

PENSION: Claimants and recipients of old age assistance bene-
CONVEYANCE: fits are disqualified to receive benefits when deeding
DEED: property without fair and valuable consideration to
children, with irrevocable instructions to escrow
agent to deliver deed to grantees upon death of grantors.



April 21, 1955

Honorable Noel Cox
Missouri State Senate
Senate Post Office
Capitol Building
Jefferson City, Missouri

Dear Senator Cox:

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

"The facts I had in mind are as follows:
An old couple, who have qualified and are receiving old age assistance, have a number of children. They desire to prefer two of the children over the other children in the final disposition of their real estate.

"As I understand the law under the ruling of the State Social Security Commission, they can do this only by will. At the death of the survivor of them, this entails administration in Probate Court and is very expensive. The two questions on which I would like to have your opinion are as follows:

"First would it violate the laws of the State of Missouri if these recipients made a deed deeding this property outright to the preferred children, then deliver said deed to a bank or to some other escrow agent with irrevocable instructions to deliver said deed to the grantees at the death of the grantors, and would it cause the pensioners to lose their pension?

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"Second, would these old age pensioners, who are already on the roll, be disqualified and lose their pensions if they made a quit claim deed to the two children, retaining the right to sell, mortgage, rent or otherwise dispose of said property during their lifetime?

* * * * *

You first inquire if recipients of old age assistance benefits under the State Social Security Act would lose benefits thereunder by making an outright deed to their property to preferred children, and deliver it to an escrow agent with irrevocable instructions to deliver said deed to grantees only upon the death of the grantors.

In the case of *St. Louis County National Bank v. Fielder*, 260 S.W.2d 483, referred to in your request, you will recall the grantors therein retained an interest for life and also reserved the right to mortgage, rent, lease and even convey said property during their lifetime. In view of the foregoing, that decision is hardly applicable in this instance.

In *Forester v. Clark*, 171 S.W.2d 647, 1.c. 648 (1-3), the court held that the delivery of a deed is essential to its validity; that the grantor must part with the dominion and control of said deed with intent that it take effect presently; that the actual delivery to the grantee need not be made, but to a third party.

In *Wilcox v. Coons*, 241 S.W.2d 907, 1.c. 912, the court held that when the grantor in a deed retained no dominion or control over said deed and tendered said deed to an attorney to deliver to the grantees upon the death of the grantor, that the delivery was complete when he delivered it to the attorney, and thereafter he could not make any other disposition by subsequent will. In so holding, the court said:

"The contention made under (b), above, is that the fact of the codicil and the making of the two subsequent wills (each prepared by Walden) conclusively establishes Collins' right of recall, and the ending of Walden's authority, if it ever existed.

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But Walden's testimony, under any construction or view that may be taken of it, was amply sufficient (if believed by the jury, as it was) to warrant a finding that Collins deposited the deed with him with directions to hold it and turn it over to the grantees upon grantor's death, and that in so depositing the deed Collins reserved no dominion or control over the deed, nor any right thereto. In that view, then delivery was complete, so that the grantor could not, by subsequently changing his intention, and by purporting to make other disposition of it by will, affect such prior delivery. Potts v. Patterson, 355 Mo. 154, 157, 195 S.W.2d 454, 456; * * *

See also Potts v. Patterson, et al., 195 S.W.2d 454, Lc.456(13).

Under the foregoing decisions, assuming all other requirements for a valid deed are satisfied, the proposed deed is valid. Grantors and recipients under the State Social Security Act cannot have anything further to do with the property so conveyed, not even to dispose of it by will or subsequent deed.

Section 208.010, RSMo Cum. Supp. 1953, raises a statutory presumption that any person who assigns, conveys or transfers property without receiving a fair and valuable consideration within five years preceding an investigation, shall be presumed to have made such assignment, conveyance or transfer for the purpose of rendering themselves eligible for benefits or to increase their benefits, and said statute furthermore defines "fair and valuable consideration" as follows:

" * * * 'Fair and valuable consideration' as used herein shall not, for the purpose of this section, be construed to include past support, contributions or services rendered by a relative to a claimant; * * "

Therefore, unless these recipients can positively overcome this statutory presumption, then such disposition of said property of itself disqualifies them from longer receiving benefits under said program. While such statute merely raises a presumption that may possibly be overcome by direct and positive evidence to the contrary, this may be difficult to overcome, as persons and courts differ as to its legal effect.

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Furthermore, as previously shown in our recent opinion rendered to you on a similar request, we made reference to a rule of the Division of Welfare of the Department of Public Health and Welfare, which relates to the disqualification of a claimant or recipient for old age assistance benefits who has an additional property in which he does not reside, until such time as he may sell same and use the proceeds thereof for living expenses, as it is considered a resource under the law. Section 208.010, supra. So if these recipients should deed property of this kind, it is possible that it might disqualify them from such benefits.

In reply to your second inquiry, we believe this was fully covered in our recent opinion rendered to you under date of March 23, 1955.

CONCLUSION

It is the opinion of this department that such disposition of property under facts stated in your first inquiry will possibly result in removing such claimants and recipients from the old age assistance roll, or, if not presently recipients of such benefits, disqualifying them for same.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

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