

2075

WAR—STATE OF WAR EXISTS IN REFERENCE TO PROVISIONS OF SECTION 1932 G. C.—ADMISSION OF CHILDREN TO OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME.

SYLLABUS:

A state of war still exists in reference to the conditions set out in Section 1932 of the General Code governing the admission of children to the Ohio Soldiers' and Sailors' Orphans' Home.

Columbus, Ohio, July 26, 1950

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

Dear Sir:

Your request for my opinion reads as follows:

"The Board of Trustees of this Home has directed me to request an opinion on the following question:

"For purposes of admission of children of veterans to this Home, what date should be considered as ending service of the veteran in World War II?

"The question is raised because Section 1932 of the General Code uses the phrase, 'who served honorably in the military or naval forces of the United States during any war.' The Board is fully aware that peacetime service does not constitute eligibility and has been using the date of August 14, 1945, the period when hostilities ceased, as the determining date for admission. This policy has now been challenged and the Board is anxious to have an official ruling on the matter."

The statutory provisions governing admission of children to the Ohio Soldiers' and Sailors' Orphans' Home are stated in Section 1932 of the General Code of Ohio. This section reads as follows:

"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. Admission of an ex-soldier to the United States National Military Home, from another state shall not constitute the child of such soldier eligible for admission into the Ohio Soldiers' and Sailors' Orphans' Home."

Your inquiry regards interpretation of the above mentioned code section as to the termination date of World War II. As seen above, the code phrase in question is "who served honorably in the military or naval forces of the United States during any war."

The words "during any war" clearly mean during the existence of any war. In Opinions of the Attorney General, 1948, p. 492, opinion No. 3869, the then Attorney General of Ohio set out in a detailed opinion the cases bearing on the official end of the war. This opinion quotes many opinions and court decisions relative to the cessation of hostilities and end of the war. The conclusion reached, although in that case it regarded civil service wartime rights, was that war once started could not be officially terminated except by Presidential Proclamation or a Joint Resolution of Congress. Since these two eventualities have never occurred since the declaration of war, the war is, for official purposes, still unended.

The fact that the war is not yet officially over has no bearing on the actions of Congress in changing wartime rights and privileges. Pensions and bonuses have been issued using specific dates upon which payment is based, but these do not presume the official end of the war. As shown in the citations quoted in the Opinions of the Attorney General cited in this opinion, war does not always consist of active hostilities and combat, and frequently, as now, is a state of relationship between nations to see that active hostilities do not break out anew. Hence the occupation of Germany, Japan and parts of Korea.

Since Section 1932 provides for admission of children of those "who served honorably in the military or naval forces of the United States during any war," it would appear that the legislature meant during the time of the existence of a state of war. Since there has been no Presidential Proclamation or Resolution of Congress stating that there is an end to the declared war, the government is still, technically at least, at war, and a person in the armed services during this period is in the service "during the war."

It is therefore my opinion that a state of war still exists in reference to the conditions set out in Section 1932 of the General Code governing admission of children to the Ohio Soldiers' and Sailors' Orphans' Home.

Respectfully,

HERBERT S. DUFFY,
Attorney General.