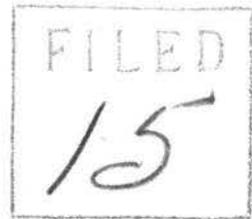


PENSIONS: Necessary that recipients of old age assistance  
SOCIAL SECURITY: continue to be residents of the state in order  
to qualify.



April 2, 1948

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Mr. Proctor N. Carter, Director  
Division of Welfare  
Department of Public Health and Welfare  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"Several confusing situations have developed regarding residence of Old Age Assistance applicants or recipients upon which we would like to have the advice of your Department.

"Section 9407, R.S. Mo. 1939 as it relates to residence qualifications for Old Age Assistance reads in part as follows:

"Pensions or old age assistance shall be granted under this law to any person who:\*\*\*

"(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." (Emphasis Ours).

"The title to the 1937 Social Security Act, Laws of Missouri, 1937, p. 467, reads in part as follows:

"AN ACT to repeal Sections 1 to 30 inclusive of an Act of the Fifty-eighth General Assembly of Missouri, found on pages 308 to 315 inclusive, Laws of Missouri, 1935, providing for assistance for residents of the state over the age of

seventy years under certain conditions and requirements\* \* \*. (Emphasis Ours).

"Section 9412, R. S. Mo. 1939, provides for reconsideration of a recipient's case and for changing or cancelling benefits previously granted. Also Section 9411 provides for appeals to the circuit court of the county in which the applicant resides.

"We are familiar with the fact that the words 'reside', 'resided' and 'residents' are elastic words and have been interpreted by our courts in the light, purpose and context of the statute in which such terms are employed. It has been our construction of the Social Security laws that its purpose was to provide assistance for 'residents of the state' and when it is determined that a recipient has abandoned his Missouri residence he is ineligible to continue to receive benefits. In other words, we have construed the statute to mean actual as distinguished from a legal or constructive residence. This, of course, would not affect a recipient who is temporarily absent from the state who has a bona fide intention to return when the purpose of his absence has been accomplished.

"In view of the above and foregoing, and the fact that the State Social Security Law does not contain any specific provision for removing a recipient of Old Age Assistance, after original residence eligibility has been once established, from the rolls when residence in this state is abandoned, I would appreciate receiving from you an opinion as to whether or not we are legally correct in our construction of the intent of the law. I would also appreciate receiving from you an opinion as to whether or not the persons in the following hypothetical cases are entitled to receive Old Age Assistance under the residence requirements of the State Social Security Law.

"(1) Mr. A. has lived in Missouri many years and several years ago applied for Old Age Assistance. He was found eligible in all respects and placed on the rolls.

Two years ago he went to live with a daughter in California because she could give him a home and care. He intends to remain there permanently or indefinitely.

"(2) Mr. X. has lived in Missouri for about 50 years and was placed on the Old Age Assistance rolls upon attaining the age of 65. About 2 years ago he went to Florida to visit a son intending to return to Missouri after the visit. While there he found he liked the climate and has decided to remain.

"(3) Mr. Y., eligible for and duly enrolled upon the Old Age Assistance rolls, went to Arizona upon the advice of his physician. He intends to return to Missouri if his health permits.

"(4) Mrs. Z., eligible for and duly enrolled upon the Old Age Assistance rolls, lives with her four children who live in Texas, Arkansas, Ohio, and New York. She stays about an equal amount of time with each child. She has sold all property she formerly owned in Missouri and has stated that she cannot live by herself in Missouri as she is physically unable to perform her household work.

"(5) Mr. B., eligible for and duly enrolled upon the Old Age Assistance rolls, went to visit his son in Washington about 1 year ago. Recently he suffered a heart attack and now states he is unable to return to Missouri as he cannot travel alone.

"(6) Mr. C., eligible for and duly enrolled upon the Old Age Assistance rolls, afterwards went to Utah after a criminal indictment had been filed against him in Jasper County. He now states that due to his age and physical condition he is unable to return to Missouri."

In passing on such matters, it is well to keep in mind several well established rules of statutory construction which are applicable in the instant case. One is that statutes are to be construed, if possible, so as to harmonize and give effect to all of their provisions, which requires that in determining meaning of particular sections of an act all other parts should be considered. See *State ex rel. Cairo Bridge Commission v. Mitchell*, 181 S.W. (2d) 496, 352 Mo. 1136. Another well established rule is that the purpose of all statutory construction is to give effect to the Legislature's intention within the expression of the statute, and hence no rule of strict construction which will defeat a statute's purpose can be applied to its bare language. See *Thompson v. Glover*, 94 Fed. (2d) 544. Also, *State ex rel. Webster Groves Sanitary Sewer District v. Smith*, 115 S.W. (2d) 816, 342 Mo. 365. Another very important rule which may be in point is that, when a statute is ambiguous, the title may be examined to ascertain the act's meaning. See *In re Graves*, 30 S.W. (2d) 149, 325 Mo. 888. It was held in the case of *A. J. Meyer & Co. v. Unemployment Compensation Commission*, 152 S.W. (2d) 184, 348 Mo. 147, that, under the Constitution, title of a statute is necessarily a part thereof and is to be considered in the construction.

The Social Security Act of this state provides that a person must have resided in the state five years, or more, within the nine years immediately preceding application for assistance and for one year next preceding the date of application in order to qualify for old age assistance. Section 9407, R.S. Mo. 1939, reads in part:

"Pensions or old age assistance shall be granted under this law to any person who:

\* \* \* \* \*

"(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 foregoing statute requires one to be a resident of this state in order to qualify for such assistance, however, no place in the act does it specifically state what shall happen if recipients, upon being placed upon the roll, leave the state or abandon this state as their residence, or what

shall amount to an abandonment. Therefore, it will require a construction of the whole act to determine the legislative intent about such matters.

Section 9412, R.S. Mo. 1939, requires a reconsideration of all benefits granted as often as the administrator deems it necessary. Furthermore, if the writer is not mistaken, the Federal Social Security Board requires a reconsideration, by the state agency of every case receiving old age assistance, every six months, which is one of the prerequisites for obtaining Federal assistance in the payment of old age assistance grants.

Under Section 9411, R.S. Mo. 1939, 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. The constitutional amendment authorizing the payments of grants to the aged in this state did not in any manner restrict the payment of said grants to residents of this state. It merely grants the Legislature the privilege of enacting legislation for the payment of old age assistance. Section 38(a), Article III, Constitution of 1945, reads in part:

"The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation, excepting aid in public calamity, and general laws providing for pensions for the blind, for old age assistance, \* \* \* \*"

To say the least, the State Social Security Act is ambiguous as to the necessity of a recipient of old age assistance retaining a residence in this state in order to continue to qualify for such assistance. Therefore, we shall examine the title to the Social Security Act. We find the original State Social Security Act, passed by the 58th General Assembly, provided for grants to needy aged, page 308, Laws of Missouri 1935. The title to said act, in part, reads:

"AN ACT to provide for, regulate and fix the conditions and requirements for assistance for residents of the State over the age of 70 years; \* \* \* \*"

The 59th General Assembly of the State of Missouri repealed the foregoing State Social Security Act and enacted in lieu thereof a new act, page 467, Laws of Missouri 1937, which act has practically the same qualifications as to the length of time one must reside in this state in order to qualify for assistance as was contained in the act it repealed, with the exception the new act no longer requires one to be a citizen of the United States.

It is reasonable to believe that, since every state in the Union now has provided for grants to the aged, and in view of the fact one must have resided in this state a specified period of time before qualifying for assistance, it was apparently the legislative intent that only those persons who can qualify as residents of Missouri are entitled to benefits under the act.

Therefore, in view of the foregoing statutory provisions relative to residential qualifications for certain persons under the act and rules of statutory construction invoked, we must conclude that the General Assembly in enacting the State Social Security Act only contemplated that residents of this state shall be entitled to receive assistance under the act, and when said recipients no longer are residents of this state they are disqualified to receive further assistance under the act.

Just when a person, who has once resided in this state a sufficient length of time to qualify for a grant under the State Social Security program, shall be considered no longer a resident of this state and disqualified to receive further grants is very difficult to determine. "Residence" is a very flexible term and has no fixed meaning applicable alike to all cases. This department has heretofore rendered a very comprehensive opinion defining the words "reside" and "residence" as used in the State Social Security Act. That opinion was rendered to Colonel Allen M. Thompson, the then Commissioner of the Old Age Assistance Division of this state, under date of September 28, 1935, a copy of which you have in your file. Therefore, for the purpose of this opinion, we deem it unnecessary to dwell at any great length on such definitions, but merely refer you to that opinion.

We have carefully searched the decisions in this and other states for a specific definition of "reside" or "residence," as it applies to laws pertaining to grants for old age assistance,

but regret to say that we have been unable to find wherein any court has ever been called upon to construe same. The Legislature has defined "residence" in Section 655, R.S. Mo. 1939, as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: \* \* \* the place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally lodge, shall be deemed the place of residence of such person or persons respectively; \* \* \*"

54 C.J., Sections 1 and 4, pages 702 and 703, in part, lay down the general and accepted rule as to the elasticity of the word "reside," and hold that, while the word may occasionally be construed to mean a temporary place, it ordinarily means permanent residence. Said provisions read, in part, as follows:

"A. In General. An elastic words, often defined and construed by the courts, it is employed in a wide variety of significations, and its meaning has been variously shaded according to the variant conditions of its application, for it is capable of different meanings, and may receive a different meaning according to the connection in which it is found. \* \* \*  
\* \*

\* \* \* \* \*

"D. Continuity and Permanency. While it is said that the word may signify a temporary abiding, the word in its ordinary sense carries with it the idea of permanence, as well as continuity, and embraces the idea of fixed or permanent residence, to be construed as excluding the mere casual presence of a transient, and implying a permanent abode as contradistinguished from a mere temporary locality of existence. Furthermore it imports a habitation of some degree of permanency, coupled with the home thought."

As stated by the court in Greene et al. v. Beckwith, 38 Mo. l.c. 387:

"\* \* \* A mere residence of a temporary nature is not enough to constitute a man a resident of this State. It has been said that inhabitancy or residence does not mean precisely the same thing as domicil, but that they mean a fixed and permanent abode, or dwelling place for the time being, as contra-distin-  
guished from a mere temporary locality of existence--Matter of Wrigley, 4 Wend. 602; S. C. 8 Wend. 134. \* \* \* "

(See also Reger v. Reger, 293 S.W. l.c. 420.)

While intention to retain this state as one's residence has great weight, the courts have held that this may be overcome by actual facts and manifest appearances. In re Lankford's Estate, 197 S.W. 147, l.c. 148, the court said:

"Residence is largely a matter of intention. Lankford v. Gebhart, 130 Mo. 621, 32 S.W. 1127, 51 Am. St. Rep. 585. This intention is to be deduced from the acts and utterances of the person whose residence is in issue. \* \* \* "

(See State ex rel. Blackburn v. Smith, 64 Mo. App. 313, l.c. 320.)

Therefore, in view of the foregoing, we are of the opinion that one's residence is the place where the family of any person shall permanently reside in this state, or if he has no family, where he shall generally lodge; that a continuity of a residence is not broken by mere temporary absence with intent of returning, or without a definite intention of abandoning such residence. That if he leaves his residence and while absent forms the intent of not returning, the continuity of his residence is broken as though he had formed the intent at the time of removing. One merely away on a visit or for one's health for a reasonable length of time, possibly several months or, in some cases, possibly longer, depending upon the circumstances, should not be disqualified for receiving old age assistance under the State Social Security Act. However, this is a matter within the discretion of the Director and Commission, and he should exercise such discretion

Mr. Proctor N. Carter

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under the particular facts in each case, since in all probability there will be no two identical cases.

CONCLUSION

Having reached the foregoing conclusion, we will now answer your questions in the order requested. It is our opinion that your questions Nos. 1, 2, 4 and 6 should be answered in the negative. No. 3 should be answered in the affirmative. No. 5 should be answered in the negative, unless there is a possibility that the recipient may improve to such an extent that he intends to and will return to this state.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

ARR:LR