United States Army in 1917, was commissioned captain in the United States army and took the federal oath. The court held that Fekete had ceased to be a member of the National Guard and held an office of "honor and profit" under the federal government within the meaning of the Illinois constitutional prohibition.[9] Similarly, in *Lowe v. State*,[10] a judge who was a captain in the National Guard was found to hold a federal office within the meaning of the Texas constitutional prohibition, after he was called into the United States Army in 1917.

The federal statute involved in *Fekete v. East St. Louis* and in the instant case was the same,[11] and in 1917, as well as at the present time, the National Guardsmen received federal pay and used federally owned equipment. The basis for the different conclusion in the instant case lay in the administration of the National Defense Act in 1917, as contrasted with that of 1940. Under the Act of Congress of 1917, the President had the power to call the National Guard into the federal service for the period of the "existing emergency unless sooner discharged."[12] In 1940, however, Congress adopted a joint resolution[13] authorizing the President merely to induct the National Guard into the military service of the United States. Pursuant to this resolution, the president issued an order[14] directing the National Guard to report for a year's intensive training in the United States Army, and an Army Regulation[15] of March 1940 provided that National Guard officers in the federal service were not required to take any additional oath, but were to serve under the commissions issued by the governors of their respective states.

It is quite probable that similar controversies will arise in other states which have substantially the same constitutional provisions. If the court's reasoning is generally adopted by other jurisdictions, the civil income and economic security of National Guard officers derived from the home state is not likely to be disturbed under the existing Joint Resolution, Presidential Orders, and Army Regulations, so long as the state governments have some control, nominal and tenuous though it may be. V. T. M.

STATUTORY CONSTRUCTION—MISSOURI SOCIAL SECURITY ACT—SUPPORT OF APPLICANT BY RELATIVE—[Missouri].—The Missouri Social Security Commission denied old age assistance payments under the provisions of the State's Social Security Act, on the ground that the plaintiff had "income sufficient to meet his needs for a reasonable subsistence compatible with decency and health," such income being furnished by his son. Plaintiff appealed, alleging that the commission refused to consider the son's financial

9. Ill. Const. art. IV, sec. 3.
10. (1918) 83 Tex. Crim. Rep. 134, 201 S. W. 986.
11. National Defense Act (1916) 39 Stat. 211, sec. 111, 32 U. S. C. A. (1928) sec. 81.
12. Act of May 18, (1917) 40 Stat. 76, 50 U. S. C. A. (Supp. 1940) sec. 201.
13. Pub. Res. No. 96, 76th Cong., 3d sess. (August 27, 1940).
14. Executive Order Fed. Reg. (September 4, 1940) Vol. 5, No. 172.
15. Army Regulations (March 1940) 130-10, sec. 12.

ability to support the plaintiff. The Missouri Supreme Court, reversing the Springfield Court of Appeals, *held:* a claimant who in fact is receiving adequate support from a child is not entitled to benefits under the act. *Howlett v. Social Security Commission.*[1]

The Missouri Social Security Act provides for the granting of assistance to persons sixty-five years of age or over who are incapable of earning a livelihood and who are without minimum means of support.[2] When an applicant "has earning capacity, 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,"[3] he is not eligible for assistance under the act. The Springfield Court of Appeals in the instant case, however, interpreted the act as meaning that when the support of an applicant by a relative entails unreasonable sacrifice by the donor, the applicant should receive assistance.[4] Whereas the court of appeals was trying to prevent the placing of too great a financial burden upon the shoulders of those persons of low income who are contributing to the support of an applicant at great personal sacrifice, the interpretation of the commission and the supreme court, on the other hand, places emphasis upon a more economical administration of the act.[5] At least one other jurisdiction having a similar statute has interpreted it in the same manner as the supreme court in the instant case[6] At least one court, however, has held *contra,* stating that an applicant for old age assistance was "in need" within the meaning of the old-age assistance statute, notwithstanding that applicant's daughter and son-in-law were financially able to and did provide food, lodging, and clothing for that the legislature intended children who were able to do so to continue applicant.[7] There was a strong dissent, however, in which it was stated to support their aged parents.[8]

---

1. (Mo. 1941) 149 S. W. (2d) 806. Accord: Chapman v. State Social Security Comm. (Mo. App. 1941) 147 S. W. (2d) 157.

2. R. S. Mo. (1939) sec. 9407 (1).

3. R. S. Mo. (1939) sec. 9406 (6). See note 13 infra.

4. Howlett v. Social Security Comm. (Mo. App. 1940) 146 S. W. (2d) 94.

5. See Missouri Association for Social Welfare, *Building a Better State* (October, 1938, Vol. 3, No. 9). Quoting from a survey made by the Kansas City Star, this publication states: "The inclusion of applicants for assistance who were already receiving gifts or donations equivalent to, or greater than, assistance payments under the act would raise the number of recipients from 73,000 to 200,000 at an estimated cost of $100,000,000 per biennium."

6. Wood v. Wagonner (S. D. 1940) 293 N. W. 188, 190, quoted the South Dakota statute as follows: "'Section 11 [SDC 55.3608]. Eligibilty for Assistance. Assistance shall be given to any person who: * * * (d) Has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.'"

7. Conant v. State (1938) 197 Wash. 21, 84 P. (2d) 378. The following statutes were cited by the court, l. c. 23: Rem. Rev. Stat. (Supp.) sec. 9998 —2 provided: "Subject to the provisions of this act, every person residing in the State of Washington, if in need, shall be entitled to old-age assistance from the state." Rem. Rev. Stat. secs. 9981-9984 and 9987-9991 had required certain relatives (if such relatives are "of sufficient ability") of every poor

The statutory history of eligibility in Missouri has been marked by clashes of policy and poor legislative draftsmanship, as a result of which the question involved in the instant case has not even yet been satisfactorily solved. The first "old age pension" statute was passed in 1935. This statute[9] stated: "Old age assistance may be granted only to an applicant who has attained the age of 70 years or upwards, is incapacitated from earning a livelihood and is without adequate means of support * * * and has no child or other person responsible under the law of this state and found by the state board or by the county board able to support him." The use of the words "responsible under the law of this state" was confusing, since there is no liability on the part of a child to support his parents in Missouri.[10] The act was evidently copied from a model bill without suitable adaptation to the local law. This statute, however, was short-lived, being repealed by the Social Security Act of 1937.[11] This act was also defective in that it did not make clear whether an applicant who was being supported by a child or other person was eligible for old age assistance payments. The cases decided under this statute interpreted the words "resources" and "means of support" as not including support by an applicant's child or relative.[12] The statute was then changed to its present form.[13]

---

person who was unable to earn a livelihood because of physical or mental disability to support such person. This statute was repealed by Wash. Laws of 1937, 709, sec. 22, which declared that the burden of caring for the handicapped and underprivileged was a public responsibility which the state assumed.

8. Robinson, J., dissented on the grounds that the failure to take into consideration the support of an applicant by his children or relatives was basing the granting of old age assistance on grounds other than actual need, and was, further, contra to the Federal Social Security Act and the theory underlying the passage of the state social security act by the legislature.

9. Mo. Laws of 1935, 308 et seq, 310.

10. Missouri follows the common law rule. See, e. g., Moore v. State Social Security Comm. (1938) 233 Mo. App. 536, 122 S. W. (2d) 391, 394.

11. Mo. Laws of 1937, 467, now R. S. Mo. (1939) secs. 9396-9420. Sec. 9407 is as follows: "Pensions or old age assistance shall be granted under this law to any person who: (1) is 70 years of age or over * * *; (2) is incapacitated from earning a livelihood and has not sufficient income or other resources, * * * to provide a reasonable subsistence compatible with decency and health, and is without adequate means of support; * * *"

12. Moore v. State Social Security Comm. (1938) 233 Mo. App. 536, 122 S. W. (2d) 391; Price v. State Social Security Comm. (1938) 232 Mo. App. 721, 121 S. W. (2d) 298; Branson v. State Social Security Comm. (Mo. App. 1941) 139 S. W. (2d) 551.

13. Mo. Laws 1939, 738, sec. 11, R. S. Mo. (1939) sec. 9406 provide: "In determining the eligibility of an applicant for public assistance under this law, it shall be the duty of the Commission to consider and take into account all facts and circumstances surrounding the applicant, including his earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the applicant is not found to be in need, assistance shall be denied. The amount of benefits when added to all other income, resources, support and maintenance shall provide such persons with reasonable subsistence compatible with decency and health. Bene-

The law created by the 1939 act, reflected in the instant case, does not solve the problem of relative state and family responsibility for assistance to the aged. As matters now stand, sons and daughters barely possessed of sufficient income to meet their own needs and those of their families are under pressure to divert a substantial part of their own income to the support of their parents who would otherwise be entitled to old age assistance. Some authorities would require the state to grant old age assistance to an applicant irrespective of the financial ability of the applicant's children to support him.[14] Many states have laws requiring relatives to support needy persons, if they are financially able to do so.[15] Where persons of little means are making sacrifices to support an applicant, their parent or relative, old age assistance should be granted the applicant in justice to such relatives. However, a recent amendment to the Federal Social Security Act[16] requires the states, as a condition of receiving federal aid, to go at least as far as the Missouri statute in taking advantage of support from relatives and other private sources to the aged.

H. M. F.

---

fits shall not be payable to any person who: * * * (6) has earning capacity, 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."

14. Epstein, *The Challenge of the Aged* (1928). Epstein would give all indigent aged persons old age assistance whether there were children able to support them or not, on the ground that it is better social policy to have the state rather than the children or relatives undertake the burden of supporting the indigent aged. Grant, *Old Age Security: Social and Financial Trends* (1940) 31 reports: "In accordance with the growing opinion that the support of needy old persons should be provided by the community as a whole, family responsibility is not imposed by the laws of Denmark, Australia, New Zealand, and Great Britain."

15. Governmental Research Institute, *Dollars and Sense in Government* (St. Louis, 1941) No. 16. The Institute's analysis of the laws of the 48 states shows that 29 states have provisions making relatives with sufficient financial ability liable for the support of indigents. In one state, such liability is imposed only on adult children, while in seven states it is imposed on children and parents. The laws of 21 other states provide that one or more of the following relatives, in addition to children and parents, shall be responsible for support: grandparents, grandchildren, spouse, brothers, and sisters. 4 Vernier, *American Family Laws* (1936) and Supplement (1938) sec. 235, gives the number of jurisdictions as 38. A provision in the Public Assistance Laws of North Dakota is expressive of the same policy as the statutes referred to. North Dakota Session Laws (1937) c. 211, sec. 2 provide: "Eligibility for Assistance to the Needy Aged. Assistance shall be granted under this Act to any person who: * * * (d) Has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health; * * * (f) Has no child or other relative of sufficient financial ability to support the applicant and responsible under the law for the support of the applicant." See State ex rel. Eckroth v. Borge (1939) 69 N. D. 1, 283 N. W. 521.

16. Social Security Act (1939) 53 Stat. 1360, 42 U. S. C. A. (Supp. 1940) sec. 302. Sec. 2(a): "A state plan for old-age assistance must * * * (7) effective July 1, 1941, provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming old-age assistance; * * *."