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COMMENT ON RECENT DECISIONS

ADMINISTRATIVE LAW—OLD AGE ASSISTANCE—VOLUNTARY ASSISTANCE BY RELATIVES AS BASIS FOR DISQUALIFICATION—[Missouri].—In two separate appeals from decisions of the State Social Security Commission denying applications for old age assistance under the Missouri statute, which authorizes the commission to grant assistance to any person who "has not sufficient income or resources to provide a reasonable subsistence compatible with decency and health,"¹ the facts showed that both applicants met requirements as to age and residence and incapacity to earn a living. A monthly donation of fifty dollars was received from a son-in-law by the wife of one applicant; the other was living with and supported solely by contributions of an adult daughter. *Held*, that inasmuch as there is no legal duty on children to support parents, such donations are "gifts"; consequently, applicants were without resources, income, or means of support, and were eligible for assistance. Commission reversed.²

At common law there was no obligation to support indigent aged relatives;³ but, as early as 1601, recognizing that relatives are morally bound, Parliament established the legal duty for those sufficiently able.⁴ In prescribing eligibility under present state plans for old age assistance, most states expressly provide that aid from persons able to assist or legally responsible for assistance shall be considered in determining the need which is the basis for granting assistance.⁵ Even in the absence of statutory duty, it has been held, as to an applicant receiving aid from relatives, that the source and amount of support are controlling factors in determining need.⁶

As a rule, the conclusion of an administrative officer or body will not be judicially disturbed unless plainly wrong.⁷ Whether the commission exer-

1. Mo. Laws of 1935, sec. 12, p. 308, as amended, Mo. Laws of 1937, sec. a, p. 467, Mo. Stats. Ann. (1938 Supp.) sec. 12967b-12.

2. *Moore v. State Social Security Commission* (Mo. App. 1938) 122 S. W. (2d) 391; *Price v. State Social Security Commission* (Mo. App. 1938) 121 S. W. (2d) 298.

3. *Occidental Life Insurance Co. v. Powers* (1937) 192 Wash. 475, 74 P. (2d) 27; Schouler, *Domestic Relations* (1895) 422.

4. (1601) 43 Eliz. c. 2, sec. 7, commented on in 25 Halsbury, *Laws of England* (1937) 407, sec. 710; *Betz v. Horr* (1937) 250 App. Div. 457, 294 N. Y. S. 546, 548, where it was stated that the object of statutes to this effect is to prevent the public from loss occasioned by neglect of a moral duty and to translate that duty into a statutory and legal liability.

5. Social Security Board, *Sixteen Characteristics of State Plans for Old Age Assistance* (1937).

6. *Soper v. Wheeler* (1921) 239 Mass. 327, 132 N. E. 46 (relief denied).

7. *Peterson v. Rodgers* (Ariz. 1938) 78 P. (2d) 480; *In re Gilhuly* (1938) 124 Conn. 271, 199 Atl. 436; *Adams v. Nagle* (1938) 303 U. S. 532; *Red Canyon Sheep Co. v. Ickes* (D. C. App. 1938) 98 F. (2d) 308, 322, where it was held that mandamus will not issue to interfere with discretion of an administrative officer in construing a statute even though the court would construe the statute otherwise, providing the officer's construction is reasonably possible; *United States ex rel. White v. Coe* (D. C. App. 1938) 95 F. (2d) 347.

cised its discretion reasonably in the instant cases involves an inquiry as to the legislative intent in regard to whether aid from relatives should be considered as "income" or "resources."⁸ Under the federal grants to states, though the definition of those entitled to assistance is left to states,⁹ there is available evidence of a congressional intent that grants should be available only to persons not receiving aid from relatives.¹⁰ The Missouri legislature directed the State Commission to "comply with the provisions of any Act of Congress providing for the distribution and expenditure of funds of the United States appropriated by Congress for social security benefits, and to comply with any and all rules and regulations attached to or made a part of such Appropriation Act * * *."¹¹ As absence of "means" of support furnishes the basis upon which eligibility rests, it has been urged that the benefits which any person receives "shall be determined with due regard * * * to the conditions existing in each case * * *."¹² It would appear on this analysis that the commission's conclusion that this aid should be considered as "resources" was not unreasonable.

The provision that "Any applicant aggrieved by the action of the State Commission in the denial of benefits * * * may appeal to the circuit court * * *," and that "Such appeal shall be tried *de novo* on the sole question of whether the applicant is entitled to benefits and not as to the amount thereof * * *"¹³ raises the question whether there is a delegation of executive power to the judicial branch.¹⁴ Upon a trial *de novo*, the court is not limited to mere review of an administrative determination, but may independently determine issues of fact and substitute its own judgment and

8. Black, *Construction and Interpretation of Laws* (2d ed. 1911) 46; Sedgwick, *Statutory and Constitutional Law* (1874) 193; Sutherland, *Statutory Construction* (1891) 309, sec. 234.

9. Social Security Act (1935) 49 Stat. 620, (1938 Supp.) 42 U. S. C. A. sec. 301 et seq.

10. *Conant v. State* (Wash. 1938) 84 P. (2d) 378, 382. Robinson, J., dissenting, cites the following: In a hearing before the Committee on Ways and Means (1935) H. R. Rep. No. 4120, 74th Cong., 1st Sess. at p. 83, Dr. Witte is thus quoted: "This bill does not contemplate that where children are able to support their parents they should not do so." In a report of the Senate Finance Committee, of which Senator Harrison was chairman, recommending passage of the Social Security Act, he stated: "We think that children who are able to do so should continue to support their aged parents, and the legislation which we are proposing is framed with this in mind." (1935) Sen. Rep. No. 628, 74th Cong., 1st Sess., 4.

11. Mo. Laws of 1935, sec. 11, p. 308, as amended, Mo. Laws of 1937, sec. a, p. 467, Mo. Stats. Ann. (1938 Supp.) sec. 12967b-11. See *State Social Security Commission of Missouri Manual* (1938) 21: "Every effort should be made to induce all relatives to recognize the moral responsibility and assume the burden of support as long as it does not cause undue sacrifice in their own families."

12. Wyatt and Wandell, *Social Security Act in Operation* (1937) 278.

13. Mo. Laws of 1935, sec. 16, p. 308, as amended, Mo. Laws of 1937, sec. a, p. 467, Mo. Stats. Ann. (1938 Supp.) sec. 12967b-16.

14. Mo. Const. art. 3; *Borreson v. Dep't of Public Welfare* (1938) 368 Ill. 425, 14 N. E. (2d) 485; *In re Northwestern Indiana Telephone Co.* (1930) 201 Ind. 667, 171 N. E. 65; *In re Opinion of Justices* (1931) 85 N. H. 562, 154 Atl. 217.

discretion for that of the administrative body.¹⁵ In Illinois a section of the Old Age Assistance Act permitting an unsuccessful applicant to petition the circuit court for a trial *de novo* has been held an unconstitutional delegation of power in view of the broad discretion intended to be granted to the administrative agency.¹⁶

Since the instant decisions were handed down, the Missouri statute has been amended to provide that benefits shall not be payable to any person who has " * * * income, or resources, whether such income or resources 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."¹⁷ Further, the appeal to the circuit court shall not involve a trial *de novo*; instead, on an applicant's appeal, the proceedings before the commission shall be certified, and upon this record the "circuit court shall determine whether or not a fair hearing has been granted the individual. If the court shall decide for any reason that a fair hearing and determination of the applicant's eligibility and rights under this act was not granted the individual by the State Commission, or that its decision was arbitrary and unreasonable, the court shall, in such event, remand the proceedings for redetermination of the issues by the State Commission."¹⁸

As old age assistance grants are available not as a matter of right¹⁹ but to cope with the existing emergency,²⁰ it is submitted that the better view is that relatives able to do so should aid the indigent aged, and to this end the legislature should have expressly provided that, where old age assistance is granted, it shall appear that the applicant has no responsible relative or other person able to furnish support.

P. H. A.

ARCHITECTS—PROTECTION OF PLANS AS INTELLECTUAL PROPERTY—LOSS OF RIGHT BY PUBLICATION—[Missouri].—Plaintiff, an architect, was employed by defendants to prepare plans for modernization of a residence. The remodeled residence was open to the public for inspection, and the plan itself was printed in a professional periodical. Later defendants constructed two more residences from the same plans without plaintiff's consent. In a suit for damages for the alleged unauthorized appropriation and use of plaintiff's plans, *held*, that plaintiff's common law copyright was extinguished by publication.¹

By common law authors are protected in the exclusive use of their in-

15. See *Borreson v. Dep't of Public Welfare* (1938) 368 Ill. 425, 432, 14 N. E. (2d) 485, 488.

16. *Ibid.*

17. (1939) Sen. Bill No. 32, 60th Gen. Ass.

18. (1939) Sen. Bill No. 31, 60th Gen. Ass.

19. See *Robinson, J.*, dissenting, in *Conant v. State* (Wash. 1938) 84 P. (2d) 378, 382.

20. *State ex rel. Shomaker v. Super. Ct.* (1938) 193 Wash. 465, 475, 76 P. (2d) 306, 310.

1. *Kurfiss v. Cowherd* (Mo. 1938) 121 S. W. (2d) 282.