

BLIND PENSIONS:

Construing House Bill No. 97 and House Bill No. 98, pending in the 66th General Assembly of the State of Missouri.

DIVISION OF WELFARE:

April 30, 1951

5-1-51

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



Dear Sir:

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

"A question has been raised as to whether or not payment could be made to any blind pensioner under the provisions of either House Bill 97 or House Bill 98 in an amount less than \$50 a month. I should like for you to advise me whether, in your opinion, it would be possible for the Agency administering the law under the terms of House Bill 97 and under the provisions of House Bill 98 to pay a grant of less than \$50 per month to a person qualifying under either program. The specific sections of these bills to which I refer are: Section 209.040 of House Bill 97 and Section 5 of House Bill 98.

"A further question which I would like answered is, could an individual receiving old age assistance or permanent and total disability aid in an amount less than \$50 be considered as receiving aid under a Federal-State program for aid to the blind, as set forth in Line 17, Section 209.040 of House Bill 97.

"In your opinion, could a blind person, eligible and receiving benefits under provisions of House Bill 97, be compelled to accept some other type of aid, in lieu of his pension, other than aid to the blind as would be provided under the provisions of House Bill 98.

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"House Bills 97 and 98 have passed the House of Representatives and hearings will probably be held on these bills in the Senate within the next ten days. Consequently, we need your opinion as early as possible."

We shall answer the questions in the order stated in your request. (1) Is it possible for the administrative agency (Division of Welfare) under proposed House Bill No. 97 and House Bill No. 98 pending in the 66th General Assembly to pay a grant of a less amount than \$50.00 to persons qualifying under either bill? (2) Can a recipient of old age assistance or permanent total disability in an amount of less than \$50.00 be considered as receiving aid under a Federal-State Program for aid to the blind as set forth in Line 17, Section 209.040 of House Bill No. 97? (3) Can a blind person who is eligible and actually receiving benefits under House Bill No. 97 be compelled to accept some other type of aid in lieu of said pension other than aid to the blind as provided under House Bill No. 98?

Your inquiry is for a construction of new proposed legislation, and we have found no court decision actually construing such provisions or any similar legislation. So, this is of first impression.

One of the cardinal rules of statutory construction is, if possible, to ascertain the legislative intent from the words used and give it that construction. See *Union Electric Co. v. Morris*, 222 S.W. (2d) 767, 359 Mo. 564.

House Bill No. 97, supra, amends the present blind pension law by increasing the present pension from \$40.00 to \$50.00, and further provides that such blind pension shall not be payable to a blind person unless such person has been declared ineligible to receive aid to the blind (as provided in proposed House Bill No. 98). However, any present recipients of a blind pension shall continue to receive same until such time as investigations have been made as to the eligibility of such recipients to receive aid to the blind under proposed House Bill No. 98.

Section 209.040, House Bill No. 97, reads:

"No person shall be entitled to a pension under this article who has vision, with or without proper adjusted glasses, greater

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than what is known as light perception. 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. No person shall be entitled to receive a pension except upon a scientific vision test supported by the certificate of a competent oculist that such person does not possess vision greater than light perception. Every person passing the vision test and having the other qualifications provided in this article shall be entitled to receive a monthly pension of fifty dollars (\$50.00); provided, however, that pensions to the blind as provided herein shall not be payable to a blind person unless such person has been declared ineligible to receive aid to the blind under a federal-state program for aid to the blind; provided further, that the division of welfare shall continue the payment of blind pensions to persons now enrolled upon the blind pension rolls until investigations have been made as to the eligibility of such persons to receive aid to the blind."

Section 5 of House Bill No. 98 reads:

"The division of welfare shall, for the purpose of obtaining Federal financial participation in aid to the blind payments, prepare a budget taking into consideration the necessary expenses (in accordance with standards developed by the division of welfare) and the income and resources of the individual claiming aid to the blind. In preparing such budget the division of welfare shall disregard the first \$50.00 per month of earned income. Every person passing the vision test and having the other

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qualifications provided in this act shall be entitled to receive aid to the blind in the amount of \$50.00 monthly; provided, however, that if such person is found not to be in need and Federal financial participation in payments of aid to him cannot be obtained by the division of welfare under an approved state plan for aid to the blind, Title X of the Federal Social Security Act, as amended, aid to the blind shall not be granted. Any person disqualified to receive aid to the blind may apply for pension to the blind as provided in Chapter 209, Revised Statutes of Missouri, 1949."

The foregoing provision under House Bill No. 98, known as the aid to the blind bill, in clear and unmistakable language specifically provides that any person passing the vision test and having other necessary qualifications as provided therein shall be entitled to receive aid to the blind in an amount of \$50.00 per month. "Shall" is ordinarily construed by the courts, when used as herein, as mandatory and not discretionary. See State ex rel. Stevens v. Wurdeman, 246 S.W. 189, 295 Mo. 566. Considering the wording of said provision, the use of the word "shall" and decisions construing "shall" as mandatory, we consider it a mandate upon the administrative agency to pay the full \$50.00. Had the Legislature intended that applicants for blind pensions should receive a smaller amount than \$50.00, certainly it would have used some language indicating such intent. Section 5 further provides that however if such person is found to be in no need and Federal aid cannot be obtained under an approved state plan for aid to the blind under Title X as amended, he cannot receive aid to the blind under House Bill No. 98, but may then apply for a blind pension under Chapter 209, RSMo 1949. This merely means that if found to not be in need, then naturally no aid can be forthcoming from the Federal government under Title X, supra, as amended for the reason under the Federal Act, the Federal government can only participate with the states in such payments on a need basis. Section 1206, subchapter 10, Title 42, U.S.C.A., provides for the purpose of said subchapter the term "aid to the blind" means payments to or medical care to blind individuals who are needy. Said section reads:

"For the purposes of this subchapter, the term 'aid to the blind' means money payments to, or medical care in behalf of or any type of remedial care recognized under State law

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in behalf of, blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual (a) who is a patient in an institution for tuberculosis or mental diseases, or (b) who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof."

So, any applicant not being in need is entitled to no Federal participation under House Bill No. 98, supra, however, said applicant may apply under House Bill No. 97, supra, which provides for a blind pension of \$50.00 monthly. In either case an applicant qualifying under either proposed bill shall be entitled to \$50.00 per month. If he can qualify under House Bill No. 98, he is entitled to \$50.00, and if he cannot qualify thereunder, he may apply under the provisions of House Bill No. 97, which also grants him a flat \$50.00 a month pension.

In view of the foregoing, our answer to your first question is in the negative.

Likewise our answer to your second inquiry is in the negative for the reason that the Federal-State program for aid to the blind is that provided for by proposed House Bill No. 98 and Sections 1201-1206, inclusive, subchapter X, Title 42, as amended U.S.C.A. That aid received as old age assistance and total disability is not aid under the Federal-State program for aid to the blind as provided in Line 17, Section 209.040 of proposed House Bill No. 97.

The same is true of your third inquiry. The law is clear as to what any applicant is entitled to receive under House Bill No. 97, supra, provided he can qualify for a pension under that act. As previously stated, it provides that he shall be entitled to receive a pension of \$50.00. This is mandatory and the administrative agency, the Division of Welfare, cannot require said applicant to take something else in lieu of the \$50.00, provided for under House Bill No. 97, if he meets the qualifications thereunder.

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CONCLUSION

It is, therefore, the opinion of this department that in answer to your first question, the administrative agency, the Division of Welfare, is not authorized under proposed House Bill No. 97 or House Bill No. 98 to pay a grant of less than \$50.00 per month to any person qualifying under either program. Second, that any individual receiving old age assistance or permanent and total disability aid in the amount of less than \$50.00 shall not be considered as receiving aid under a Federal-State program for aid to the blind as set forth in Line 17, Section 209.040 of proposed House Bill No. 97. Third, that a blind person eligible and receiving benefits under the provisions of proposed House Bill No. 97 cannot be compelled to accept some other type of aid in lieu of his pension other than aid to the blind as provided under the provisions of proposed House Bill No. 98, should he qualify thereunder.

Respectfully submitted,

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APPROVED:



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