumerated, and to investigate and report to the general assembly from time to time the condition of the blind within this state, with its recommendations concerning the best method of relief for the blind; to adopt such measures as the commission may deem expedient for the prevention and cure of blindness; to establish and maintain at such places within this state as the commission may deem expedient shops and workrooms for the employment of blind persons capable of useful labor, and to provide superintendence and other assistance therefor and instruction therein; to compensate the persons so employed in the manner and to the extent that the commission shall deem proper; to provide such means for the sale of the products of the blind as the commission shall deem expedient; to act as a bureau of information for the purpose of securing employment for the blind of this state elsewhere than in the shops and workrooms of the commission, and to this end the commission is authorized to procure and furnish materials and tools and to furnish aid and assistance to blind persons engaged in home industries and to buy and sell the products of the blind wherever and however produced within this state; to provide for the temporary cost of the food, raiment and shelter of deserving blind persons engaged in useful labor; to ameliorate the condition of the blind by such means consistent with the provisions of this article as the commission may deem expedient: Provided, however, that no part of the funds appropriated

by the state shall be used for solely charitable purposes; the object and purpose of this article being to encourage capable blind persons in the pursuit of useful labor and to provide for the prevention and cure of blindness."

Section 8891, R. S. Mo. 1929, provides as follows:

"Said commission may adopt by-laws or rules and regulations for its government; a majority of the commission shall constitute a quorum; it shall have power to appoint such agents and employes as it shall deem necessary and fix their compensation within the limits of the appropriation that shall be made by the general assembly; it shall hold regular monthly meetings, keep a full record of its proceedings and of its receipts and disbursements, and shall, on or before the first Monday in January of each biennial period, make a full report to the general assembly, presenting a concise review of the work of the commission for such period, with recommendations looking to the amelioration of the blind in this state."

Section 8892, R. S. Mo. 1929 (now Section 8892, Laws of Missouri, 1933, page 191) reads as follows:

"The officers and members of the Commission hereby created shall receive no salary or other compensation for their services as officers or members of the Commission for the Blind, but their traveling expenses and other necessary expense in the performance of their duties as officers and members of the Commission for the Blind may be allowed and paid them out of any funds that may be appropriated by the State for the use of said Commission."

The Missouri statutes above provide for an administration of the plan. Whether such administration is efficient is for the Federal Board to decide and not this department.

## VII.

The Missouri Legislature must enact a statute requiring the Commission for the Blind to make such reports as the Board may from time to time require.

Section 1002, supra, states that the State plan must "provide that the State agency will make such reports in such form and contain 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."

The requirement stated above must be met by the State plan before such plan will be approved by the Board. It is mandatory that the State plan must specifically include this stipulation. The Missouri Blind Pension Act contains no such statute. Due to the fact that the Missouri Act was passed before the Federal act, it could make no reference to such Federal act. Therefore, the Legislature must pass a statute which will meet this requirement.

## VIII.

Missouri allows no one who is a recipient of old age assistance to receive a pension under the Blind Pension Act.

Section 1002, Federal Social Security Act, supra, reads that "the State plan must" provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under Section 2 of this Act.

Section 16, Laws of Missouri, 1935, Pensions and Retirement Funds, at page 312, reads as follows:

"No person receiving assistance under this Act shall at the same time receive any other relief from any public funds, except for medical and surgical assistance."

The Missouri Old Age Assistance law, therefore, forbids any one who is receiving old age assistance from receiving any other pension. While this statute probably fills the federal requirement, the Legislature may, to conform with the federal act unreservedly, enact a statute that affirmatively sets forth this inhibition.

#### IX.

The Legislature must amend the law in regard to residence requirement in order to comply with the federal act.

Section 1002, Title X, Federal Social Security Act, states:

"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 aid to the blind under the plan--

"(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application."

Section 8893, R. S. Mo. 1929, reads as follows:

"Every adult blind person, twenty-one years of age or over, of good moral character, who shall have been a resident of the state of Missouri for ten consecutive years or more next

preceding the time for making application for the pension herein provided, and every adult blind person, twenty-one years of age or over, who may have lost his or her sight while a bona fide resident of this state and who has been a continuous resident thereof since such loss of sight, shall be entitled to receive, when enrolled under the provision of this article, an annual pension as provided for therein, payable in equal quarterly installments: \* \* \*."

The above quoted Missouri statute is in conflict with the federal requirement and must be amended to comply with the federal Act.

I.

The Missouri plan does not have any citizenship requirement which excludes any citizen of the United States.

Section 1002, Federal Social Security Act, supra, provides that the Board shall not approve any plan which imposes "any citizenship requirement which excludes any citizen of the United States."

The Missouri plan does not have any statutes in relation to this matter and therefore meets the requirements of the above federal section.

Respectfully submitted,

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APPROVED:

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ROY MCKITTRICK,  
Attorney General.

AO:HR