

803

ADOPTION—CHILD OF VETERAN—LEGALLY ADOPTED BY NON-VETERAN—DOES NOT LOSE STATUS FOR PURPOSE OF ADMITTANCE TO OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME.

## SYLLABUS :

A child of a veteran does not lose his status, for the purpose of being admitted to the Ohio Soldiers' and Sailors' Orphans' Home, as a result of his legal adoption by a non-veteran.

Columbus, Ohio, August 2, 1949

Mr. Floyd R. Harpence, Superintendent  
Ohio Soldiers' and Sailors' Orphans' Home  
Xenia, Ohio

Dear Sir :

I am in receipt of your request for my opinion, which reads as follows :

“Does the child of a veteran lose its right to admission to this Home as a result of its legal adoption by a non-veteran?”

“An application has been presented for the admission of the sister of four children who have been or are now residents of the Home. At the time of their admission, no application was made for this girl but she was placed for adoption and later was legally adopted by the family with whom she was placed. The adopting mother has since died and the County Welfare Board is making the application.

“We understand that an adopted child receives all the rights of a natural parent, but we do not know whether that child loses the rights and benefits enjoyed before adoption.”

Section 1931 et seq., of the General Code of Ohio, provides for the establishment of the Ohio Soldiers' and Sailors' Orphans' Home, which shall be a place for the care and education of the children of deceased and disabled soldiers and sailors.

Section 1932 of the General Code provides in part :

“Under such rules and regulations as they adopt, the trustees shall receive into the home such children of deceased, permanently

disabled or indigent soldiers, sailors, marines and nurses who served honorably in the military or naval forces of the United States during any war, as are destitute of means of support and education. Provided, however, that no such child shall be admitted to the home, unless said child, and the parent, or the person having the legal custody and control of said child, shall have been a legal resident of the state of Ohio for at least one year immediately prior to the filing of the application for admission.  
\* \* \* ”

It will be noted from Section 1932, supra, that to entitle a child to admission to the home, he must not only be destitute of means of support and education and reside in Ohio, but must be :

a child of a deceased, permanently disabled or indigent soldier, sailor, marine or nurse who served honorably in the military or naval forces of the United States during any war.

In view of the fact that the county welfare board is making the application for the child's admission to the home, such child must be in dire need of assistance. The question, as I understand it, is: Does a child of a deceased veteran cease to be his child, for the purposes as outlined in Section 1931, et seq., upon the adoption by a non-veteran?

Section 10512-23, General Code, expressly defines the status of an adopted child as follows :

“Except as hereinafter provided in the case of adoption by a step-father or step-mother, the natural parents, if living, shall be divested of all legal rights and obligations due from them to the child or from the child to them, and the child shall be free from all legal obligations of obedience or otherwise to such parents; and the adopting parent or parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child as if said child had been born to them in lawful wedlock; and the child shall be invested with every legal right, privilege, obligation and relation in respect to education, maintenance and the rights of inheritance to real estate, or to the distribution of personal estate on the death of such adopting parent or parents as if born to them in lawful wedlock; provided, such child shall not be capable of inheriting property expressly limited to heirs of the body of the adopting parent or parents; but shall be capable of inheriting property expressly limited by will or by operation of law to the child or children, heir or heirs at law, or next of kin, of the adopting parent or parents, or to a class including any of the foregoing and provided, also, if such adopting parent or parents shall have other child or children, then the

children by birth and adoption shall, respectively, inherit from and through each other as if all had been children of the same parents born in lawful wedlock. *Nothing in this act shall be construed as debarring a legally adopted child from inheriting property of its natural parents or other kin.* Provided, however, that in case of adoptions by a step-father or step-mother the rights and obligations of the natural parent who is the spouse of the adopting step-parent shall not in any way be affected by such decree.”

(Emphasis added.)

In Vol. I, O. Jur., at page 442, it reads:

“Although it was said in an earlier case that in passing the adoption statute the legislature was dealing with personal rights and duties growing out of the relation of parent and child, by transferring them from the natural to the adopted relation, later cases hold that the phrase ‘all the rights and privileges’ as used in the statute should be given a broad construction, and should not be limited to mean only personal rights and privileges. The courts should apply the language in the broad and humane spirit in which it was written into the law and policy of the state.”

It further reads in Vol. I O. Jur., supra, at page 445:

“The adoption statute expressly declares that nothing therein shall be construed as debarring a legally adopted child from inheriting property of its natural parents or other kin. \* \* \* the provision reserving to the adopted child its right of inheritance from its natural parents apparently was designed to remove any lingering doubt (as to an earlier statute).”

(Parenthetical matter added.)

In the case of *Knese v. Hake*, 16 O. D. (N. P.) p. 466, at page 471, the court said:

“\* \* \* in our state the adopting statute does not take away from the adopted child the right to inherit from its natural father. It has only changed personal rights and duties growing out of the new relations, but has not changed the original statute of descent and distribution, based upon the rights of blood.

“As little as the adopted child becomes of the blood of its adopter, so little does the adopted child relinquish the blood of its ancestors, and the rights, based by statute upon the claim of blood, remain the same.”

There can be no question in my mind that the intent of the legislature, upon the enactment of legislation establishing the Ohio Soldiers' and

Sailors' Orphans' Home, was for the purpose of taking care of needy children of those veterans of Ohio who fought or died for their country during such an emergency as wars.

In view of the foregoing, it is therefore my opinion that a child of a veteran does not lose his status, for the purpose of being admitted to the Ohio Soldiers' and Sailors' Orphans' Home, as a result of his legal adoption by a non-veteran.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.