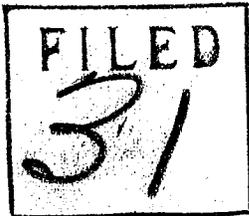


OLD AGE ASSISTANCE:
SOCIAL SECURITY COM-
MISSION:

The ownership of saleable real estate whose value is in excess of \$500, which real estate is not lived on by the owner, constitutes an available resource as that word is used in paragraph 5 of Section 208.010 RSMo Cumulative supplement 1953, and would render its owner ineligible for old age assistance.



June 23, 1954

Senator Arkley W. Frieze
Carthage,
Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"I would like to have this considered as a request for an opinion from your office in relation to the construction of Section 208.010, Revised Statutes of Missouri, which was approved by the Governor on June 19, 1953. That section provides in part as follows, in relation to eligibility for Old Age Assistance:

"Benefits shall not be payable to any person who:
(2) Owns or possesses cash or securities in the sum of \$500.00 or more, provided, however, that if such person is married and not separated from spouse, he or they, individually or jointly, may own cash or securities of a total value of \$1000.00
* * *."

"Subsection 5 of Section 208.010 provides:
"Has earning capacity, income or resource, whether such income or resource is received from some other person or persons, gifts or otherwise, sufficient to meet his needs for a reasonable subsistence compatible with decency and health."

"An administrative determination by the local welfare office has been made in which it was concluded that if the applicant had real estate upon which he was not living, that this constituted an available resource and disqualified him, even though the value of the real estate was not over the statutory maximum allowed to applicant.

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"The factual situation upon which this request is based is as follows: 'F', an applicant for Old Age Assistance, owns a small tract of land in this county upon which he does not live, but which has been appraised as having a fair market value of approximately \$1750.00. The total value of the property owned by the applicant is less than \$5000.00, which is presently authorized by law. However, the Department of Welfare has taken the position that under the law, the applicant has an available resource in the real estate upon which he does not reside and for that reason has denied his application for Old Age Assistance. The question thus presented is whether applicant, under the existing circumstances, is entitled to Old Age Assistance or whether he is ineligible because of the ownership of the real estate upon which he does not reside.

"From my examination of the authorities, I fail to find any expression by the upper courts of Missouri in relation to real estate which is owned by the applicant but upon which he does not reside. However, the case of Miller vs. Social Security Commission, 151 S.W. (2) 457, expressly holds that the applicant in that case was not rendered ineligible by reason of the fact that he had a life insurance policy with a cash surrender value of over \$500.00. By analogy it would certainly appear that real estate owned by an applicant but upon which he does not reside, could not be considered as disqualifying.

"The opinion of your office upon this problem is a vital one to a good many of the people living in this part of the state, and an early reply will be deeply appreciated."

The bare issue which you raise is whether the ownership of real estate, upon which the applicant for old age assistance does not live, which real estate is saleable and of the approximate value of \$1750, constitutes a "resource," as that word is used in paragraph 5 of Section 208.010, RSMo, Cumulative Supplement 1953, sufficient to disqualify the applicant.

We note your reference to the case of Miller v. State Social Security Commission, 151 S.W. (2d) 457. That case makes two

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holdings. One is that a life insurance policy, with a cash surrender value, is not a negotiable security as that term was used in paragraph 2 of Section 9406 RSMo. 1939; and that an insurance policy, with a cash surrender value, should be considered as "property", as that term was used in paragraph 3 of the above section, which is now Section 208.010 RSMo, Cumulative Supplement 1953. The court failed to consider whether such an insurance policy was a "resource", as that term was used in paragraph 6 of the above section. We feel that such a consideration should have been given.

In the case of Parks v. State Social Security Commission, 160 S.W. (2d) 823, at l.c. 825, the court in its opinion said:

"Claimant's application for assistance must be tested not only by one of the disqualification clauses of section 9406 but all of them, including clause 6. Clauses 1 to 6 are all disqualifying clauses and are of equal weight and, if claimant is disqualified under any one of them, he is not entitled to old age assistance. Chapman v. State Social Security Commission, 235 Mo. App. 698, 147 S.W. 2d 157, 162."

In view of the above, we feel therefore that the situation in your case must be tested in the light of paragraph 5 of Section 208.010, supra, which is now the "resources" paragraph, as well as by all the other parts of the section. At this point it becomes necessary for us to look at Rule 13 of the Division of Welfare. That rule reads as follows:

"Real Property as an Available Resource

"(See Manual Section V)

"When an applicant or recipient owns real property which is not furnishing shelter for him, and its value is less than the statutory maximum, but its current market value is \$500 or more if owned by a single person or \$1000 or more if owned by a married person living with spouse, it shall be considered as a resource and the claimant will not be eligible for assistance on the basis of need, provided all of the following criteria which apply are met (the value of an equity in a life estate and of burial lots shall be excluded from this computation);

"(a) For real property in which the applicant or recipient has lived;

"1. 24 months have elapsed since the last date on which either the claimant or spouse have occupied the dwelling; except that the

24-month rule will not apply when a claimant or couple owns two pieces of property and lives part-time in each property - they shall be required to designate one of the properties as their home and the other property shall then be considered as an available resource immediately; also when a claimant purchases a second piece of property and uses it as a home, or when two claimants marry each of which owns the home in which he or she has been living - in such cases the vacated home shall be considered as an available resource immediately.

"2. For town or city property, lots on which there is no dwelling and which adjoin the residence and considered a part of the home (regardless of the number of lots so long as they are in the same city block);

"3. For rural property, the acreage on which the home is located, plus any adjoining acreage which is a part of that farming unit will be considered as part of the home. (Property will be considered as adjoining even though a road may separate two tracts, if the property is farmed as a single unit).

"(b) For all other real property:

"The property is not being used directly by the applicant or recipient in the course of his employment. (Revised April, 1954)."

It is clear that under the above rule the applicant, (whom we assume from your letter to be a single person), in the instant case, is not eligible for old age assistance. He owns real property which is not furnishing him shelter, and the current market value of such property clearly appears to be in excess of five hundred dollars.

You do not in your letter raise any question as to the authority of the division of welfare to enact Rule 13, but in view of the very important effect that this rule is having, and will continue to have, upon the lives of great numbers of people of this state, we feel that we should consider it from this viewpoint. In this regard we direct attention to Section 207.020 RSMo 1949, which reads in part as follows:

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"(1) The department of health and welfare through and on behalf of the division of welfare shall have the power: * * * (1) to adopt, amend, and repeal orders and findings not inconsistent with the Constitution or laws of this state. * * *"

Under authority of the above, Rule 13 was enacted. The test of Rule 13, as stated above, is whether it is in conflict with the Constitution of Missouri, or any law of Missouri. If it be in conflict with any law, that law obviously would be the social security law, which is Chapter 208 RSMo 1949, and we believe more specifically Section 208.010 of that chapter, with which section we are familiar.

A factual situation parallel to the instant case arose in California in 1945 in *Newbold vs. Social Welfare Board*, 174 Pac.(2) 482. In that case, the Social Welfare Board promulgated a regulation providing that Aid to the Blind could not be granted where cash or securities owned were in excess of \$600.00, unless there was a plan for, and the ability to provide for, rehabilitation. The Plaintiff sued out a writ of mandamus contending that the regulation of the Board was in conflict with Section 3047 of the Welfare and Institutions Code, which provided in part as follows: "Aid shall not be received under the provisions of this chapter by any person who owns personal or real property, or both, the county assessed valuation of which, less all encumbrances thereon of record, is in excess of three thousand dollars (\$3000)."

The Superior Court of Orange County sustained the petitioner's contentions. The court said: "It is my opinion that the Social Welfare Board in adopting Section 142-05 of the Manual of Procedures, Rules and Regulations acted in an arbitrary manner, and that its above-numbered section is inconsistent with and in conflict with the suitable provisions of the Welfare and Institutions Code of California pertaining to needy blind persons, in that such rule modifies the statute in an unwarranted fashion. Furthermore, it is my opinion that assuming the Board to have had the power to adopt a rule, the effect of which would be to modify the statute, it is clear that an administrative body may not by the adoption of a rule of policy or procedure to subscribe or curtail the exercise of its discretion as to prevent the free exercise thereof in every case, and in my opinion by the adoption of a rule, the effect of which is to state that no blind person having \$600 in cash and securities is needy, the Board has assumed to itself a legislative function."

Upon appeal, the decision of the superior court was reversed. The appellate court held that Section 3047 was intended to set only the maximum amount which an individual might own and yet be eligible to receive blind aid, and that the State Social Welfare Board had discretion to fix by regulation a lesser amount as a maximum for

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eligibles, taking into consideration the other provisions of the statute, particularly that provision which required that aid should be granted only to those who are in need. It was further ruled that such a regulation was not in conflict with said Section 3047, and was neither unreasonable, arbitrary, nor capricious. It is to be noted that the California statute did not contain a specific disqualifying clause declaring a person ineligible who had resources to provide a reasonable subsistence as the Missouri law does provide. The validity of the California regulation was ruled upon under the general provision in their law that an applicant had to be in need. We think the ruling made by the California Appellate Court presents the proper perspective to hold in view in construing the Missouri Social Security Law relative to the evaluation of resources and determination of who is "a needy person".

The regulation does not prohibit the ownership of a home in which the applicant resides and which has a valuation of \$5000.00. The application of this regulation insures that persons in similar circumstances will receive the same treatment in establishing eligibility to receive benefits, and that there will be no evasion of the law by changing cash assets into real property. Applicants owning cash or cash equivalent (i.e. real or personal property convertible into cash) are measured by the same eligibility yardstick. Rule 13 is a reasonable rule and regulation to effectuate the provisions of the law, and, in view of the necessity and propriety of considering the State Social Security law as a whole, it cannot be said that this regulation is in conflict with the provisions of the State Social Security Law, nor specifically with the provisions of Section 208.010.

CONCLUSION

The ownership of saleable real estate whose value is in excess of \$500, which real estate is not lived on by the owner, constitutes an available resource as that word is used in paragraph 5 of Section 208.010 RSMo, Cumulative Supplement 1953, and would render its owner ineligible for old age assistance.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

HPW/ld