

BLIND PENSIONS: Commission in determining residence is not bound to follow declared intention but may consider all available facts.

May 14, 1945.



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Mrs. Lee Johnston, Executive Director
Missouri Commission for the Blind
102 Capitol Building
Jefferson City, Missouri

Dear Mrs. Johnston:

Under date of May 3, 1945, you wrote this office requesting an opinion as follows:

"On February 25, 1943, the Missouri Commission for the Blind granted Mr. James E. Jennings, #26 Taney County, a ninety-day leave of absence, from the State of Missouri.

"On May 26, Mr. Jennings' daughter wrote that her father would return to Missouri just as soon as he possibly could; that her brother and family would try to bring him back in the fall if they could get gasoline to do so. We replied that his June 30 payment would be withheld until it was definitely decided that he would return to Missouri.

"We heard nothing further and wrote again on June 22, and again on August 6, and on August 10 heard from Mr. Jennings that he wanted to come back to Missouri as soon as his son could make arrangements. We advised him that as soon as we heard he had returned to Missouri to make his home here, we would authorize the State Auditor to release his back pension check.

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"On September 15, Mr. Jennings advised that he would be back in Missouri by the 15th or 20th of November and would notify us when he got here.

"In November, 1944, the State Auditor's office advised us that Mr. Jennings had had no pension payment since July, 1943, and we wrote to a reference in Ash Grove, Missouri, asking if she could give us any information regarding Mr. Jennings. We had no reply, and wrote to a son in Springfield asking for information with regard to his father. This letter was returned unclaimed, so we wrote again to Mr. Jennings' daughter in Washington and have her reply of March 19 saying that her father has been trying to make arrangements to return to Missouri but is unable to come by bus or train and they have been trying to make arrangements for him to drive back. She states he does not care to make his home in Washington and asks if he will receive his back checks when he returns to Missouri.

"Will you kindly advise us as to whether or not Mr. Jennings is eligible to receive the back payments of the blind pension."

As your letter is understood, you wish to know the rules of law to be applied by the Commission for the Blind in determining whether or not the mentioned pensioner, James E. Jennings, has become ineligible to receive a blind pension.

In order for the Commission to pass on this question, it must apply one section of the statutes, Section 9451, R. S. Mo. 1939, which is in part as follows:

"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 provision of this article, an annual pension as provided for therein, payable in equal quarterly installments: * * #"

Attention is also directed to a portion of Section 9454, R. S. Mo. 1939:

"* * # And whenever it shall become known to the commission that any person whose name is on the blind pension roll is no longer qualified to receive a pension, after reasonable notice mailed to such person at his or her last known residence address, such fact shall be certified to the state auditor and the name of such person shall be stricken from the blind pension roll: * * #"

The Missouri appellate courts have never defined the word "resident" as used in the Blind Pension Law. The word is one having many meanings, there are twenty-three pages of definitions in Words & Phrases, Permanent Edition. It is our belief the Legislature intended that only those persons, who, in good faith, had established their permanent residence or domicile in the State of Missouri, and intended to permanently, or at least for an indefinite time retain the residence established, could become eligible to receive a blind pension, or retain eligibility after it was once established.

A permanent residence is established by presence in the place, coupled with the intention of making that place the residence or domicile. If the intention is not present then the person does not establish a residence or domicile.

In determining the residence of a person, a court or other fact finding body should consider all evidence available, including the expressed intention of the person, giving to each bit of evidence such weight, under the circumstances, as it deems proper.

At this point it is desired to call attention to a quotation from the case of Firth v. Firth, 24 Atl. Rep. 916, l. c. 918:

"The decision of questions of disputed domicile are frequently surrounded with a great many practical difficulties. The evidence is often obscure, equivocal, and contradictory. The acts or conduct of the person whose domicile is the subject of dispute will, in many cases, seem to indicate with certainty that his residence must have been in one place, while his declarations go to show that it was in another. * * *"

In this case the court held that the absence of over five years of the person from his original place of residence, showed an intention to establish a new residence in the place where he had been residing, even though he expressed the intention of retaining his original place of residence.

The same rule is stated by the court in the case of In re Lankford Estate, 272 Mo. 1, l. c. 9:

"Residence is largely a matter of intention. (Lankford v. Gebhart, 130 Mo. 621.) This intention is to be deduced from the acts and utterances of the person whose residence is in issue. * * *"

Another quotation stating this rule is taken from Chomeau v. Roth, 72 S. W. (2d) 997, l. c. 999:

"* * * In other words, mere physical presence at the school is not enough either to gain for him a voting residence at the school, or to cause him to lose his existing voting residence at his home; the whole question, as in all similar situations, being largely one of intention, to be determined not alone from the evidence of the party himself, but in the light of all the facts and circumstances of the case. Hall v. Schoonecke, 128 Mo. 661, 31 S. W. 97; Goben v. Murrell, 195 Mo. App. 104, 190 S. W. 986, 197 S. W. 432."

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In each of these cases the court was determining the legal residence for the application of different laws. In the Firth case, for the purpose of determining jurisdiction of a court; in the Lankford case, for determining where administration should be had on an estate; and in the Chomeau case, to determine the right to vote. The court determining where the residence was established, the person was a resident of that place,

A voting residence may be acquired in the State of Washington by one year's residence, Constitution of Washington, Section 1, Article VI,

In the case for determination by the Commission, a pensioner left his place of residence in the State of Missouri, went to another state and has remained there over two years, a year longer than is necessary to establish a voting residence in the State. The pensioner declares his intention to return to Missouri at some indefinite time in the future.

CONCLUSION

The Commission for the Blind should consider all of the evidence it can procure and from this evidence determine, under the rule herein set out, whether or not the pensioner went to the State of Washington with the purpose of establishing a new residence or domicile. If, in the judgment of the Commission, that was his purpose, he is no longer eligible to receive the pension. If, however, the Commission should determine it was not his intention to establish a new place of residence and become a resident of the State of Washington, but merely to make a visit and has been unavoidably prevented from returning to Missouri, he would retain his eligibility to receive a pension.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

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