

4222.

## OLD AGE PENSION—PATIENT OF STATE HOSPITAL FOR INSANE ELIGIBLE FOR OLD AGE PENSION WHEN OUT ON "TRIAL VISITS."

## SYLLABUS:

*When a person is committed to a state hospital for the insane, even though he has not been discharged, while out on "trial visits" he is not an "inmate" of such institution within the meaning of Subsection (e) of Section 1359-2 of the Old Age Pension Law.*

COLUMBUS, OHIO, May 4, 1935.

HON. H. J. BERRODIN, *Chief, Division of Aid for the Aged, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"We are inclosing herewith a copy of a report regarding the case, received from our Hamilton County office, and are requesting an informal opinion on the question of whether Mr. M. is entitled to aid under our law governing the payment of aid to aged persons.

As stated in this report, this man has never been formally discharged from the Hospital, but has been sent home on a trial visit with his son. We understand that the case is a very deserving and needy one."

The attached memorandum to your inquiry reads in part as follows:

"This office received its first notice of any complaint in regard to this claim on March 7, 1935, when the applicant called at this office and brought with him your letter under date of March 5, 1935, together with Trial Visit Permit No. 3576, issued February 6, 1935 by Longview Hospital. This being our first notice of any difficulty applicant was encountering in receiving his check, we were somewhat at loss as to what had transpired prior to above mentioned date. In investigating this matter further, we learned that the applicant on May 9, 1933 was admitted to Longview Hospital and on August 9, 1933 was released. However, this release was not a permanent discharge and before applicant did receive such permanent discharge he became mentally upset and it was necessary for him to return to the hospital. His case has been diagnosed as senile psychosis. We were informed that, in view of the above, applicant has never been permanently discharged from Longview, since he was admitted there on May 9, 1933 and that while he is allowed to live with his son and daughter-in-law it is also necessary for him to report to the hospital every three months. The paper that the applicant thought was his permanent discharge turned out to be a 'Trial Visit Permit' No. 3576.

Since the above information discloses that the applicant is still an inmate at the above named state hospital, we feel that his application, of necessity, must be refused. We do await, however, your further instruction in connection with this phase of the matter. \* \* \*

Section 1968, General Code, reads as follows:

"When the superintendent deems it for the best interest of a patient who

has no homicidal or suicidal tendencies, he may permit such patient to leave the state hospital on a trial visit. The superintendent, at his discretion, may require an agreement in writing to the effect that the friends or relatives of such patient shall assume the responsibility for the proper care and control of such patient. The duration of such trial visit shall be at the discretion of the superintendent and such patient may be returned to the state hospital without further legal proceedings whenever such return is deemed necessary for the best interests of such patient."

As stated in the memorandum attached to your inquiry, the particular patient in question has been on trial visits to the home of his son and daughter-in-law since August 9, 1933, although he reports to the hospital "every three months."

Section 1964, General Code, provides the manner by which a person or patient may be discharged from such hospital. It reads as follows:

"When the superintendent deems it for the best interest of a patient in a state hospital he may discharge such patient and indicate such action on the records of such hospital whether such patient be at the time of such discharge actually in such hospital or absent on trial visit, but such discharge shall not be effective until approved in writing by the director of the department of public welfare. No patient, who in the judgment of the superintendent, has homicidal or suicidal tendencies, shall be discharged. If, in the opinion of the superintendent, the condition of the patient at the time of discharge or trial visit justified it, he may permit such patient to leave the institution unattended."

However, it appears from the facts supplied in the memorandum attached to your inquiry that the patient's case has been diagnosed as senile psychosis and the hospital authorities are unwilling to permanently discharge this patient, perhaps deeming it necessary to keep the man under further observation.

Section 1359-2, General Code, relative to the Old Age Pension Law provides in part as follows:

"No person shall be entitled to aid under this act unless he fulfills the following conditions:

\* \* \* \* \*

(e) Is not an inmate of any penal or correctional institution or state hospital. \* \* \*"

It is also provided in the Old Age Pension Law in Section 1359-29, General Code, as follows:

"This act shall be liberally construed to accomplish the purposes thereof. Nothing herein shall be construed as repealing any other act or part of an act providing for the support of the poor except insofar as plainly inconsistent herewith, and the provisions of this act shall be construed as an additional method of supporting and providing for the aged poor."

The precise question raised by your inquiry involves an interpretation of the word "inmate" as employed in Section 1359-2, quoted in part supra. It must be borne in mind that the word "inmate" is not a word that can be dogmatically defined for all le-

gal purposes, but must be construed with reference to the particular statute in which it is employed, and in relation to the subject matter of such statute. In other words, it is capable of precise definition only with reference to the legislation wherein it is found.

The primary purpose of the Old Age Pension Law is to provide a form of relief to aged people who because of the vicissitudes of life find it necessary to call upon the state to support them. The duty to provide for them is a humanitarian one owed to them by organized society. It is evident from the statement of facts presented by your inquiry that the state is no longer paying for the support and care of this destitute person when he is no longer within the confines of the institution. Under such circumstances, it is apparent that the person in question is well within the object and spirit of the Old Age Pension Law.

It now becomes necessary to ascertain the meaning of the word "inmate" as employed in this particular legislation. In the case of *People vs. Matsicura*, 19 Cal. App. 75, 124, Pac. 882, 883, it was stated:

"The word 'inmate' is defined by the Standard Dictionary as 'one who occupies or lodges in a place with others,' or 'any occupant even if alone'; in other words, the words, 'inmate' and 'occupant' when employed with reference to a building, are synonyms."

In the case of *Strench vs. Pedaris*, 55 Fed. (2nd) 597 C. C. A. (Wyo.), it is stated at page 599:

"The word 'inmate' is defined by Webster as 'One who lives in the same apartment or house as another; a fellow lodger,' etc., and by the Century Dictionary as 'One who is a mate or associate in the occupancy of a place,' etc."

In the case of *Farrell vs. Security Mut. Life Ins. Co.*, 66 (C. C. A. 374) 125 Fed. 684 at page 688, it is stated:

"'Inmate' is defined as follows:

'One who lives in the same house or apartment with another; a fellow lodger; esp. one of the occupants of an asylum, or prison; by extension, one who occupies or lodges in any place or dwelling.' Webster.

'One who is a mate or associate in the occupancy of a place; hence, an indweller; an associated lodger or inhabitant; as the inmate of a dwelling house, factory, hospital, or prison.' Century."

It appears from the cases cited supra that the usual connotation of the word "inmate" involves in some degree the element of physical presence or dwelling in a particular place, and only by extension does it include within its purview the element of constructive, fictional, or legal presence.

In view of the fact that the object of statutory construction is to ascertain the intention of the legislature (*Barth vs. State ex rel. Zielenka*, 107 O. S. 154; *City of Mt. Vernon vs. Mockwart*, 75 O. S. 529) and since relief to the man in question is well within the spirit and purpose of the Old Age Pension Law, and since the word "inmate" in its ordinary connotation would not embrace the situation where a patient is not physically present in a State Hospital for the Insane, it is my opinion that Mr. M. is entitled to an Old Age Pension if he meets all other requirements of the Old Age Pension

Law. However, if he is taken back inside the institution, he should no longer derive the benefits of the Old Age Pension Law.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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4223.

APPROVAL, BONDS OF EDEN TOWNSHIP RURAL SCHOOL DISTRICT, SENECA COUNTY, OHIO, \$61,000.00.

COLUMBUS, OHIO, May 4, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4224.

APPROVAL, BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY, OHIO, \$12,000.00.

COLUMBUS, OHIO, May 4, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

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4225.

APPROVAL, BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY, OHIO, \$18,000.00.

COLUMBUS, OHIO, May 4, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

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4226.

APPROVAL, BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY, OHIO, \$20,000.00.

COLUMBUS, OHIO, May 4, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*