

It is provided in Section 154-19, General Code, that each department of government provided for by the so-called administrative code, is empowered to employ, subject to the civil service laws in force at the time the employment is made, all necessary employes, and if the rate of compensation is not otherwise fixed by law, to fix their compensation. These departments are not limited to the fixing of compensation on a weekly, monthly or yearly basis and may provide for compensation on a per diem basis. Yet in the next section of the Code noted above, it is provided that:

"Each employe in the several departments shall be entitled during each calendar year to fourteen days' leave of absence with full pay."

Instances may be conceived where to grant vacations to employes employed on a per diem basis would be an abuse of discretion, but the same observation might be made in cases where the employe was employed on a weekly or monthly basis. Contracts providing for leaves of absence with full pay should be reasonable and may not either provide or be construed so as to make the granting of the leave of absence an abuse of discretion.

I am therefore of the opinion, in specific answer to your question, that county commissioners may lawfully allow their employes a reasonable leave of absence during their term of employment with full pay whether such employes are paid on a weekly or monthly basis or upon a per diem basis, providing the contracts of employment with such employes so provides either expressly or by necessary reasonable implication.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

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3007.

EXEMPTION FROM TAXATION—PERSONAL PROPERTY—ESTATES  
ACCUMULATED BY GUARDIANS FROM GRATUITIES OF FEDERAL  
GOVERNMENT EXEMPT UNDER CERTAIN CONDITIONS.

*SYLLABUS:*

*Estates that have been built up by guardians out of money received as payments under the World War Veterans' Act of 1924, are exempt from taxation under the provisions of Section 22 of said Act, (38 U.S.C.A. Section 454), as long as said funds are in their original form in the hands of the beneficiary or on deposit to the credit of his estate.*

COLUMBUS, OHIO, December 10, 1928.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

"The Tax Commission of Ohio is desirous of having an opinion from your office relative to the question raised in the enclosed letter."

The letter which you enclosed is addressed to your Commission by Mr. A. M. Barlow, Regional Attorney for the United States Veterans Bureau at Cleveland, Ohio, and reads as follows:

"The Cleveland Regional Office of the U. S. Veterans' Bureau, through guardians appointed by the various Probate Courts, pays disability, death compensation, and insurance benefits to approximately 1500 incompetent and minor beneficiaries located in forty counties in Northern Ohio. The Regional Attorney in the Cleveland Regional Office is charged with the responsibility of seeing that money paid for the benefit of the minor and incompetent beneficiaries in the territory covered by this office is expended to their benefit. He is also charged with the responsibility of advising guardians as to their rights and duties both under Federal and State laws.

A question recently has been submitted to this office by the Dollar Savings and Trust Company of Youngstown, Ohio, concerning whether estates which are made up of payments made by the Federal Government as gratuities under the various Acts of Congress should be listed for taxation. Before replying to this letter, we shall appreciate hearing from you on this subject. There is no departmental or Bureau ruling that has been brought to the attention of the Regional Attorney. The World War Veterans' Act, (U. S. Statutes, Volume 44, part 2, page 792, amended by the Act of May 29, 1928, Public 585, 70th Congress), however, under which these gratuities are paid, reads in part as follows:

'That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, or IV; and shall be exempt from all taxation; Provided, That such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Titles II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.

'That the provisions of the Section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of such Act of his interest in such insurance to any other member of the permitted class of beneficiaries.'

It would seem, however, the case of the *United States vs. Jeremiah Hall*, 98 U. S. 343, 25 Law Small Ed. 180, may be helpful in deciding this question. In this case, the Court says in part as follows:

'For the defendant, it is insisted that when the payment is made to the guardian, the money paid ceases to be within the constitutional control of the United States \* \* \* but the Court is unhesitatingly of a different opinion, for several reasons: 1. Because the United States, as the donor of the pension, may, through the Legislative Department of the Government, annex such conditions to the donation as they see fit, to insure its transmission unimpaired to the beneficiary. 2. Because the guardian no more than the agent or attorney of the pensioner is obliged by the laws of Congress to receive the funds; but if he does, he must accept it subject to the annexed conditions. 3. Because the word "guardian", as used in the Acts of Congress, is merely the designation of the person to whom the money granted may be paid for the use and benefit of the pensioners. 4. Because the fund proceeds from the United States, and inasmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary, which is all that is necessary to decide in this case.'

Reference is also made to the case of the *Tax Commission of Ohio vs. Rife*, a report of which appears in The Ohio Law Bulletin and Reporter for July 30, 1928.

The matter of the control of the legislative branch of the Federal Government, through the executive branch, over money paid to this class of beneficiaries, which is in the nature of a gratuity, has already received the attention of the Probate Court at Youngstown, Ohio. \* \* \*

(Here follows a copy of the journal entry. In re: Michael McCaffrey, Insane, Case No. 4,119, determining exceptions to the account of the guardian of an insane person; sustaining exceptions filed by the regional attorney of the United States Veterans' Bureau, objecting to the allowance of fees to said guardian, and to the amount of the attorney fees by said guardian in said account.

The Probate Court found that the income and corpus of said estate was derived from money paid by the United States Government through the United States Veterans' Bureau, under the World War Veterans' Act and the same was a gratuity and that such gratuity was under the Act of Congress herein referred to, under the control of said Bureau until it reached the hands of the beneficiary).

"In the light of the above quoted decisions and Act of Congress, this office will very much appreciate an opinion from you as to whether or not estates have been built up by guardians out of money received as gratuity paid by the Federal Government should be listed for taxation in the State of Ohio."

The disability, death compensation, and insurance benefits to incompetent and minor beneficiaries made by the Federal Government as gratuities under the various acts of Congress, are payable to guardians appointed by the various probate courts of Ohio, and the question raised by the Regional Attorney in the Cleveland Regional office of the United States Veterans' Bureau is as to whether or not estates which have been built up by guardians out of money received as gratuities paid by the Federal Government should be listed for taxation.

In the case of *Tax Commission of Ohio vs. Rife, et al.*, 119 O. S. 43, decided June 13, 1928, Ohio Law Bulletin and Reporter, July 30, 1928, page 43, the Court held as stated in the syllabus that:

"The provisions of the world's war veterans' act relating to the exemptions from taxation of insurance payable thereunder exempt from the state inheritance tax the amount paid to the estate of a deceased soldier."

At page 44 the opinion quotes from Section 22 of said Act as follows:

"That the compensation, insurance, and maintenance and support allowance payable under titles II, III, and IV, respectively \* \* \* shall be exempt from all taxation. \* \* \*" 43 Stats. at L., 607, 613 c. 320, Section 22, June 7, 1924, Title 38, Section 454, U. S. Code."

At page 48 the Court say:

"The provisions of Section 22 of the act of June 7, 1924, providing for exemption from taxation, must dominate over the succession tax statutes of Ohio, because of the provision of paragraph 2, Art. VI of the United States Constitution, providing that:

'This Constitution, and the laws of the United States which shall be made in pursuance thereof \* \* \* shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.'

The opinion then concludes as follows:

"Entertaining the view that Congress has power to provide for payment to the next of kin of the deceased soldier in such manner as it may determine, and that such proceedings, being for the benefit of dependents, constitute a special, distinct class of property, different from a general estate of a deceased soldier, such fund, by Section 22 of the act is exempt from the inheritance tax under the Ohio statute. The judgment of the Court of Appeals is affirmed."

In the case of *United States vs. Jeremiah Hall*, 98 U. S. 343, 25 Law Ed. 185, the Court was considering the status of pension money of a ward paid to his guardian and stated as follows:

"For the defendant, it is insisted that when the payment is made to the guardian, the money paid ceases to be within the constitutional control of the United States \* \* \* but the Court is unhesitatingly of a different opinion, for several reasons: 1. Because the United States, as the donor of the pension, may, through the Legislative Department of the Government, annex such conditions to the donation as they see fit, to insure its transmission unimpaired to the beneficiary. 2. Because the guardian no more than the agent or attorney of the pensioner is obliged by the laws of Congress to receive the funds; but if he does, he must accept it subject to the annexed conditions. 3. Because the word 'guardian,' as used in the Act of Congress is merely the designation of the person to whom the money granted may be paid for the use and benefit of the pensioners. 4. Because the fund proceeds from the United States, and inasmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary, which is all that is necessary to decide in this case."

The Federal statutes, supra, provide that the gratuities in question shall be exempt from all taxation and the opinion last quoted holds that the government may annex such conditions to the donation as it sees fit to insure its transmission unimpaired to the beneficiary. The money in the hands of the guardian is the same as in the hands of the beneficiary and the guardian must accept the donation subject to the conditions provided by the government. Said decision further holds that the word "guardian" as used in the acts of Congress is merely the designation of the person to whom the money granted may be paid for the use and benefit of those entitled to it.

The Court of Appeals of the First Appellate District of Ohio, case number 3073, in its opinion, July 5, 1927, in the case of *The Tax Commission of Ohio vs. Chris Rife, et al.*, which opinion was sustained by the Supreme Court in *Tax Commission vs. Rife*, supra, stated as follows:

"This insurance was provided for and awarded when the Nation was at war. It was a protective measure for the Government as well as for the insured, and the use of the language 'shall be exempt from all taxation,' in view of the fact that the government designated the permitted class and that the laws of Ohio are subject to the laws of the United States on this question, there can be no doubt that the language of the Act meant what it said in providing 'shall be exempt from all taxation.'"

In the case of *Wilson vs. Sawyer*, reported in 6 S. W. (2nd) 825, the Supreme Court of Arkansas had before it the question as to whether compensation paid to disabled soldiers under the World War Veterans' Act was garnishable, and the following language is found in the opinion of the Court:

"The court was correct in the declaration of law made, except that the funds were not subject to seizure, even after they had come into the hands of the ward. In 28 C. J. p. 187, Section 227 of the chapter on Garnishment, it is said:

'But after a pension or bounty has been paid to, and received by, the beneficiary, it is subject to garnishment in the hands of a third person to the same extent as other property, unless exempted by statute.'

The funds here involved are exempted by the statute under which they were allowed and paid to Sawyer. The act known as the 'World War Veterans' Act of 1924' (Act June 7, 1924, c. 320, Section 1, 43 Stat. 607, 38 USCA Section 421), makes provision for compensation and treatment for disabled veterans, this being part 2 of the act (38 USCA Section 471 et seq.); for their insurance, this being part 3 (38 USCA Section 511 et seq.); and for vocational rehabilitation, this being part 4 of the act (38 USCA Section 531 et seq.). By Section 22 of the act it is provided:

'That the compensation, insurance, and maintenance and support allowance payable under titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under titles II, III, or IV; and shall be exempt from all taxation: Provided, that such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under titles II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable. \* \* \*' 38 USCA Section 454.

In the case of *Payne vs. Jordan*, 36 Ga. App. 787, 138 S. E. 262, it was held by the Court of Appeals of Georgia that a house purchased with proceeds only of war risk insurance, payable under the War Risk Insurance Act of Congress approved October 6, 1917 (38 USCA Sections 287, 357, 502), was not subject to execution. In a case of the same style, 152 Ga. 367, 110 S. E. 4, it was held by the Supreme Court of Georgia that funds actually paid by the government to the beneficiary of an insurance policy, and by her deposited in a bank, are not subject to garnishment. In the case of *Succession of Geier*, 155 La. 167, 99 So. 26, 32 A. L. R. 353, the Supreme Court of Louisiana held that the heirs at law, who received insurance from a deceased service man, under the provisions of the War Risk Insurance Act, received the money as beneficiaries, and not as heirs, and that the money so received was not subject to the payment of an inheritance tax under the laws of that state taxing the right to inherit.

The World War Veterans' Act of 1924 contains substantially the same exemption from seizure as is found in the War Risk Insurance Act, and the cases cited which construe the latter act are applicable here. We think the manifest purpose of the legislation making provision for World War veterans was to devote the benefactions there provided to the sole use of the beneficiaries, and that the same should not be subject to the demands of creditors, even after the money had come into their hands, or was held by another for their benefit.

The writ of garnishment was therefore properly quashed, and the judgment of the court so ordering is affirmed."

In view of the express provisions of the World War Veterans' Act, and the authorities herein cited, it is my opinion that estates that have been built up by guardians out of money received as payments under the World War Veterans' Act of 1924, are exempt from taxation under the provisions of Section 22 of said Act, (38 USCA, Section 454), as long as said funds are in their original form in the hands of the beneficiary or on deposit to the credit of his estate.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General*

3008.

MUNICIPALITY—POWER TO MAKE LOCAL BOARD OF EDUCATION  
PAY FEE AND OBTAIN PERMIT BEFORE ALTERING PLUMBING—  
EXERCISED UNDER VALID ORDINANCE.

*SYLLABUS:*

*A city which has and is enforcing an ordinance providing that no plumbing alterations shall be made until a permit is obtained from a city plumbing inspector, and a fee paid into the city treasury, may require the local board of education to obtain a permit, and pay the fee prescribed, in the event that schoolhouse plumbing is to be altered.*

COLUMBUS, OHIO, December 10, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

"Section 1261-3, General Code, reads:

"It shall be the duty of said inspector of plumbing, as often as instructed by the state board of health, to inspect any and all public or private institutions, sanitariums, hospitals, schools, prisons, factories, workshops, or places where men, women or children are or might be employed, and to condemn any and all unsanitary or defective plumbing that may be found in connection therewith, and to order such changes in the method of construction of the drainage and ventilation, as well as the arrangement of the plumbing appliances, as may be necessary to insure the safety of the public health.