Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same to you herewith, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1809.

INSANE WAR VETERAN—COMMITTED TO STATE HOSPITAL—GUARDIAN'S RIGHT TO PAY SUCH VETERAN'S BILLS DISCUSSED—REFUND BY COUNTY FOR ILLEGAL PAYMENTS MADE BY SAID GUARDIAN.

SYLLABUS:

1. *By reason of the provisions of Section* 22 *of the World War Vererans' Act (Section* 454 *U. S. Code Ann.), where a guardian has been appointed for an insane ward who has been committed to a state hospital for the insane, the compensation, insurance or maintenance and support paid to the guardian of such ward may not be expended by said guardian for the purpose of paying the cost of clothing or support, furnished to said ward prior to his appointment and receipt of such compensation.*

2. *Under such circumstances, where such patient is maintained in a state hospital the guardian may properly pay such bills as he incurs for such support subsequent to his appointment and receipt of funds, subject to the approval of the court.*

3. *In the event the guardian has improperly paid the county for such support furnished prior to his receipt of said funds, the County Commissioners may properly authorize the refunding of said amounts to said guardian, under the provisions of Sections* 2460 *and* 2572 *of the General Code.*

COLUMBUS, OHIO, April 24, 1930.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion upon the following:

> "The Probate Court of Franklin County has appointed a guardian for an insane soldier, who was committed to the Columbus State Hospital. The guardian was appointed July 18, 1920, and at that time the soldier was committed to the State Hospital. During the years 1920, 1921, 1922, 1923, 1924 and 1925, the State Hospital, in accordance with the provisions of Sections 1815 and 1816, General Code, furnished such soldier with clothes and incidentals and as the same were not paid for by the guardian the amount expended by the state for clothing was certified to the Auditor of Franklin County in accordance with the provisions of Section 1816, General Code, and the county paid the same to the state. When the attention of the guardian

was called to the fact that this bill had been paid by the county and he was requested to reimburse the county, he did so. During the period when the soldier was confined to the State Hospital he was granted support allowance by the Federal Government and the amount of this allowance was placed in the hands of his guardian, and from this allowance the guardian paid to the county of Franklin the bill for clothing as above stated. The U. S. Veterans' Bureau now contends that such payment was illegal on the part of the guardian and that he should apply for a refund of the same by reason of the fact that the payment was contrary to Section 22 of the World War Veterans' Act, which provides:

'That the compensation, insurance and maintenence and support allowance payable under Title 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 Title II, III or IV; and shall be exempt from all taxation.'

Question: Should said amount of this payment be refunded to the guardian in question and is such payment contrary to Section 22 of the World War Veterans' Act as contended? "

In connection with your inquiry, the office has been favored by an exhaustive brief upon the subject by W. L. Metzger, Regional Attorney, Cincinnati office of the United States Veterans Bureau.

My predecessor in an opinion found in Opinions of the Attorney General for the year 1928, page 2822, held, as disclosed by the 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 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."

Said opinion gave consideration to the case of *Tax Commission of Ohio* vs. *Rife*, et al., 119 O. S. 83, in which it was held, as disclosed by the syllabus:

"The provisions of the World War Veterans' Act relating to the exemption from taxation of insurance payable thereunder exempt from the state inheritance tax the amount paid to the estate of a deceased soldier."

Also in my opinion to Hon. C. E. Moyer, Prosecuting Attorney, Sandusky, Ohio, under date of February 5, 1929, No. 60, it was held in substance that the rule deducible from the decisions of the courts is that the funds received and held by guardians under the provisions of the World War Veteran's Act of 1924 are exempt from taxation so long as such funds, in whatever form invested, are under the control of said guardian. In said opinion the case of In re Jeremia Hall, 98 U. S. 343, was cited on the proposition that the government of the United States may annex such conditions to the donation as it sees fit and that the acceptance of such funds by a guardian could not change the conditions attached thereto. In my opinion above referred to, the case of *Wilson* vs. *Sawyer*, reported in 6 S. W. (2nd) 825, decided by the Supreme Court of Arkansas, was cited, which held that compensation paid to disabled soldiers under the World War Veterans' Act was not garnishable.

Without further consideration, it is clear that by reason of the provisions of Section 22 of the World War Veterans' Act the compensation, insurance and maintenance payable under Titles II, III and IV, are not subject to the claims of creditors of persons to whom an award is made, and, of course, are exempt from all taxation. By reason

of the express provisions of said section, however, said sums are subject to any claims which the United States may have against the person on whose account the compensation is payable. However, the question which your communication presents is whether Section 22 of the World War Veterans' Act has reference to creditors existing at the time the compensation is received, or whether it has reference to creditors which the beneficiary may have for all time.

There seems to be no doubt but that the State of Ohio or the County of Franklin would be a creditor in view of the provisions of the statute requiring the payment of the cost of clothing from the estate of the person who is committed to an insane institution. It apparently would follow that the county, being a creditor, could not assert its claim which had arisen prior to the receipt of such compensation. There can be no doubt but that under the Ohio law, when a guardian is duly appointed and permits his ward to remain in an insane institution in the State of Ohio, said guardian by operation of law has entered into a contract with the state to pay the necessary bills for clothing and other support which the state expressly requires to be paid. If such guardian may never use the compensation paid to him by the government for the benefit of his ward, and such ward has no other funds with which to pay his necessary bills, the result would be the building up of an estate for the benefit of the ward, while he would be supported by the state as a common pauper. It is believed that no such a construction can be justified under the law. Such a conclusion would be an insult to the intelligence of all responsible for such legislation. The purpose of such compensation is to support the disabled veteran. There may be many instances in which a guardian is necessary when the ward is not committed to any institution. It certainly could not be said that the guardian being responsible for his ward could not incur an obligation to pay for the necessities of life furnished to the ward. Such a rule would prevent an arrangement in advance for the room rent or meals of the ward and probably would prevent the payment of such obligations in cash, because if in the broad sense no creditor may be paid from said fund, it follows that no contract of any character, express or implied, could be made, as the relation of debtor and creditor arises by reason of a contract of some character.

The Regional Attorney cites a case by the Supreme Court of Oneida County, New York, decided July 20, 1929, and the following is quoted from the opinion of Dowling, J.:

> "It seems unjust that the law should prevent the committee of an incompetent veteran from paying a person or agency, who or which, without the proper authorization of the committee, has furnished necessary support and maintenance to such veteran, but persons and agencies dealing with incompetent veterans are chargeable with the knowledge that the law jealously protects their allowances against their claims, and they must suffer the consequences. The State of New York is obliged to accept any deranged New York State veteran needing hospitalization, into one of its State Hospitals, and is obliged to treat and care for him, and, unless the State enters in advance into a contract with the veteran's committee or guardian, it can recover no compensation therefor out of the veteran's government allowance. In a business sense this is a harsh rule, but, in the end, a merciful one from the veteran's viewpoint. If the State maintained all disabled or deranged veterans for the balance of their days, it would still be their debtor."

The above case was reported in 134 Misc. N. Y., 683.

A careful consideration of the facts in that case will disclose that the guardian under consideration was appointed January 6, 1929, whereas the bills that were paid and which were the subject of consideration in said opinion were those for medical treatment and maintenance of a world war veteran between May 15, 1928, and Feb-

ruary 5, 1929, showing that practically all of the obligations incurred were so made prior to the appointment of the guardian. The following is quoted from the brief of the Regional Attorney submitted in connection with the question before me:

> "In instances where the guardian of a World War veteran is holding funds in trust for such veteran I can see no reason why the state law relative to furnishing clothing should be abrogated and the guardian would clearly be liable for such clothing, in so far as the provisions of Section 22 of the World War Veterans' Act are not contravened. For this purpose, in order to establish a criterion, it would seem most logical for the office of the Attorney General to hold that clothing furnished a World War veteran prior to receipt of compensation on his behalf by a guardian, is a charge against the State of Ohio; but, that clothing purchased subsequent to receipt by the guardian of such compensation benefits on behalf of the incompetent or insane World War veteran, is a charge against the estate of the veteran. To hold otherwise would either be to say that Section 22 of the World War Veterans' Act as passed by Congress has no legal effect, or, on the other hand, that insane World War veterans or their guardians are not obligated to pay for clothing purchased. Either ruling would be untenable, but after satisfying the provisions of Section 22 of the World War Veterans' Act there is no reason why the state law concerning this matter should not be fully applicable.
>
> In other words, in order to conform with the provisions of Section 22 of the World War Veterans' Act, it is respectfully submitted that the Attorney General should rule that clothing furnished a World War veteran in a state institution, prior to the receipt by his legal guardian of compensation on his behalf from the United States Veterans' Bureau, represents the claim of a creditor; but that clothing purchased subsequent to the receipt of such compensation benefits by the guardian does not represent the claim of a creditor.
>
> A slightly different criterion should apply with reference to support of veterans at state hospitals for the insane. If the veteran has been provided with support by the State of Ohio, prior to the receipt by his guardian of compensation or other benefits from the United States Veterans' Bureau, the State could not thereafter interpose a claim in the role of a creditor for such support. However, after compensation is awarded to the guardian on behalf of the insane veteran, thereby creating an estate sufficient to pay for the ward's support in a state hospital for the insane, such estate is properly chargeable with the usual expenses incident to the support furnished on and after the date the guardian enters into a contract with the state for that purpose.
>
> The United States Veterans' Bureau has always held that in so far as Section 22 is concerned, the provision of law insures that payments of benefits made under the World War Veterans' Act or War Risk Insurance Act will reach the hands of the beneficiary unimpaired, but that after they reach the hands of the beneficiary or are expended for his benefit, the Government has no further interest in invoking the provisions of Section 22. It also holds that while such funds are in the hands of a guardian or other fiduciary they have not actually reached the beneficiary, nor have they been expended for his benefit and, therefore, such funds are subject to the provisions of said section and the Government is obliged to see that they are properly conserved and used for the benefit of the ward."

Analyzing the authorities hereinbefore mentioned, it would seem that after the money has been received by the guardian and the guardian properly incurs expense in connection with the support of his ward, which expense is properly allowed by the

probate court having jurisdiction of said guardian, the same may be paid. As hereinbefore indicated, there is a contract existing by operation of law to the effect that the guardian will pay for such support from the estate of his ward. By reason of the provisions of the statutes of Ohio, all expenditures by a guardian on behalf of his ward must be approved by the court.

In the case under consideration, it appears that the guardian was appointed on July 18, 1920, at the time the veteran was committed to the state hospital. Said veteran subsequent to the appointment of said guardian was furnished clothes and incidentals in accordance with the provisions of the General Code of Ohio. Therefore, as a proposition of law, it must be said that the guardian incurred the expenses under consideration, although it does not appear whether all of the expenses were incurred after the receipt of the funds by the guardian.

In reaching this conclusion, I am not unmindful of the protection the federal government has undertaken to place around the World War veterans in an attempt to reward them for what they have suffered on behalf of their country, and, as hereinbefore indicated, it is clear that under the provisions of Section 22 of the World War Veterans' Act such funds may not be subject, in the hands of a guardian, to the payment of creditors existing prior to the time the award was made and received by the guardian. However, the very purpose of such compensation is for the benefit of the ward, and to enable the guardian to expend it for his benefit under the circumstances being considered is in furtherance of the interest of the ward himself.

It is my understanding that the conclusion I have reached herein is in accord with the conclusions of the Regional Attorney, at least in so far as the main points are concerned.

From the foregoing it will be observed that any sums that were expended by the guardian after the receipt of the funds for the support and maintenance of the ward are properly payable from said funds. It further follows that any sums expended for such purpose to cover claims arising prior to the receipt of said funds by the guardian would be illegally paid.

The conclusions hereinbefore reached bring us now to a consideration of the question as to whether any such sums which were illegally paid should be refunded to the guardian. In the event the county has collected a sum for such purpose which the guardian, as a matter of law, was not authorized to pay, the county treasury, of course, has been improperly enhanced to the extent of such payment. Probably such funds are impressed with a trust and, as a matter of equity, the same could be followed by the trustee in the hands of the county treasury.

Section 2460 of the General Code, which relates to the power of county commissioners to allow claims, provides:

> "No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance if not fixed by law."

Section 2572 of the General Code provides:

> "A bill or voucher for payment of money from any fund controlled by the commissioners must be filed with the county auditor and entered in a book for

that purpose at least five days before its approval for payment by the commissioners. When approved, the date thereof shall be entered on such book opposite the claim, and payment thereof shall not be made until after the expiration of five days after the approval has been so entered."

In an opinion of the Attorney General, found in Opinions of the Attorney General for 1920, p. 428, it was held in substance that where assessments had been collected for the payment of bond issues and the improvement was not undertaken, under such circumstances the county commissioners could properly allow to the persons who had paid such assessments their claims and refund the same. It would appear that Sections 2460 and 2572 would have application under such circumstances as are under consideration herein.

Based upon the foregoing, it is my opinion:

1. By reason of the provisions of Section 22 of the World War Veterans' Act (Section 454 U. S. Code Ann.), where a guardian has been appointed for an insane ward who has been committed to a state hospital for the insane, the compensation, insurance or maintenance and support paid to the guardian of such ward may not be expended by said guardian for the purpose of paying the cost of clothing or support, furnished to said ward prior to his appointment and receipt of such compensation.

2. Under such circumstances, where such patient is maintained in a state hospital, the guardian may properly pay such bills as he incurs for such support subsequent to his appointment and receipt of funds, subject to the approval of the court.

3. In the event the guardian has improperly paid the county for such support furnished prior to his receipt of said funds the county commissioners may properly authorize the refunding of said amounts to said guardian, under the provisions of Sections 2460 and 2572 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1810.

CONSOLIDATION—TWO NATIONAL BANKING ASSOCIATIONS, STATE BANK WITH NATIONAL BANKING ASSOCIATIONS OR TWO STATE BANKS HAVING TRUST POWERS—WHEN SUPERINTENDENT OF BANKS MAY AUTHORIZE WITHDRAWAL OF FUNDS FROM STATE TREASURER—RIGHT OF CONSOLIDATED BANK TO EXECUTE TRUSTS OF CONSTITUENT TRUST COMPANIES DISCUSSED.

SYLLABUS:

1. *In instances of consolidation of two national banking associations, a state bank with a national banking association or two state banks, which possessed trust powers, before the Superintendent of Banks may authorize the withdrawal of funds deposited with the Treasurer of State under Section 710-150 of the General Code, he must be satisfied that in cases in which said banks have been acting in a fiduciary capacity, such as trustee, executor, administrator, guardian, receiver, etc., their duties as such have been properly terminated.*

2. *Upon consolidation, a consolidated bank is possessed of the rights, privileges, powers and franchises of the several companies and may act as trustee of the trusts held by the constituent companies, except in those cases where authority to act in a fiduciary capacity must be granted by a court, and before any of the trusts may be transferred to the*