

BLIND PENSIONS: Under Constitution of 1945 probate
CONSTITUTIONAL LAW: judges may continue to perform duties
PROBATE COURTS: under the provisions of Section 9454,
R. S. Mo. 1939.

February 8, 1946



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

Dear Mrs. Johnston:

We are in receipt of your request of February 4, 1946, as to whether the judges of the probate courts of Missouri may continue to receive applications from persons desiring the benefits of Art. 1, Chap. 54, R. S. Mo. 1939, pertaining to pensions to deserving blind, as more specifically set out in Section 9454, R. S. Mo. 1939, since the adoption of the Constitution of 1945.

The jurisdiction of the probate courts of Missouri is set out in Sec. 16, of Art. V, of the Constitution of 1945, and provides as follows:

"There shall be a probate court in each county with jurisdiction of all matters pertaining to probate business, to granting letters testamentary and of administration, the appointment of guardians and curators of minors and persons of unsound mind, settling the accounts of executors, administrators, curators and guardians, and the sale or leasing of lands by executors, administrators, curators and guardians, and of such other matters as are provided in this Constitution."

The provision in the Missouri Statutes for the judges of the various probate courts to grant certificates to applicants for blind pensions to be certified

to the Missouri Commission for the Blind, appears under Section 9454, R. S. Mo. 1939, and this section provides as follows:

"Any person who desires the benefits of this article shall apply to the judge of the probate court within his or her county or city or to the commission for the blind, who, if satisfied that the applicant comes within the provisions of this article, shall grant to the applicant a certificate of such fact and the certificates granted by the probate judges shall be certified to the Missouri commission for the blind at its office in St. Louis, Missouri, which shall consider the merits of such application and if approved by the commission, it shall certify same to the state auditor. All pensions payable under this article shall begin on the date of the filing of the application therefor before the probate judge or the commission, as may be. 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: Provided further, any person who shall by gifts, secret disposition, or other means dispose of any property in his or her possession in order to become wholly or in part within the provision of this article, shall be deemed guilty of a misdemeanor."

Construing the provisions of Section 9454, supra, as to whether it would come within the jurisdiction of the

probate courts as set out in Sec. 16, Art. V, Const. of Mo. 1945, it would be truly apparent that the matter of entertaining applications for blind pensions, to be certified to the Missouri Commission for the Blind, would be a matter not within the jurisdiction of the probate courts pertaining to probate business, to granting letters testamentary and of administration, the appointment of guardians and curators of minors and persons of unsound mind, settling the accounts of executors, administrators, curators and guardians, and the sale or leasing of lands by executors, administrators, curators and guardians, and also, it does not appear that there are any other provisions present in the Constitution of 1945 that place the subject of the matter in Section 9454, supra, within the jurisdiction of the probate courts.

However, under the provisions of Section 9454, supra, we find that the judge of the probate court in performing his duties is not functioning as the probate court, but as the probate judge.

In *Ragan v. Commission for the Blind*, 271 S. W. 1014, 1. c. 1015, the court, in construing the section from Laws of 1923, page 304, Sec. 4, which is now Section 9454, R. S. Mo. 1939, made this observation:

"It will be observed that under section 4 a person deserving to be placed on the blind pension roll may make application to either the probate judge (not the probate court) of his or her county or to the commission for the blind for a certificate. But the probate judge does not pass on the merits of the application. He only certifies to the commission whether the applicant comes within the provisions of the act, and it is the commission that 'shall consider the merits of such application,' and, if the commission approves it, the applicant's name goes on the pension roll. It is the commission which has original jurisdiction or power to consider the merits of the application and to decide whether applicant's name shall go on the pension roll. The mere fact that, when an application is made to the probate judge instead of to the commission, the latter sends in-

instructions as to how the examination shall be made, and perhaps also sends an oculist to be present at the hearing, does not take from the commission the power of jurisdiction to consider the merits of the application after the probate judge has acted; * * * * *

(Emphasis ours.)

In differentiating between the terms "court" and "judge" which are often used as synonymous, although they are entirely different, the following definitions appear in Words and Phrases, Perm. Ed. 10, 227, et seq.:

"Though the terms 'court' and 'judge' are often used as synonymous, they are entirely different; a 'court' being an organized body, with defined powers, regular times and places of meeting, and proper officers, while a 'judge' is 'a public officer appointed to preside and to administer the law in a court of justice.' City of Moline v. Chicago, B. & Q. R. Co., 104 N. E. 204, 206, 262 Ill. 52."

* * * *

"'Courts' are mere legal entities established under constitution for governmental purposes and in contemplation of law, have a separate existence from the judges who preside over them and a judge therefore has no judicial power outside of court in which he officiates and when discharging judicial function of his office, he is the court in concrete form and in such sense he is often called 'court' but strictly and technically speaking judge and court are wholly distinct. United States Life Ins. Co. v. Shattuck, 57 Ill. App. 382."

* * * *

"'A "court" is not a judge, nor is a judge a "court." A judge is a public officer who, by virtue of his office, is clothed with judicial authority. A "court" is defined to be a place in which justice is judicially administered; it is the exercise of judicial power by the proper officer or officers at a time and place appointed by law. The officers exist independent of the exercise of such appointed jurisdiction, though the "court" may not, in general, be holden independent of its officers.' Under Chinese Exclusion Act Sept. 13, 1888, Sec. 13, 25 Stat. 476, 8 U.S.C.A. Secs. 271, 282, providing that any such Chinese person convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the District Court for the district, the right of appeal is to the judge as a special tribunal, and not to the District 'Court.' Chow Loy v. United States, 112 F. 354, 359, 50 C. C. A. 279."

We construe the observation of Judge Trimble, in the case of Ragan v. Commission for the Blind, supra, who pointedly asserts that under the circumstances the judge performed the duties in regard to the blind pension law as probate judge and not as the probate court, we can readily see that the probate judge performs his duties under the provisions of Section 9454, supra, as a public officer and not as the probate court, and it is a proper administrative duty placed upon the judges of the probate courts that is not dependent upon the limitations of jurisdiction as set out in Section 16, Art. V, Mo. Const. of 1945.

CONCLUSION

Therefore, it is the opinion of this department that the duties of the judges of the probate courts of Missouri,

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under the provisions of Section 9454, R. S. Mo. 1939, are not in conflict with the provisions of Section 16, Article V, Constitution of Missouri of 1945, and such functions as a judge of the probate court may perform under the provisions of Section 9454, R. S. Mo. 1939, are as a public official upon whom the legislature has placed a duty and not by virtue of the jurisdiction of the probate court which he serves as judge.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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