

**OPINION NO. 94-062****Syllabus:**

1. When a veterans service commission grants an allowance under R.C. 5901.02-.15, it is permitted by R.C. 5901.14 to appoint a suitable person to draw, receipt for, and properly expend the allowance for the benefit of the recipient and the indigent members of the recipient's family. The person so appointed may expend proceeds of the allowance to make mortgage payments if making such payments is consistent with the actual housing need. (1965 Op. Att'y Gen. No. 65-71, approved and followed.)
2. A veterans service commission is not permitted to use its appointive power under R.C. 5901.14 to appoint itself as the person with authority to draw, receipt for, and expend an allowance granted under R.C. 5901.02-.15, and, therefore, the commission cannot itself make payments on a veteran's mortgage from such an allowance.

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**To: David E. Aldstadt, Director, Governor's Office of Veterans' Affairs,  
Columbus, Ohio**

**By: Lee Fisher, Attorney General, September 28, 1994**

You have requested an opinion on the question whether a veterans service commission is permitted to make payments on a veteran's mortgage from an allowance awarded by the commission. Your question arises in light of 1965 Op. Att'y Gen. No. 65-71, which states in the syllabus:

1. Under the provision of Section 5901.12, Revised Code, the Soldiers' Relief Commission may pay benefits to persons or families determined to be needy; there is no provision of law permitting the Soldiers' Relief Commission to make direct payments on a land contract or mortgage.
2. Under the provision of Section 5901.14, Revised Code, the Soldiers' Relief Commission may appoint a person to draw, receipt for and properly expend the allowance provided for by law; such person may expend funds for the payment of land contract or mortgage obligations of the needy person or family if making such payments is consistent with the actual housing need.

The entity that was known in 1965 as a soldiers' relief commission is now a veterans service commission. See R.C. Chapter 5901. Each county has its own veterans service

commission. R.C. 5901.02. Although R.C. 5901.12 has been repealed, *see* 1987-1988 Ohio Laws, Part III, 4685 (Am. Sub. H.B. 626, eff. Sept. 14, 1988), and other provisions of R.C. Chapter 5901 have been modified since 1965, *see, e.g.*, Am. Sub. H.B. 448, 120th Gen. A. (1994) (eff. July 22, 1994), the commission has retained its function of providing assistance to individuals who are in need.

#### **Payment and Expenditure of Allowances Awarded by a Veterans Service Commission**

R.C. 5901.08 permits a veterans service commission to accept applications for financial assistance under R.C. 5902.02-.15 from "[a] veteran, an active-duty member of the armed forces of the United States, or the spouse, surviving spouse, dependent parent, minor child, or ward of a veteran or active-duty member of the armed forces of the United States, who has been a bona fide resident of the county in which application is being made for at least three months." *See also* R.C. 5901.09. The commission certifies to the county auditor the names of persons who are to receive allowances and the auditor issues to each such person a warrant for the allowance awarded by the commission. R.C. 5901.14; *see also* R.C. 5901.11. The commission has discretion to increase, decrease, or discontinue such an allowance. R.C. 5901.14. The amounts granted to a particular recipient are within the discretion of the commission. *See, e.g.*, *State ex rel. Lentz v. DePue*, 71 Ohio App. 83, 47 N.E.2d 796 (Ottawa County 1941) (the granting of relief is within the discretion and control of the commission); 1992 Op. Att'y Gen. No. 92-014.

The statutory provisions do not specify that funds for housing are to be included within the allowances granted. It is, however, clear that housing is a basic need of each recipient and that it is appropriate for the commission to consider housing expenses as it determines the amount of each allowance. As one of my predecessors stated in Op. No. 65-71: "In keeping with human experience, man's basic needs are food, clothing and shelter. Certainly, it is well within the discretion of the soldiers' relief commission to consider these necessities when employing discretion in deciding the amount to be paid." Op. No. 65-71 at 2-149.

In Op. No. 65-71, it was determined that the commission could not itself make direct payments on a land contract or a mortgage for the benefit of needy persons. This conclusion was based on the fact that the statute authorized the county auditor to pay an allowance awarded by the commission only to the person certified as recipient or to a suitable person appointed by the commission.

R.C. 5901.14, which remains substantially as it appeared in 1965, permits an allowance granted under R.C. 5901.02-.15 to be paid to and expended by a person other than the recipient, as follows:

Upon proper cause shown, the commission may appoint a suitable person to draw, receipt for, and properly expend the allowance made to any person under sections 5901.02 to 5901.15 of the Revised Code, after the voucher or certificate is endorsed by the person for whom the allowance is intended, for the benefit of the person and the indigent members of his family. No part of the allowance shall be paid to any person without such endorsement.

An allowance under R.C. 5901.02-.15 is thus paid either to the person certified as recipient or to a suitable person appointed by the commission, who may expend the allowance only after it has been endorsed by the recipient. Such an allowance does not come to the commission and

is not available for expenditure by the commission.<sup>1</sup> It is evident, however, that a person properly appointed to expend the allowance for the benefit of the recipient and the indigent members of the recipient's family may expend proceeds of the allowance to make mortgage payments if making such payments is consistent with the actual housing need. *See* Op. No. 65-71.

#### **Appointment of a Suitable Person**

Your question raises the issue of whether the veterans service commission may be designated as the appointed person with authority to expend the allowance for mortgage payments. Op. No. 65-71 did not discuss this issue. R.C. 5901.14 does not attach conditions to the selection of a suitable person. It requires only that proper cause be shown for such appointment and that the voucher or certificate be endorsed by the person for whom the allowance is intended before any part of the allowance may be paid to any person. The statute does not expressly prohibit the commission from serving as the person appointed to expend an allowance on behalf of a recipient. It appears, however, that such appointment would be inappropriate because the commission is the entity with statutory responsibility for appointing a suitable person.

It is generally established that an entity with legal authority to make an appointment is prohibited from appointing itself. *See State ex rel. Louthan v. Taylor*, 12 Ohio St. 130 (1861); 1979 Op. Att'y Gen. No. 79-086 at 2-277 ("all officers having appointive power are disqualified for the positions to which they may appoint" (citations omitted)). This general rule is consistent with the common law compatibility principle that prohibits a person from holding two positions where one is subordinate to, or a check upon, the other. *See, e.g., State ex rel. Hover v. Wolven*, 175 Ohio St. 114, 191 N.E.2d 723 (1963); 1990 Op. Att'y Gen. No. 90-021.

This general rule serves to avoid conflict of interest situations. Its application in the instant case is appropriate because, as the entity responsible for selecting and appointing suitable persons to take charge of the expenditure of allowances in appropriate circumstances, the commission has an implied responsibility to oversee the activities of those persons, to make certain that the persons continue to be "suitable" for their functions, and to ensure that the procedures established by R.C. 5901.14 are properly followed. A conflict of interests would result if the commission were in the position of supervising its own activity. *See generally* Op. No. 79-086. In addition, the commission is responsible for determining the degree of need of various recipients. To be involved also in expending certain of the allowances that it grants might cause the commission to be unfairly influenced in exercising its discretion to allocate allowances. Therefore, it must be concluded that a veterans service commission is not permitted to use its appointive power under R.C. 5901.14 to appoint itself as the person with authority to draw, receipt for, and expend an allowance granted under R.C. 5901.02-.15. It follows that the

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<sup>1</sup> As recently amended, R.C. 5701.15 requires each veterans service commission to adopt and implement rules governing immediate assistance and specifies that the assistance granted pursuant to those rules may be "financial or otherwise." R.C. 5701.15; *see* Am. Sub. H.B. 448, 120th Gen. A. (1994) (eff. July 22, 1994). This opinion addresses only the question whether a veterans service commission may make payments on a veteran's mortgage from an allowance granted under R.C. 5901.02-.15 and does not consider any authority of the commission to provide assistance pursuant to R.C. 5701.15 by means other than granting an allowance. *See generally, e.g.,* 1950 Op. Att'y Gen. No. 1786, p. 289 at 293; 1934 Op. Att'y Gen. No. 2423, vol. I, p. 358; 1932 Op. Att'y Gen. No. 4821, vol III, p. 1398.

commission cannot itself make payments on a veteran's mortgage from an allowance granted under R.C. 5901.02-.15.

### **Conclusion**

For the reasons discussed above, it is my opinion, and you are advised as follows:

1. When a veterans service commission grants an allowance under R.C. 5901.02-.15, it is permitted by R.C. 5901.14 to appoint a suitable person to draw, receipt for, and properly expend the allowance for the benefit of the recipient and the indigent members of the recipient's family. The person so appointed may expend proceeds of the allowance to make mortgage payments if making such payments is consistent with the actual housing need. (1965 Op. Att'y Gen. No. 65-71, approved and followed.)
2. A veterans service commission is not permitted to use its appointive power under R.C. 5901.14 to appoint itself as the person with authority to draw, receipt for, and expend an allowance granted under R.C. 5901.02-.15, and, therefore, the commission cannot itself make payments on a veteran's mortgage from such an allowance.