

DEPARTMENT OF PUBLIC HEALTH
AND WELFARE:

Appeals under Sec. 9411 R. S. Mo.
1939, shall be made to the Director
of Public Health and Welfare under Sen-
ate Bill No. 349.

August 17, 1946.



Mr. Proctor N. Carter, Director
Division of Welfare,
State of Missouri,
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your request for an opinion. Restating your request, for the sake of brevity, you inquire whether an appeal under Sec. 9411, R. S. Mo. 1939, from the decision of the Administrator of the State Social Security Commission shall be made to the Director of the Department of Public Health and Welfare, or the Director of the Division of Welfare, under Senate Bill No. 349 passed by the 63rd General Assembly of the State of Missouri.

Section 9410, R. S. Mo. 1939, provides that the Administrator of the State Social Security Commission, or someone designated by him, shall decide whether an applicant is eligible for benefits under the State Social Security Act, upon said applicant filing his application for such benefits.

Section 9411, R. S. Mo. 1939, grants the applicant for benefits under the State Social Security Act the right to appeal from the decision of the administrator to the state commission. There can be no question but that such an appeal under the State Social Security Act goes to the state commission. That commission is referred to many times in Sec. 9411, supra, as the proper party to appeal to and determine the questions presented by said appeal; and it further provides for an appeal from the decision of the state commission to the circuit court.

The two sections to be construed in answering your request are Secs. 31 and 32 of Senate Bill No. 349, as passed by the 63rd General Assembly, and their provisions read in part:

"Section 31. All powers and duties heretofore under control and administration of the state social security commission and the offices thereof shall hereafter be under the control and administration of the state department of public health and welfare and shall be assigned to the division of welfare within the department,

together with all other powers and duties which may herein or hereafter be so assigned. In all laws of Missouri, wherever the term state social security commission or state commission used in such connection shall occur, the term department of public health and welfare shall be substituted and understood; and wherever the term commissioner in such connection shall occur, it shall be understood to mean the director of the division of welfare; the term person shall include corporation, partnership or association; state agency as that term may be used in any federal act and not otherwise specifically provided for by state law shall mean the department of public health and welfare; the singular shall include the plural and the masculine shall include the feminine.

"Section 32. The division of welfare as an integral part of the department of public health and welfare shall be vested with and shall exercise all the powers and duties necessary to enable it to carry out fully and effectively the purposes enumerated in this act or in amendatory acts, and shall be the state agency to administer state plans and laws involving pensions or assistance to persons over sixty-five years of age, who are incapacitated from earning a livelihood or are without means of adequate support; * * *."

Under Senate Bill No. 349, as passed by the 63rd General Assembly, the Legislature created the Department of Public Health and Welfare, and under that department the Division of Welfare.

Under Sec. 31 of Senate Bill No. 349, supra, it provides that state agency, as used in any federal act and not otherwise provided by state law, shall mean the Department of Public Health and Welfare. However, under Sec. 32 of the same act, the Division of Welfare is made an integral part of the Department of Public Health and Welfare, and further provides that the Division of Welfare shall be the state agency to administer state plans and laws involving pensions to the aged, dependent children, relief, etc. From reading the foregoing provisions, one might conclude that, since the division of welfare is made by state law the state agency to administer state plans and laws involving pensions, the Director of the Division of Welfare is the proper officer to appeal to and pass upon appeals by applicants for benefits under the State Social Security Act. This might be true if it were not for other provisions in Sec. 31, Senate Bill No. 349, supra, which transferred all powers and duties heretofore under the control and administration of the State Social Security

Commission to the State Department of Health and Public Welfare and further requiring that, whenever the term state commission is used in any law of Missouri, the term Department of Public Health and Welfare shall be substituted.

Since both Secs. 31 and 32 of Senate Bill No. 349, supra, were enacted at the same time, we cannot apply that rule of statutory construction so often relied upon that in case of a conflict the latter enactment shall prevail.

One of the cardinal rules of statutory construction is to give effect to the legislative intent, as expressed therein (See America Bridge Co. v. Smith, 179 S.W. (2d) 12, 352 Mo. 616). There is also a well established rule of statutory construction - that courts should try to give a sensible construction - one that would lead to an absurd construction should be avoided.

In Donnelly Garment Co. v. International Ladies' Garment Workers, 99 Fed. (2) 309, the court said:

"It is a well established rule that all laws are to be given a sensible construction, and that a literal application of a statute which would lead to absurd consequences should be avoided whenever a reasonable application can be given to the statute consistent with the legislative purpose. (See cases cited.)"

It is also well established that in construing statutes, the courts should consider the object of such legislation, and the evil it sought to remedy. The court may also consider the expediency of law in ascertaining legislative intent. (See Warrington v. Babb, 56 S.W. (2d) 835, and Memmel v. Thomas, 181 S.W. (2) 168.

Following the foregoing rules of statutory construction, we are of the opinion that the appeal hereinabove referred to should be made to the Department of Public Health and Welfare and that said Director should decide all questions presented by said appeal.

Under Secs. 9410 and 9411, supra, the administrator of the State Social Security Commission originally passed upon the qualifications of all applicants for benefits and fixed the amount of benefits each applicant was entitled to receive. Anyone aggrieved by his action could appeal to the State Commission. If the law had required said appeal to be made to the State Administrator, that would have been unfair to the applicant for the reason that in so doing it would permit the administrator to pass upon his former decisions, and that would be too much like being the prosecuting attorney, jury and judge.

To require that appeals under Senate Bill No. 349 be made to the Director of Public Welfare, who, under the law originally passed upon the qualifications of said applicants, would be permitting him to pass upon his former decisions, and it is the opinion of this department that that would be an unreasonable construction to say that the Legislature, in passing Senate Bill No. 349, supra, intended that the Director of Public Welfare should, on appeal, pass upon his former action.

Therefore, since Sec. 31 of Senate Bill No. 349, supra, specifically transfers all authority vested in the State Commission to the Department of Public Health and Welfare, it is the opinion of this department that appeals granted under Sec. 9411 R. S. No. 1939, should be made to the Director of the Department of Public Health and Welfare and that officer should render judgment on said appeal in conformity with Sec. 9411, supra,

Respectfully submitted,

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APPROVED:

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