

PENSIONS:
OLD AGE
ASSISTANCE:

Under Section 16, Page 736, Laws of 1939, the State Social Security Commission is unauthorized to suspend monthly payments pending appeal for a hearing.

March 15, 1940

3-16



Honorable W. Randall Smart
Member
Missouri House of Representatives
Commerce Building
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion under date of February 19, 1940, which reads as follows:

"I would appreciate if you would furnish to me your opinion of the law on the following facts:

'An aged recipient under our Social Security Laws is denied further benefits. Within the proper time he files his application for a hearing before the State Board, under Section 16 of the Revised Social Security Act, page 736, Session Acts of 1939. The petitioner or Appellant makes demand upon the State Social Security Commission that it continue to pay the appellant and retain him on the rolls until the case has been determined by the State Social Security Commission. The Commission has refused to pay appellant, but state that the

recipient's name shall be carried on the payroll in a suspended form and if the Commission finds the appellant eligible, reinstatement shall be made as of the date case was closed, and he would automatically receive all of his back payments.'

"Will you please advise if this act on the part of the State Social Security Commission is not a direct violation of the law, the intent and purpose of the law, and that the Commission should be required to continue payments to the recipient until a final determination by the Commission."

You enclose a letter addressed to you under date of February 17th, from Mr. William Huttig, Secretary-Administrator of the State Social Security Commission of Missouri, which reads, in part:

"Upon receipt in the State office of Forms PA-2 (Appeal forms) from a former recipient to request a hearing before the State Commission, the closing shall be cancelled by the State Office and the recipient's name carried on the payroll in a suspended form. If the State Commission finds the appellant to be eligible, reinstatement shall be made as of the date case was closed and in the amount received at the time of closing."

Section 16, as amended by the Sixtieth General Assembly, page 737, Laws of 1939, reads as follows:

"If an application is not acted upon within a reasonable time after the filing of the application or is denied in whole, or in part, or if any benefits are cancelled or modified under the provisions of this Act, the applicant for pensions, or old age assistance, or aid to dependent children, shall be notified at once and may appeal to the State Commission, said appeal from the State Administrator to the State Commission shall be filed in the office of the secretary of the county commission by the aggrieved applicant within ninety days from the date of the action and decision appealed from. Proper blank form for appeal to the State Commission shall, upon request, be furnished by the county office to any aggrieved applicant and every such appeal to the State Commission shall be certified and transmitted by the county office to the State Commission within ten days after same is filed with the county office. The State Commission shall upon receipt of such an appeal give the applicant reasonable notice of, and opportunity for, a fair and speedy hearing in the county of the residence of the applicant. Every applicant on appeal to the State Commission shall be entitled to be present, in person and by attorney, at the hearing, and shall be entitled to introduce into the record at said hearing any and all evidence, by witnesses or otherwise, pertinent to such applicant's eligibility as defined under the provision of Sections 11 and 12 of this act and all such evidence shall be taken down, preserved and shall become a part of the applicant's record in said case, and upon the record so made the State Commission shall determine all questions presented by the appeal. 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 within ninety days from the date of the action and decision appealed from. The State Commission, upon a denial of benefits to the applicant, shall, upon request, furnish said applicant with proper form of affidavit for appeal from the said Commission to the circuit court of the county in which the applicant resides. Upon the affidavit for appeal, duly executed by the applicant before an officer authorized to administer oaths, being filed with the State Commission within ninety days from the date of the said Commission's decision denying benefits to said applicant, the entire record preserved in the case at the time of the applicant's hearing, together with the affidavit for appeal, shall, by the State Commission, be certified to the circuit court of the county in which the applicant resides and said case shall be docketed as other civil cases except that neither party shall be required to give bond or deposit any money for docket fee on appeal to the Circuit Court. Such appeal shall be tried in the circuit court upon the record of the proceedings had before and certified by the State Commission, which shall in such case be certified and included in the return of the State Commission to the court. Upon the record so certified by the State Commission, the circuit court shall determine whether or not a fair hearing has been granted the individual. If the court shall decide for any reason that a fair hearing and determination of the applicant's eligibility and rights under this act was not granted the individual by the State Commission, or that its decision was arbitrary and unreasonable, the court shall, in such event, remand

the proceedings for redetermination of the issues by the State Commission. Appeals may be had by either party from the Circuit Court upon the record in the same manner as provided herein for appeals from the State Commission to the Circuit Court and all appeals to the Circuit and Appellate Courts shall be advanced on the docket of said Courts for immediate hearing and determination. In no event when appeal is taken shall any person's name be removed from the rolls of public assistance under this act, until the case has been heard and determined by the State Social Security Commission. The file and record of every person whose name is duly entered upon the public assistance rolls of this state, at all reasonable times, be open to inspection by such individual and to any representative of such individual."

The pertinent part of Section 16 to be construed is:

"* * * In no event when appeal is taken shall any person's name be removed from the rolls of public assistance under this act, until the case has been heard or determined by the State Social Security Commission. * * * "

We are unable to find any decisions construing this specific provision.

In re Costello's Estate, 92 S. W. (2d) 723, l. c. 725, 338 Mo. 673, the court said:

"This statement is in harmony with the rule, in all jurisdictions, which follows:

'As the intention of the legislature, embodied in a statute, is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the court shall, by all aids available, ascertain and give effect, unless it is in conflict with constitutional provisions, or is inconsistent with the organic law of the state, to the intention or purpose of the legislature as expressed in the statute.' 59 C. J., p. 948."
(See also Wallace v. Woods, 102 S. W. (2d) 91, 340 No. 452.)

Under Section 16, page 475, Laws of 1937, which was effective prior to the Sixtieth General Assembly repealing same and enacting in lieu thereof Section 16, p. 737, Laws of 1939, the appellate courts in this State held that the Circuit Courts were not exceeding their jurisdiction in restoring claimants to the roll as of the date they were arbitrarily removed with back pay to date of trial in the Circuit Court.

In State v. Hughes, 128 S. W. (2d) 671, 1. c. 673, the court said:

"We also think and hold that the trial court was within its jurisdiction in holding as of the date of the trial October 20, 1938, that the applicant 'is entitled to all the assistance which she was drawing at the time of being stricken from the rolls.'"

Also, in Galvin v. State Social Security Commission, 129 S. W. (2d) 1051, 1. cl. 1053, the court said:

"We conclude that when the court adjudged that respondent be restored to the roll the law wrote into the judgment that such restoration was of the date of the erroneous removal and that the words in the judgment 'as of November 30, 1937', were unnecessary and added nothing to the force of the judgment."

Under Section 16, Laws of 1939, page 736, the Circuit Court has been restricted so that now all the jurisdiction the circuit court has on one of these appeals is to determine if the claimant received a fair hearing and whether or not the Commission was unreasonable or arbitrary in rendering their decision and all the jurisdiction the circuit court has under this provision, if they find against the Commission on any of these points, is to remand same to the Commission for a redetermination, which is quite a contrast to Section 16, Laws of 1937, as hereinabove construed by the appellate courts in this State.

It is common knowledge that the Sixtieth General Assembly was faced with the possibility of losing Federal participation in paying old age assistance in this State, if the State Act was not amended so as to comply with the requirements of the Federal Social Security Board and the provisions of its Federal Appropriation Act. One of the principal complaints leveled at the State Social Security Board by the Federal Board was that the said act was not being administered by a single state agency as provided by the State Act, State plan approved by the Federal Board and the Federal Act. Another complaint was that the circuit courts in this state were restoring to the rolls persons who had been declared by the State Social Security Commission (the single state agency) ineligible. Another complaint was that the appeal provided for a trial de novo which permitted the admittance of new evidence, evidence that the Commission had never had before it. Such evidence might even show a change in conditions from the conditions at the time recipient was removed or at the time of hearing.

The Federal Social Security Board heretofore has never participated in this state in retroactive payments, and we assume they will not participate in suspended payments. There is no reason for enacting such a provision if it is to be construed as meaning the Commission shall leave the recipient's name on the roll without any payments, pending the final decision of the Commission which must come after a hearing has been held. If this was the intent of the Legislature, they would have been more specific and included such a provision.

It is fine to say if the Commission finds for the claimant then the back payments shall be forthcoming to the claimant. But what about his expenses pending the hearing? How is he to meet these expenses? This might be defeated by the expiration of an appropriation for that biennium and the new appropriation might specifically prohibit any such payments. In other words, what reason is there for leaving his name on the roll and suspending payment? The lawmakers could have had but one thought in enacting such a provision and that was that the recipient should continue to draw his monthly assistance until the State Social Security Commission finally determined his appeal.

The State Social Security Commission may make rules and regulations under the State Social Security Act, but this does not permit them to legislate and enact laws. The rules and regulations may be promulgated only for the purpose of administering the act.

Volume 12 C. J., page 847, Section 330, reads as follows:

"While the power to make laws may not be delegated to a board or commission, nor may the legislature, without prescribing any standard of exemption, leave it wholly to the discretion of a commissioner to exempt persons from the operation of a statute, yet, a certain policy or rule having been prescribed by

statute, matters of detail in carrying out the executive duty of giving effect to the legislative will may be left to boards or commissioners. The interstate commerce commission is a conspicuous illustration of this rule."

In *Field v. Clark*, 12 S. Ct. Rep. 495, 1. c. 505, the court said:

"The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must therefore be a subject of inquiry and determination outside of the halls of legislation."

One of the cardinal rules of statutory construction is to favor a reasonable construction which would tend to avoid injustice and oppression. In *State v. Irvine*, 72 S. W. (2d) 96, 1. c. 100, 335 Mo. 261, 93 A. L. R. 232, the court said:

"The Courts will not construe a statute as to make it require an impossibility."

In *State ex rel. St. Louis Public Service Co. v. Public Service Commission*, 34 S. W. (2d) 486, 1. c. 489, 326 Mo. 1169, the court said:

"A statute should not be construed in a way to make it unreasonable when it can be given a reasonable construction."

It has already been shown that under Section 16 prior to it being amended by the Sixtieth General Assembly, the Circuit Courts were restoring persons to the roll as of the date they were removed when found by the circuit court on appeal to be eligible. The amendment prohibits such jurisdiction. Therefore, is it not reasonable to believe that the Legislature was of the opinion the recipients should be guaranteed their monthly assistance until the Commission after a hearing finally determined their eligibility. The very words import no other meaning. So long as a person's name is on that roll he is entitled to some assistance. This provision was enacted in order to stay the Commission from removing a recipient until the State Social Security Commission itself finally passed upon their eligibility. Another reason for this construction is that heretofore under the former act before same was amended, and probably not so much now, in many cases it would be a year or more after the recipient was removed from the roll and filed his appeal to the Commission for a hearing before the Commission would grant him a hearing and finally pass on said hearing. There was no delay in the circuit court after the recipient filed his appeal to the circuit court, but a prerequisite for appeal to the courts was the hearing and decision of the Commission.

After the appeal for hearing was filed, the Commission would require what they termed a reconsideration which caused much delay and required the presence of the District Supervisor and worker with the recipient. This was necessary before the hearing could be held. There was no specific provision under the law for holding such a reconsideration. Of course, now under the amendment it almost prohibits a reconsideration for the reason it specifically requires the County Social Security Commission to forward said appeal to the

State Social Security Commission within ten (10) days after receipt of same. However, there is no provision requiring the Commission to hold hearings within any specific time after receipt of said appeal.

As we read this amendment we can see no sound or logical reason why the Sixtieth General Assembly in enacting such amendment would ever do so with the intent that the name should remain on the roll with no monthly payments until the State Social Security Commission had finally rendered its decision after a hearing. Then, if they found for the claimant he shall receive back payments and if they found against him he receives no back payments and his name is then removed from the roll. The Legislature very well knew that only a very small percentage after a hearing are ever restored to the roll voluntarily by the State Social Security Commission.

CONCLUSION.

Therefore, we are of the opinion the Sixtieth General Assembly in amending Section 16, supra, fully intended that all recipients for old age assistance that were ordered stricken from the roll should remain on the roll and continue to receive old age assistance until a hearing was granted and the Commission finally determine their eligibility. This is the only reasonable construction for such a provision.

This amendment further requires a person desiring to appeal to the Commission for a hearing to do so within ninety (90) days after he is notified that he will no longer receive assistance. If he fails to

Hon. W. Randall Smart

(12)

March 15, 1940

file his appeal within the specified time and comply with the law, then he may be removed from the rolls upon the expiration of this special period.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

GOVELL R. HEWITT
(Acting) Attorney General

ARH/rv