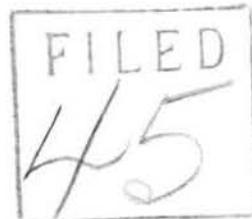


OLD AGE ASSISTANCE BOARD: Members of county court disqualified from appointing themselves to county old age assistance board.

7-6
July 6, 1935.



Hon. W. Ed Jameson,
President Board of Managers,
State Eleemosynary Institutions,
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter of June 18, which is as follows:

"I am just in receipt of a letter from the county court of Ralls County, Missouri, asking if the court itself would be permitted to act as an Old Age Pension Board in that county. The law states the court shall appoint an Old Age Assistance Board. Whether they can appoint themselves, I shall have to leave to your office for an opinion.

"Kindly furnish me with an opinion as to the qualifications of the Old Age Assistance Board, making it broad enough so it will apply to the many letters I will be receiving in the next few weeks regarding this matter."

Your letter refers to Senate Bill No. 7, same being an Act to provide for, regulate and fix the conditions and requirements for assistance for residents of the State of Missouri over the age of 70 years.

Section 3 of said Act provides as follows:

"In every county there shall be established a County Old Age Assistance Board, to consist of

three persons domiciled in the county, each of whom shall have been a resident taxpaying citizen of the county for a period of five years prior to his or her appointment at least one of whom shall be a woman, who shall be appointed by the county court for a term of four years, except that of the members first appointed, one shall be appointed for a term of two years and one for a term of three years. Vacancies shall be filled in the same way in which the original appointment was made. The members of the county board shall serve without compensation, except that the necessary expenses incurred while in the performance of their duties shall be paid to them."

I

The qualifications for membership on county old age assistance boards are set out in the above section. They are, namely, (1) domiciled in the county; (2) resident taxpaying citizen of the county for a period of five years prior to his or her appointment.

The term "domicile" is defined in 10 American & English Encyclopedia of Law (2^d Ed.) page 8 in the following manner:

"In a strict and legal sense, that is properly the domicile of a person when he has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning."

In the case of *Wyrick v. Wyrick*, 145 S.W. 144, 1.c. 146, 172 Mo. App. 723, our court, in defining the word "domicile", said:

"The 'domicile' of a person is a place in which such person has voluntarily fixed his abode, not for a temporary purpose, but with the permanent intention of making it his permanent home."

14 Cyc. 383:

"'Domicile' is residence coupled with intention,"

We are of the opinion that a person may be said to be domiciled in a particular county and be eligible for membership on its county old age assistance board when he or she has a fixed, permanent home and principal establishment in that county.

The term "resident" is defined in the case of *Bough v. Little*, 140 Okla. 206, 282 P. 459, l.c. 461, thus:

"A resident of a place is one whose place of abode is there and who has no present intention of removing therefrom. See also: Pope 'Legal Definitions' 1401; 7 Words & Phrases, 1st Series, 61, 62."

A person may be said to be a "resident" of Cole County and have his "domicile" in Jackson County. There is not necessarily the idea of permanence connected with the signification of the word "resident" as there is in the word "domicile". With this in mind, we are of the opinion that the Legislature intended that persons, in order to be qualified as members of their county old age assistance boards, must not only have their "domicile" in their county, but must also be a "resident" of their county.

In the case of *State ex inf. Bellamy v. Menegali*, 307 Mo. 447, 270 S.W. 101, an attempt was made to oust a school director on the ground that she was not a taxpayer who had paid a state and county tax within one year next preceding her election, in violation of a statute. The Court, analyzing the meaning of the term "taxpayer", said:

"In Webster's New International Dictionary, a taxpayer is defined as: 'One who pays a tax.' In Funk & Wagnall's New Standard Dictionary, a taxpayer is defined as: 'One who pays any tax, or who is liable for the payment of any tax.' The evidence is clear and undisputed that respondent on June 1, 1920, was

the legal owner of the property heretofore described, and that it was not exempt from taxation."

In the case of *Catilo v. State Highway Commission*, 312 Mo. 244, 279 S.W. 673 (1925), the status of the plaintiffs as taxpayers having a right to bring an injunction suit on their own behalf and on behalf of others similarly situated was questioned, and the court in discussing the meaning of the term "taxpayer", said:

"In Black's Law Dictionary, a taxpayer is defined as 'A person chargeable with a tax.' In *State ex rel. Sutton v. Fasse*, 71 S.W. (Mo.) 745, Goode, J., speaking for the St. Louis Court of Appeals, defines a taxpayer as 'a person owning property in the State subject to taxation and on which he regularly pays taxes.' This definition is adopted in *Pope's Legal Definitions*."

In deciding whether a person is a taxpayer or not so as to entitle him to some statutory right, it has been held that it makes no difference whether the property on which he claims to be a taxpayer is assessed in his name or not. In the case of *State ex rel. Circuit Attorney v. Mecklin*, 41 Mo. App. 335 (1890), the Court said:

"A person is not relieved from paying taxes on property owned by him, simply because it is erroneously assessed to another, nor is he under any legal obligation whatever to pay a tax on realty in which he has no interest, simply because it is assessed to him. The assessment of a tax creates no debt in the ordinary sense of the term. *City of Carondelet v. Picot*, 38 Mo. 125; *Pierce v. City of Boston*, 3 Met. 520; *Green v. Wood*, 7 Ad. & Ell. N.S. 178. If a person owns an interest in property and pays a tax thereon, he pays his tax regardless of the fact to whom the property is assessed."

In conclusion, we are of the opinion that if a person is (1) a married woman, she is a taxpayer within the terms of the Act if she owns any property in the county in which she is a resident and has her domicile, subject to taxation, regardless of whether it is in her own name or not; and (2) if household goods are subject to taxation in the county and a tax has been paid on same, the owner thereof is a taxpayer; and (3) if the owner of the goods referred to in (2) above was a married man, his wife is not a taxpayer unless she owns other goods which would make her a taxpayer.

In the case of *Devanney v. Hanson*, (W. Va.), 53 S.E. 603, the Court, in defining the term "citizen" as it relates to a county, said:

"There is no such thing as a citizen of any county. A person may be a citizen of a state or of the Union, because they are sovereign; but a county is a mere subdivision of a state with bodies executing functions assigned to them by the sovereign in process of government, but they are not sovereign. To be a citizen one must be 'a member of an independent political society and as such subject to its law and entitled to its protection in the enjoyment of civil or private rights. 6 Am. & Eng. Enc. L. (2d. Ed.) 15. 'A citizen is one who, as a member of a nation or of the body politic of a sovereign state, owes allegiance to and may claim reciprocal protection from its government. 7 Cyc. 133. A county is not an independent political society. It makes no law save in subordination to the state under authority conferred by it."

In the case of *State ex rel. v. Banta*, 71 Mo. App. 32, 1.c. 42, the Court said:

"The words 'inhabitant', 'citizen' and 'resident', as employed in different constitutions to define the qualifications of electors, mean substantially the same thing; ***"

We are of the opinion that the word "citizen" as used in Section 3, supra, means substantially the same thing as the word "resident".

II

Section 3, supra, states in part that "in every county there shall be established a county old age assistance board * * * who shall be appointed by the county court * * *" The question is raised whether the members of the county court could appoint themselves to act as the county old age pension board in their county.

The Court, in the case of State ex rel. Smith v. Bowman, 184 Mo. App. 549, 170 S. W. 700, l.c. 703, in holding that officers with the power of appointment could not appoint themselves, said:

"Tested in this manner, we have no hesitancy in holding that it is against public policy to allow a body of public officials having the appointive power to fill an office to appoint one of their own number to such office. Thus, in 29 Cyc. 1381, the law is stated: 'It is contrary to the policy of the law for an officer to use his official appointing power to place himself in office, so that, even in the absence of a statutory inhibition, all officers who have the appointing power are disqualified from appointment to the offices to which they may appoint. The Constitutions of a number of the states have applied the same rule to the offices which have been created or whose emoluments have been increased by the bodies of which the persons seeking appointment were members at the time the office was created or the emoluments increased.' In 23 Ency. of Law, 338, after stating that it has often been enacted that members of legislative bodies are ineligible to offices created by such bodies, the text adds: 'The same rule applies to officers with the power of appointment. They cannot appoint themselves.'"

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"We are not without abundant authority for this ruling. The case of Meglemery v. Weissinger, (Ky.) 131 S.W. 40, 31 L. R. A. (N.S.) 575, is a leading case on this subject. The editorial note to that case says: 'The adjudged cases upon the validity of appointment to office made from the membership of the appointing body hold uniformly that such appointments are illegal and to be generally discountenanced.'"

In view of the foregoing, we are of the opinion that the members of the county court authorized to appoint members of the county old age assistance board are disqualified from appointing themselves and that any such attempted appointment would be clearly against the public policy of the State of Missouri.

Respectfully submitted,

W. O. SAWYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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