

BLIND PENSION: RE: Question of Qualification of an
applicant for Blind Pension

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November 19, 1945

Missouri Commission for the Blind
Jefferson City, Missouri

Attention: Mrs. Lee Johnston
Executive Director

Gentlemen:

This will acknowledge receipt of your letter of
October 29, 1945, requesting an official opinion of
this Department, which letter reads as follows:

"We should like to have an opinion on
the question of residence of the follow-
ing case:

"A blind pensioner of Missouri advised
us on May 7, 1942, that she was no long-
er eligible for the blind pension because
she had moved to the State of Iowa where
her husband was working in a defense
plant. After investigation, her name
was removed from the blind pension rolls.

"She has now reapplied, stating that her
husband has brought her back to Missouri
and left her and her daughter without
means of support but that up to this time
she has not secured a divorce.

"All of our records show that her Missouri
residence dates back to March, 1927.

"Thank you very much for your opinion
as to the point of eligibility under the
residence clause."

Qualifications for a blind pension in the State of
Missouri are set forth in Section 9451, as amended, page
786, Laws 1943, which provides that to be eligible for
said pension one must have been a resident of this State

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for ten (10) consecutive years or more next preceding the time of making application. Further, one cannot qualify who is living with a sighted husband or wife who has income or is the recipient of \$900.00 or more per annum from any source. Section 9451 reads, 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 pension herein provided, * * 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: Provided, that no such person shall be entitled to a pension under this article who has an income, or is the recipient, of nine hundred (\$900.00) dollars or more per annum from any source whatever, or who owns property, or has an interest in property to the value of five thousand (\$5,000.00) dollars or more, or who lives with a sighted husband or wife who has an income or is the recipient of nine hundred (\$900.00) dollars or more per annum from any source whatever or * * *".

Supplementing your request of October 29, 1945, we deemed it necessary to have additional facts, and upon request you forwarded to the writer your file in the case. Upon an examination of the contents of said file we find that the applicant's husband was receiving more than \$900.00 per annum while employed at the Burlington Ordinance Plant in the State of Iowa. He received \$5.60 per day, and was permitted to work only five days per week. That the applicant, in a letter to the Blind Commission, stated that she had been informed that she was no longer eligible for a blind pension, and that she should let the Commission know that she intended to move with her husband out of the State of Missouri. Upon receipt of this information the Blind Commission wrote the applicant requesting additional information, informing her that all this information would have a bearing upon her eligibility

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if, at any time, she wished to return to the State of Missouri. That it was the understanding of the Blind Commission that she was going to the State of Iowa for temporary defense work, and that her name would not be removed from the blind pension rolls until they knew more about it. The applicant replied to said letter informing the Commission that her husband was working in Iowa, giving the amount of money he was making, however, the company was discharging men right along and they were not sure of his job; that they were living in Burlington in a government housing project, and that she supposed it would be called temporary for she did not know when he would be laid off. We assume from the correspondence found in the file, that the applicant was prompted to write the Blind Commission and inform them that she was no longer eligible, by reason of a visit made on May 2, 1942, by an employee of the Blind Commission. Thereafter, on June 11, 1942, the Blind Commission informed her that her name would be stricken from the rolls and should she, at any time, be in need of a blind pension and eligible under the law she could file another application, and an examination and investigation would be given. On the same date, the Blind Commission wrote Forrest Smith, State Auditor, that the Commission had been advised by the applicant that her husband was now working in a defense plant in Iowa, and that she was therefore ineligible for a blind pension, and requested him to strike her name from the rolls. Thereafter, on October 26, 1942, the Blind Commission also notified the Probate Court of Schuyler County, Missouri, that the applicant's name was stricken from the roll, for the reason that she is now living in Iowa where her husband is working in a defense plant, and is earning more than the limit fixed by the Blind Pension Law. On the same date the Blind Commission wrote Forrest Smith, State Auditor, informing him that the applicant's name was stricken from the roll at a meeting by the Commission for the Blind, for the reason the husband was working in a defense plant, and that she moved to Iowa and was ineligible. The one and only specific mention of the fact that the applicant had taken up residence somewhere else, and that being the ground for disqualifying her, was mentioned in a letter of October 20, 1942, from the Blind Commission to the applicant informing her that at a meeting of the Commission on October 20, 1942, her name was stricken because she had taken up residence in Iowa, and that her husband was earning more than allowed by the blind pension law.

Under the foregoing facts, the applicant was not

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qualified to receive a blind pension so long as she lived with her sighted husband who was receiving an annual salary of \$900.00 or more, and there can be no question but that while she was living with her husband in Iowa, and he was employed and earning \$900.00 or more, subsequent to her removal from the roll, she was not eligible for a blind pension. Furthermore, we believe that the applicant intended to take up a temporary abode in Iowa with her husband for so long as he held his position in the Burlington Ordinance Plant, which under the facts, might be terminated at any time.

The question now boils down to one or two things. First, did this applicant lose her residence in Missouri by moving with her husband when he became employed at the defense plant in the State of Iowa? If so, she has not been a resident in this State, as required in Section 9451, supra, stating that one must have been a resident of Missouri for ten consecutive years or more next preceding the application for a blind pension. If this question is answered in the negative, and assuming her husband is still the recipient of \$900.00 per annum, under such facts stated in your letter, would the applicant be considered living with her husband as provided in Section 9451, supra? If so, then she is disqualified to receive a blind pension, and if not, she is eligible for same.

It is a well established rule of statutory construction that statutes should receive a sensible construction such as will affect the Legislative intent and, if possible, so as to avoid an unjust or absurd conclusion.

In *Fishbach Brewing Co. v. City of St. Louis*, 95 S.W. (2d) 335, 231 Mo. App. 793, l.c. 339, the court said:

"* * * A cardinal rule of statutory construction is to give effect to the legislative intent, where ascertainable; another is to favor such a construction which would tend to avoid injustice, oppression, and absurd and confiscatory results and be in harmony with the rule of reason * * * ."

The word "resident" is very flexible and hard to define for all purposes. It depends upon the connection in which the word is used, and the facts and circumstances taken together in each particular case.

For example the word resident as used in the statute governing the qualifications of a voter might be construed very differently from the word as used in a divorce or pension statute, or in a statute pertaining to the qualifications of an office holder. In 54 C.J., Sec. 1, page 712, we find the following statement of law defining residence which reads as follows:

"RESIDENT. (Sec. 1) A. In General. Although there are many definitions to be found in the books, it is not easy to give a satisfactory definition of this term, for it is a flexible, somewhat ambiguous word, used in many and various senses, with the sense in which it should be used controlled by reference to the object, thus having different meanings according to the context, or the subject matter under discussion. It has a great variety of meanings. It is difficult to give an exact definition of what is meant by 'resident' as used in particular statutes, for, although often construed by the courts, the term has no technical meaning, but is differently construed in courts of justice, according to the purposes for which inquiry is made into the meaning of the term. The construction is generally governed by the connection in which the word is used, and the meaning is to be determined from the facts and circumstances taken together in each particular case."

Section 655, R.S. Mo. 1939, defines residence as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: * * * * * seventeenth, the place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally lodge, shall be deemed the place of residence of such person or persons respectively; * * * * *".

In, Petition of McLaughlan, in Re Hersey, 1 Fed. (2d) 5, l.c. 7, the court quoted approvingly from Jenkins in Re

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Garneau, 127 Fed. 677, 679; 62 C.C.A. 403, 405, and said:

"Residence has been defined to be a place where a person's habitation is fixed, without any present intention of removing therefrom. It is lost by leaving the place where one has acquired a permanent home and removing to another place animo non revertendi, and is gained by remaining in such new place animo manendi. * * * The term is an elastic one, and difficult of precise definition. The sense in which it should be used is controlled by reference to the object. Its meaning is dependent upon the circumstances then surrounding the person, upon the character of the work to be performed, upon whether he has a family or a home in another place, and largely upon his present intention."

It has been held that once a residence has been established a mere temporary absence from the state with the intention of returning does not break the continuity of a residence, 48 C.J. Sec. 91, page 471, reads, in part, as follows:

"* * * But where a residence has once been established by the concurrence of intention and personal presence, continuous personal presence thereafter is not essential to a continuous residence, especially when he whose residence is in question has a family between whom and him mutual family relations are in full force."

In *Bradshaw v. Bradshaw*, 166 S.W. (2d) 805, 1.c. 806 and 807, the court, in holding that residence depended largely upon intention, said:

"(2-4) 'Residence' or 'legal residence' frequently used in the same sense, is largely a matter of intention coupled with an act or acts in conformity thereto; and a change of residence also depends largely on the intention to abandon the one and acquire the other. 28 C.J.S.

Domicile, Sec. 11, p. 15; Trigg v. Trigg, 226 Mo. App. 284, 41 S. W. 2d 583; Nolker v. Nolker, Mo. Sup. 257 S. W. 798; Finley v. Finley, Mo. App. 6 S. W. 2d 1006; Wyrick v. Wyrick, 162 Mo. App. 723, 145 S. W. 144. A person's legal residence and actual residence may be different. 17 Am. Jur. Sec. 11, page 596.

"It is obvious that the plaintiff in the instant case had a legal residence in Laclede County, Missouri when he left there in 1937. There is no evidence that he left with the intention to remain away, either permanently or for an indefinite time; or that he left without any fixed or certain purpose to return to his former place of abode. Absent any proof of these elements defendant fails to establish her allegations in the Plea in Abatement. As indicated in the beginning she only used one witness, the plaintiff. Her theory must have been based on the Biblical admonition, ' * * * by thy words thou shalt be condemned.' " (Math. 12:37)

In Finnley v. Finnley, 6 S.W. (2d) 1006, l.c. 1006 and 1007, the court said:

"(1,2) The question of residence is a question of intention, and our Supreme Court has held that actual residence and the intention to remain, either permanently or for an indefinite time, without any fixed or certain purpose to return to the former place of abode, are sufficient to constitute a change of domicile or residence. The length of time is immaterial if these elements are present. An hour is sufficient for the acquisition of a domicile. Nolker v. Nolker (Mo. Sup.) 257, S. W. 798."

" * * * The question of residence being a question of intention, she had a right to take up her residence at Cape Girardeau if she so desired, and it was not necessary that she stay there for any definite length of time in order to establish that as her residence. * * *"

Since this applicant has been a resident of the State of Missouri since 1927, and was even a recipient of a blind pension in the State of Missouri until at her own request she was removed from the roll, we believe that under the facts stated in your request, and those we discovered from an examination of the papers in the file of the Commission for the Blind in this case, that said applicant merely left the State of Missouri for the purpose of being with her husband while employed at the defense plant for the duration of the war and that she had no intention of discontinuing her residence in the State of Missouri, but fully intended to return to this State and take up her permanent residence upon the termination of her husband's employment in Iowa.

We are now confronted with the question, is said applicant while now residing in the State of Missouri living with her husband, as provided in Section 9451, supra? We are inclined to be of the opinion that she is not living with her husband, in view of the following decisions defining the words "living with." In *Weeks v. Behrend*, 135 Fed. Rep. (2d) 258, 1.c. 259, 260, the court defined "living with" as follows:

"(4-6) Appellant contends that the court should have remanded the case to the Deputy Commissioner for a possible finding either that appellant was 'dependent for support' upon her husband or that she was 'living with' him. It is a sufficient answer to say that the evidence would not have supported either finding. Appellant's husband made no regular contributions to her support. Though partial dependency will sustain an award of compensation, occasional contributions will not sustain a finding of partial dependency unless they are 'necessary and relied on.' There is no evidence that the contributions of appellant's husband were either necessary or relied on. There is strong evidence to the contrary; for appellant testified, in effect, that she earned a modest living by running the rooming house which she and her brother owned, while her husband was on relief."

In *McPadden v. Morris*, 13 Atl. (2d) 679, 1.c. 680 and 681, 126 Conn. 654, the court construed the words "living with him" in a statute providing pensions for widows of members of the police department as follows:

"(4) The language of the charter is clear and direct. The definition accorded to the word 'widow' expressly places a limitation for the class of surviving spouses who may qualify as beneficiaries of the pension plan. It excludes all those who are not living with their husbands at the time of his death. To live with another means to dwell, to reside, to make one's abiding place or home with that other. The phrase may also mean to cohabit. Webster's International Dictionary.

"I accept the definition found in Nelson's Case, 217 Mass. 467, 469, 105 N.E. 357, 358, as most in accord with sound legal logic. "With whom she lives" * * * means living together as husband and wife in the ordinary acceptation and significance of these words in common understanding. They mean maintaining a home and living together in the same household, or actually cohabiting under conditions which would be regarded as constituting a family relation. There may be temporary absences and incidental interruptions arising out of changes in the house or town of residence, or out of travel for business or pleasure. * * * The matrimonial abode may be a roof of their own, a hired tenement, a boarding house, a rented room or even a room in the house of a relative or a friend, however humble or temporary it may be. But there must be a home and a life in it.' And in Gallagher's Case, 219 Mass. 140, 106 N.E. 558, it was held that living together does not embrace those instances where a wife is justified in law in leaving her husband or where she is actually living apart from him, although this may be due to no fault of her own.

"If the Legislature had intended by the language it used to include those widows who were separated from their husbands with cause, it could easily have added language to that effect as it did when enacting Sec. 5156 of the General Statutes,

which is concerned with the statutory share of the survivor in the estate of the deceased spouse. That section, it will be recalled, provides that such survivor shall not be entitled to the statutory share who, without sufficient cause, has abandoned the other and continued that status to the time of the spouse's death.

"The plaintiff does not fall within the definition of a widow as the Legislature expressed itself. She was, in fact, living apart from him, in a different house in another section of the city. There is no room for interpretation. Inclined though one may be to warp the statute to meet his sympathies and to obtain an objective of less harsh character, such considerations must bow before the statutory mandate. The General Assembly has spoken and the law must be enforced as it was enacted. Under the circumstances, with real regret, I conclude that the plaintiff is not entitled to receive the benefits of the pension."

(See also In re: Gorski, 116 N. E. 811, 813, (6,7,8) 227 Mass. 456.)

Under the foregoing facts it is apparent that it was the intention of the applicant, at the time she moved to the State of Iowa, to be with her husband who was employed at the Burlington Ordinance Plant, and that she was only temporarily leaving the State of Missouri with the full intention of returning to the State of Missouri and continuing her residence in this State. That is shown by her letter in which she informed the Commission that she guessed it was merely a temporary position that her husband had taken in Iowa; also in the letter of the Commission advising her that if at any time she was in need of a blind pension and could qualify under the Laws of Missouri she could again file an application and an examination would be made; and in the letter to the State Auditor and to the Probate Court of Schuyler County, Missouri, from the Commission for the Blind, informing them that the applicant's name should be stricken from the roll for the reason that

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she had moved to Iowa with her husband and he was employed and receiving \$900.00 or more per annum.

In view of the foregoing decisions defining the phrase "living with," we are of the opinion that this applicant, under the facts stated, is no longer living with her husband, as that phrase is used in the Blind Pension Law.

CONCLUSION

Therefore, it is the opinion of this department that this applicant, while with her husband in the State of Iowa, was only temporarily away from the State of Missouri with the full intention of returning to this State upon the termination of her husband's employment in the Burlington Ordinance Plant in the State of Iowa, and that, under the facts and authorities defining "living with," she is not at the present time living with her sighted husband and is entitled to receive a blind pension if she can otherwise qualify under the Blind Pension Law of the State of Missouri.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

W. O. JACKSON
(Acting) Attorney General

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