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1. HOSPITAL — BOARD OF TRUSTEES OF COUNTY MEMORIAL HOSPITAL—NOT REQUIRED BY LAW TO GRANT DISCOUNTS TO SOLDIERS, SAILORS AND MARINES—MAY IN EXERCISE OF DISCRETION DO SO.
2. SOLDIERS, SAILORS AND MARINES—WORDS INCLUDE ALL FORMER MEMBERS OF ARMY AND NAVY, IRRESPECTIVE AS TO TERM OF SERVICE—SECTION 3137 G. C.
3. TERM “OF THE COUNTY” REFERS TO RESIDENTS OF COUNTY AT TIME OF ADMISSION TO HOSPITAL.

SYLLABUS:

1. The board of trustees of a county memorial hospital is not required by law to grant discounts to soldiers, sailors and marines, but may, in the exercise of its discretion, do so.

2. Soldiers, sailors and marines, as provided for in Section 3137 of the General Code, include all former members of the Army and Navy, irrespective as to their term of service.

3. The term “of the county,” as used in Section 3137 of the General Code, refers to residents of the county at the time of admission to the hospital.

Columbus, Ohio, August 17, 1949

Hon. Thomas H. Blakely, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

This is to acknowledge receipt of your letter requesting my opinion on the following questions relating to Section 3137, General Code, with reference to the fifth paragraph of said section:

“1. Do the trustees of the Lake County Memorial Hospital have authority to grant discounts to soldiers, sailors and marines of Lake County on their hospital bills or are the trustees limited to the granting of free service to the soldiers, sailors and marines of Lake County?

“2. If the board of trustees has power to grant discounts, is the board required to give a discount to soldiers, sailors and marines of the county?

"3. If the trustees have authority to grant discounts to soldiers, sailors and marines, does this authority extend to the members of other branches of the service such as Coast Guards, Waves and Wacs?"

"4. Do the words 'soldiers, sailors and marines of the county' as used in this section of the Code refer to members of the three organizations named, who participated in World War I and II, or include those who may have enlisted in the services in the period between the two wars?"

"5. Do the words 'of the county' as used in this section mean those soldiers, sailors and marines who are residents of the county at the time they were admitted to the County Hospital, or does it refer only to those whose residence was in Lake County at the time of the beginning of their service and who are residents of Lake County at the time of their admittance to the hospital?"

The board of trustees of a county hospital is a creature of statute and has only such powers as are specifically granted it by law and such as may necessarily be implied therefrom.

Section 3127, et seq., General Code, are known as the county hospital statutes, the pertinent statute to the instant questions being Section 3137, which reads in part:

"* * * Such trustees shall fix the compensation to be paid by or for all patients for all services and treatment rendered by such county hospital. They may provide for the free treatment in such hospital of soldiers, sailors and marines of the county, under such conditions and regulations as they shall prescribe."

It must be observed that the statute requires the fixing of compensation for *all* patients by the board of trustees and that under certain conditions and regulations prescribed by the board, soldiers, sailors and marines may be furnished free treatment.

Upon reviewing the history of the county hospital statutes, it is noted that the provision for "free treatment in such hospital of soldiers, sailors and marines of the county" did not make its appearance until after the close of World War I (108 O. L. 255). These statutes were later amended (112 O. L. 364; 118 O. L. 430), but such amendments in no way affected said provision, the last amendment being just prior to World War II.

The time in which this provision was enacted and the retention of same in later amendments become significant in ascertaining the intent

of the Legislature. I can reach only one conclusion, that being that the Legislature wished to provide for the treatment of those who had served their country in the armed forces and who might be in need of hospital services but are unable to pay the regular compensation prescribed.

In Crawford's Statutory Construction at page 30, under the heading "Delegation of Legislative Powers," it is said:

"The authority to make rules and regulations in order to carry out an express legislative purpose, or to effect the operation or enforcement of a law, is not a power exclusively legislative in character but is rather administrative in its nature. The rules and regulations adopted and promulgated, however, must not subvert nor be contrary to existing statutes."

The policy being established by the Legislature, the method of carrying out such policy, being a matter of local self government, may be properly left to the discretion of the board of trustees through its adoption of reasonable rules and regulations.

Section 3137 of the General Code, as it applies to the treatment of soldiers, sailors and marines, is remedial in character and thus is entitled to a liberal construction.

Since the Legislature did not define soldiers, sailors and marines, it becomes necessary to adopt the ordinary meaning of such terms. Generally speaking, a soldier is one who is a member of the Army; a sailor and a marine are members of the Navy; Wacs and Waves, as established in World War II are permanent branches of the Army and Navy, respectively, and, as such, are subject to the same degree of federal military control as were the men in the service of the United States Army or Navy; the Coast Guards have always been a part of the Navy. Since members of the Army and Navy are presumably receiving pay for such services and, under the regulations of the Federal laws relating thereto, are presumably receiving hospital treatment, I am bound to assume that the statute does not include present members of the Federal military organizations, but does include those whose services have been terminated; in other words, ex-army and navy personnel. A construction which would exclude any former member of the Army and Navy could scarcely be said to be liberal. Such a construction which would also exclude from the benefits of this section those who have served between World War I and World War II could scarcely be said to be liberal.

The construction which I have placed on the language of this section is not without judicial authority. In the case of *Anderson v. Durr*, 100

O. S. 251, the Supreme Court had before it the interpretation of Section 5325, General Code, defining the subjects of taxation. That section defined personal property as including various enumerated types of property. The specific question in the case was as to the taxability of a form of property not therein specifically described. In holding this particular form of property taxable, the Supreme Court on page 263, says:

“Section 5325, General Code, does not exclude any property or thing from the term personal property, but out of abundant caution provides that the term shall include the things named. It cannot be construed as if it read the term shall *only include*.

“As pointed out in *Ohio Electric Ry. Co. v. Village of Ottawa*, 85 Ohio St., 229, 236, the maxim *expressio unius exclusio alterius* is to be applied only as an aid to discover intention, and not to defeat clear intention.”

Now as to your last question, which refers to that part of the section which reads “of the county,” your attention is directed to *Words and Phrases*, Volume 29, at page 200, which reads:

“‘Of Brooklyn,’ as used in a certificate of the formation of a partnership declaring that the general partners interested therein were two certain persons, ‘both of Brooklyn,’ is a precise equivalent to ‘both residents of Brooklyn,’ which conveys the same idea. It is universally so understood. It is the better mode of indicating a man’s residence, and it means present residence. Where a former residence is described, the term is ‘from Brooklyn,’ or ‘late of Brooklyn,’ while ‘of Brooklyn’ has no appropriate signification but that the person resides there.”

In view of the foregoing, it is, therefore, my opinion:

1. The board of trustees of a county memorial hospital is not required by law to grant discounts to soldiers, sailors and marines, but may, in the exercise of its discretion, do so.

2. Soldiers, sailors and marines, as provided for in Section 3137 of the General Code, include all former members of the Army and Navy, irrespective as to their term of service.

3. The term “of the county,” as used in Section 3137 of the General Code, refers to residents of the county at the time of admission to the hospital.

Respectfully,

HERBERT S. DUFFY,

Attorney General.