

MISSOURI COMMISSION
FOR THE BLIND.

: Last proviso in Section 9456
: construed; also, method for
: striking names from the
: blind pension roll by the
: State Auditor.
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FILED

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January 17, 1945

Missouri Commission for the Blind
Administrative Office
102 State Office Building
Jefferson City, Missouri

Attention: Mrs. Lee Johnston

Gentlemen:

We have your request for an opinion from this department, of January 10, 1945. We here quote your request:

"As per our conversation of January 9, I would be glad to have you advise me your opinion of the following procedure to remove Blind Pensioners from the rolls because of begging.

"The Blind Pension Law makes no provisions for the manner in which this shall be done. Do you think that securing two or more affidavits from persons who have seen the blind person engaged in begging and then allow the blind person to have a hearing before the Board or before the person or persons appointed by the Board would be a proper procedure before removing the blind person from the rolls?"

At the outset we quote a pertinent part of Section 9451 R. S. Mo., 1939, as amended, p. 786 L. 1943. It might be well to state that this section has to do with the procedure and limitations upon the commission in determining the eligibility of persons to receive pensions. Said section contains the following proviso:

"* * * and provided further, that blind persons who are maintained in either public, private, or endowed institutions, or by private persons, who would otherwise be entitled to a pension under this article, shall not be entitled to

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the benefits of this article; and provided further, that no blind person shall be entitled to the benefits of this article while confined in any jail or penitentiary under conviction of any offense or while publicly soliciting alms in any manner or through any artifice in any part of this state or while confined in any insane asylum at the expense of the state or any county or municipality thereof. R. S. 1929, Sec. 8893."

The reason that we quote the first proviso is because of the fact that this proviso has been construed in the case of State ex rel. Palmer v. Thompson, 297 S. W. 2d 62, and this case is controlling so far as it could be said to be analogous in referring to the last proviso contained in section 9451. Therefore, on page 63 of the opinion we find this wording:

"Under the 1923 act, the fact that relator is and was being maintained in a publicly supported institution automatically deprived her of the right to receive a pension. The commission certified that fact to the auditor. It thereupon became the duty of the respondent, as such auditor, to strike the name of relator from the blind pension rolls. * * *"

We wish to point out that the court has seen fit to use the word "automatically" and further, the court emphasizes that the Commission should certify the fact to the auditor, whereupon, the duty devolved upon the auditor to strike the name of the person from the blind pension rolls.

The last proviso contained in section 9451, in our view, is not ambiguous, for such proviso in part reads as follows:

"* * * provided further, that no blind person should be entitled to the benefits of this article. * * * While publicly soliciting alms in any manner. * * *"

It is our view that this language is clear. In this connection we call attention to the case of Dahlin v. Missouri Commission for the Blind, 262 S. W. p. 420, l. c. 423, par. 8, wherein the court said:

"A statute that is clear in its terms, and leaves no room for construction must be enforced as written, * * *"

Now turning to the case of State ex rel. Smearing v. Thompson, 45 S. W. (2d) 1078, l. c. 1079, par. 2, wherein the court had this to say in passing upon section 8893 R. S. Mo. 1929, and in substance is now section 9451 L. 1943, p. 786. Section 8900 R. S. Mo. 1929, (which section is now 9458 R. S. Mo. 1939), and section 8896 R. S. Mo. 1929, (which is now section 9454 R. S. Mo. 1939).

We quote as follows from the Smearing case:

"Section 8893 (Revision of 1929) provides that an adult blind person having the qualifications therein prescribed 'shall be entitled to receive, when enrolled under the provisions of this article, an annual pension' etc. One is 'enrolled under the provision of this article' when his name is placed on the blind pension roll by the state auditor. Section 8900. When enrolled the pensioner is entitled to a pension from the date of the filing of his application with the probate court. An applicant's name is placed on the blind pension roll upon certification by the commission for the blind; it is stricken from the roll upon a like certification when the commission, after notice and hearing, determines that the pensioner is no longer qualified to receive a pension. Section 8896. * * *"

It will be noted from a reading of the above quoted portion that an applicant's name is placed upon the blind pension roll upon certification by the Commission for the Blind and that his name is stricken from the roll upon a like certification when the Commission, after the notice and hearing, determines

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that the pensioner is no longer qualified to receive a pension.

CONCLUSION.

It is therefore, the opinion of this department that the receipt of affidavits or other information by the Commission for the Blind, to the effect that any pensioner in publicly soliciting alms, in any manner, would be sufficient cause for the Commission to give notice and grant a hearing to such a pensioner, to determine whether or not, his name should be stricken from the pension rolls by the State Auditor. Of course, the State Auditor should first receive a certificate from the Blind Commission, that such pensioner is no longer entitled to participate in the benefits of Article 1, Chapter 54, R. S. Mo. 1939, before striking the name of such person from the roll.

Respectfully submitted,

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APPROVED:

HARRY H. KAY
Acting Attorney General

BRC:LeC