

BLIND PENSION: Oculist's expense and fee for examining eligible
APPROPRIATION: applicant for blind pension to be paid from the
applicant's first pension check.

October 30, 1941

Mrs. Lee Johnston, Chief Investigator
Missouri Commission for the Blind
103 State Capitol Building
Jefferson City, Missouri



Dear Mrs. Johnston:

This will acknowledge receipt of your request for an official opinion under date of October 27, 1941. You inquire whether the oculist's fee and expense on the examination of new applicants who shall subsequently be granted a pension, shall be deducted from the first pension check received by the applicant according to Section 9456, R. S. Missouri 1939, or whether this expense should come out of the appropriation of Fifty Thousand Dollars (\$50,000.) under Section 3, page 166, Laws 1941.

Section 9456, R. S. Missouri 1939, reads as follows:

"It shall be the duty of the commission for the blind to make such regulations relative to the examination of applicants for pension, including the examination by the oculist and of all matters deemed necessary connected with the administration of this article. The examination and certificate of the oculist shall not exceed \$5.00 for each applicant, together with such expense as may necessarily be incurred in making examination where

same is not made in his office; such fee and such expense shall be paid by the commission for the blind, but in the case the applicant, concerning whom the expense was so incurred shall subsequently receive a pension, the amount of such expense and fee for examination shall be deducted from the first pension received by applicant and upon proper voucher and requisition by the commission, the state auditor shall issue a warrant to the commission in reimbursement of same. The examining oculist shall state in his certificate (1) the amount of vision in each eye, (2) the cause of blindness, (3) the possibility of curing same by treatment or operation, (4) the physical and mental condition of applicant and such other matter as may be deemed by the commission of value in dealing with matters coming within its authority. No person shall be entitled to the benefits of this article who shall refuse to submit to treatment or operation to effect a cure when recommended by the examining oculist and approved by the commission; but upon submission to such treatment or operation the pension of applicant, otherwise entitled thereto, shall be paid as in other cases: Provided further, that no applicant who is more than seventy-five years of age, shall be required to submit to an operation to restore his or her vision in order to come under the provisions of this article, but may voluntarily submit to operation."

The above provision was not amended or repealed by the Sixty-first General Assembly.

Section 3, page 166, Laws 1941, appropriates money, out of the state treasury, chargeable to the general revenue fund, for the use and benefit of the Commission for the Blind investigating applicants for a blind pension.

"Commission for the Blind. There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of Fifty Thousand Dollars (\$50,000.00) for the use and benefit of the Commission for the Blind, to be expended under the direction of said Commission for the investigation of applications for blind pensions and for the investigation of the merits and status of those now on the pension rolls. No part of said appropriation shall be used by said Commission for any purpose not directly connected with or indispensable to the investigation of the application for blind pensions and the status of present recipients of blind pensions."

The above appropriation specifically states no part of said appropriation shall be used by said Commission for any purpose not directly connected with or indispensable to the investigation of the applications for blind pensions. Certainly, under the blind pension law the examination by an oculist is indispensable. See Section 9456, supra.

Therefore, if an application for a blind pension is rejected the fee of the oculist shall be paid out of Section 3, the appropriation hereinabove referred to, in accordance with Section 9456, supra.

The question, now, is whether or not such fee for examination by an oculist shall be paid from Section 3, page 166, Laws 1941, supra, when an application is approved and the applicant is placed upon the roll. Section 9456, supra, specifically requires such expense to be deducted from the first pension granted the pensioner.

The appellant courts in this state have ruled that an

appropriation act cannot in any manner amend or repeal a legislative enactment for the reason it would be unconstitutional, in that it would violate Section 28, Article 4 of the Constitution of Missouri, which provides that no bill shall contain more than one subject. If an appropriation act should repeal a general law it would be amending a law and at the same time appropriating money, which are two entirely different subjects.

In State vs. Smith, 75 S. W. (2d) 828, l. c. 830, the court said:

"It cannot be said that the act appropriating \$3,000 from the general revenue fund to the board of barber examiners' fund amounted to an amendment of section 13525, R. S. 1929 (Mo. St. Ann. Sec. 13525, p. 637). It does not attempt to amend that section. Its sole purpose was to appropriate \$3,000 from one fund to another. It reads as follows:

'There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, the sum of three thousand (\$3,000.00) dollars to the Board of Barber Examiners Fund.' (Laws 1933-34, p. 12, 12B.)

"Besides, legislation of a general character cannot be included in an appropriation bill. If this appropriation bill had attempted to amend section 13525, it would have been void in that it would have violated section 28 of article 4 of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no doubt but what the amendment of a general statute such as section 13525, and the mere appropriation of money are two entirely different and separate subjects. State ex rel. Hueller v. Thompson, State Auditor, 316 Mo. 272, 289 S.W. 338."

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Therefore, it is the opinion of this Department that when an application is approved for a blind pension, the expense and fee of the oculist in examining said applicant shall be deducted from the applicant's first pension check in accordance with Section 9456, supra.

Respectfully submitted,

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APPROVED:

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