

BLIND PENSION ACT: The word "income" as used in Section 9451, R. S. Missouri, 1939, means net income.

October 27, 1941

11-8

Mrs. Lee Johnston, Chief Investigator,
Missouri Commission for the Blind
Jefferson City, Missouri



My Dear Mrs. Johnston:

This will acknowledge receipt of your letter of October 21, 1941, in which you ask for an opinion as follows:

"George W. Dieter, Buchanan County, was stricken from the Blind pension roll on December 21, 1940, because of income.

"Mr. Dieter is a piano tuner by trade, and employs a sighted guide to drive his car, and has deducted from gross income all expenses of maintaining automobile, including gas, oil, tires, and repairs, his guide's salary, and a business telephone.

"When Mr. Dieter submitted his report for the year, 1940, to our investigator, it showed deductions for expenses for house rent and all other personal expenses, in addition to deductions for maintenance of automobile and guide, and business phone, from a total income exclusive of blind pension of \$1200.00.

"The investigator made allowable deductions, taken from Mr. Dieter's statement of expenses, for guide, automobile, and telephone of \$486.00, leaving a net income

of \$714.00, exclusive of blind pension for the year, 1940. It was on this basis that Mr. Dieter's name was stricken from the rolls.

"Mr. Dieter's attorney, C. J. Griswold, of St. Joseph, Missouri, has written, asking that Mr. Dieter be re-instated and has submitted reports of income and expenses for the first nine months of 1941 as shown on copy attached.

"Before writing Mr. Griswold that it will be necessary for a report to be submitted of a complete twelve-month period, instead of nine months, showing supposed average for twelve months, we would like to have your opinion as to the legality of allowing maintenance for automobile, sighted guide, and telephone, which are necessary for a blind piano tuner."

The qualifications required to entitle one to be a recipient of the blind pension are set out in Section 9451, Article 1, Chapter 54, R. S. Missouri, 1939, and the portion of that section which is pertinent to your inquiry is herein set out.

"Every adult blind person, twenty-one years of age or over, of good moral character, who shall have been a resident of the state of Missouri for ten consecutive years or more next preceding the time for making application for the pension herein provided, and every adult blind person, twenty-one years of age or over, who may have lost his or her sight while a bona fide resident of this state and who has been a continuous resident thereof since such loss of sight,

shall be entitled to receive, when enrolled under the provisions of this article, an annual pension as provided for therein, payable in equal quarterly installments: Provided, that no such person shall be entitled to a pension under this article who has an income, or is the recipient, of six hundred (\$600.00) dollars or more per annum from any source whatever, * * * * *."

The word "income" is defined in Webster's New International Dictionary, second edition, as:

1. "A coming in.
2. Something that comes in as addition or increment.
3. That gain or recurrent benefit (usually measured in money) which proceeds from labor, business, or property; commercial receipts or revenue of any kind. The total receipts from any branch of business are known as gross income. That portion of the receipts which is left after paying wages and for materials is known as net income. * * * * *."

In Section 9451, R. S. Missouri, 1939, supra, no qualifying or limiting adjective is used with the noun "income," which might indicate that the word is used in its broadest sense which would be gross income.

No appellate court in Missouri has undertaken to define the word "income" as used in Section 9451, supra, and a search of the reports from other states fails to reveal where the word has been used in a similar statute and defined. It has been defined when used in taxing statutes and where not limited by the adjective net, has been defined to mean gross income. As the word has not been defined by any

court in its use in the above or a similar statute, it is necessary to determine the definition and use the General Assembly intended should be placed upon the word when it enacted the statute, whether it means gross income or net income.

In the case of *Keller v. State Social Security Commission*, 137 S. W. (2d) 989, rules for construing a statute which are here applicable are briefly set out at l. c. 990:

"In construing this statute the following well established rule should be kept in mind: Where the language of a statute is plain and unambiguous nothing contrary to the evident intent can be implied. *State ex rel. Jacobsmeyer v. Thatcher*, 338 Mo. 622, 92 S. W. (2d) 640. A statute should be so construed as to give effect to the legislative intent. *State ex rel. Wabash R. Co. v. Shain*, 341 Mo. 19, 106 S. W. (2d) 898. * * * * *

If it was the intention of the General Assembly, in enacting what is now Section 9451, R. S. Missouri, 1939, that the word "income" should be used in its broadest sense, that of meaning gross income, which is indicated as mentioned above, this might lead to many deserving blind persons being refused a pension when really entitled to one. A deserving blind person might be attempting to carry on a business and have a gross income of Six Hundred Dollars (\$600.00) or more from the business which might not pay the expense of conducting the business and while nothing would be realized from the business to maintain the blind person, yet the person would be deprived of assistance from the state because the business had a gross income of Six Hundred Dollars (\$600.00) or more. This would be an absurdity. And a statute should not be construed into something unreasonable or absurd. *State v. Irwine*, 72 S. W. (2d) 96, l. c. 100.

"* * * The courts will not so construe a statute as to make it require an impossibility or to lead to absurd results if it is susceptible of a reasonable interpretation. * * * * *"

The sensible and reasonable construction would seem to be that the word "income" as used in section 9451, supra, should mean net income, if such a construction is possible. This would lead to the reasonable result that all blind persons having the other qualifications who had an income of Six Hundred Dollars (\$600.00) or more, which could be used in maintaining themselves and their dependents, if any, would not be entitled to assistance from the state.

It would hardly seem probable that the General Assembly intended to bar from the benefits of the Blind Pension Act those deserving blind persons who were attempting to support themselves, because they might have a gross income exceeding Six Hundred Dollars (\$600.00), but from which gross income, after deducting business expense, there was not remaining Six Hundred Dollars (\$600.00) to support the blind persons.

On page 787, Section 4 of Volume 48 of Corpus Juris is found the following quotation concerning the construction of pension laws.

"While it has been held that a statute making it a criminal offense to violate a pension law must receive strict construction, it has been uniformly held that laws creating the right to pensions must be liberally construed with the view of promoting the objects of the law-making body; and their force and effect are not to be conformed to the literal terms of the statute."

And, in the case of Dahlin v. Missouri Commission of the Blind, 262 S. W. 420, the Springfield Court of Appeals, in construing and applying the Missouri Blind Pension law said, l. c. 424:

"The blind pension law is remedial, and should therefore be liberally construed; also it should be construed with the object in view that was sought to be accomplished. Straughan v. Meyers, 268 Mo. 580, 187 S. W. 1159; Lusk v. Public Service Com., 277 Mo. 264, 210 S. W. 72.

"Where certain terms of a statute are ambiguous, resort may be had to its title as a clue or a guide to its meaning. Straughan v. Meyers, supra. Looking to the title of both the act of 1921 and the act of 1923, we find that the purpose was to provide pensions for the deserving blind.

"Guided by these rules of construction, we do not think that the Legislature intended to exclude from the blind pension those who can merely distinguish between light and darkness, or motion, or the direction of motion, and no more. 'Light perception,' as used in the act, we construe to mean all that field or scope of vision from the mere ability to distinguish between light and darkness up to the ability to discern form; that is, when one is able to recognize the form of an object, such person has a greater vision than light perception. Such is the scope of light perception as defined by Dr. Schmidtman and Hensel & Sweet, quoted supra, and also by part of the specialists who testified at the trial in the circuit court. Most of the specialists, however, as above stated, who were before

the circuit court, seem to have considered that light perception should be confined to the lowest degree of vision -- that is, the mere ability to distinguish between light and darkness -- and that any greater vision would be greater than light perception. We do not believe that the Legislature intended such a restricted and limited scope. Such a restricted and limited construction would, for all practical purposes, render ineligible all those except the totally blind."

It will be noted in the above quotation from the Dahlin Case that the court permitted a broader definition of the terms "light perception" than was generally accepted, in order to carry out the object sought to be accomplished by the Blind Pension Act. In the light of the Dahlin Case, supra, it would seem that in order to properly carry out the object of what is now Section 9451, R. S. Missouri, 1939, the word "income," as used there should be considered to mean net income, that is, income which would be available for maintaining the blind person and his or her dependents, if any.

CONCLUSION

Applying the above interpretation of the meaning of the word "income" as used in Section 9451, supra, in the conclusion follows that the legitimate expenses incurred in carrying on business may be deducted from the gross income of the blind person to determine whether or not such blind person has an income of Six Hundred Dollars (\$600.00) or more. And, in the specific case which you asked about,

Mrs. Lee Johnston

(8)

October 27, 1941

the expense of guide, transportation, et cetera, would be properly deductible.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

WOJ/rv