

OPINION NO. 92-014**Syllabus:**

1. When there has been no adoption or declaration of guardianship, the stepchild of a veteran is not eligible to apply for financial assistance from the veterans service commission pursuant to R.C. 5901.08.
2. When the veterans service commission awards an allowance to a needy person who is eligible for financial assistance pursuant to R.C. 5901.08, the commission may, in its discretion, include amounts to relieve the financial obligations of caring for the stepchildren of a veteran.

**To: David E. Aldstadt, Director, Governor's Office of Veterans' Affairs,
Columbus, Ohio**

By: Lee Fisher, Attorney General, May 12, 1992

You have requested an opinion on the question whether stepchildren of a veteran are eligible to receive financial assistance under R.C. Chapter 5901. You are concerned, in particular, with situations in which there are no adoption or custody papers requiring the veteran to provide support to the stepchildren. For purposes of this opinion, "stepchild" is given its common meaning - *i.e.*, "a child of one's husband or wife by a former marriage." *Webster's New World Dictionary* 1396 (2d college ed. 1978).

Veterans Service Commissions

R.C. Chapter 5901 provides for a veterans service commission in each county and authorizes the veterans service commission to provide direct financial assistance to certain specified needy persons. *See* R.C. 5901.02; R.C. 5901.08-.15. To be considered for financial assistance under R.C. Chapter 5901, an individual must provide the veterans service commission with a statement of income and assets. R.C. 5901.09. The veterans service commission annually determines the probable amount necessary for financial assistance and for its own operation and submits a budget to the board of county commissioners. The board may review and revise the budget requests and must levy a tax to raise the amount that it approves. R.C. 5901.11. *See generally* 1991 Op. Att'y Gen. No. 91-008. The veterans service commission certifies to the county auditor persons who are to receive financial assistance, and the auditor issues warrants for the allowances awarded by the commission. R.C. 5901.14. The commission may increase, decrease, or discontinue allowances as it sees fit. R.C. 5901.14. The commission is also authorized to provide immediate financial assistance in emergency situations. R.C. 5901.15. Your question concerns the eligibility of stepchildren to receive financial assistance pursuant to R.C. 5901.08.¹

¹ R.C. 5901.07 requires a veterans service commission to employ county veterans service officers to advise and assist "persons in the armed forces of the United States, veterans, and the spouses, surviving spouses, children, parents, and dependents of veterans in presenting claims or obtaining rights or benefits under any law of the United States or of this state." R.C. 5901.07 thus includes "dependents of veterans" among those who may be assisted by county veterans service officers. Your question relates to the granting of financial assistance under R.C. 5901.08; that provision is clearly restricted to the persons listed therein, and does not contain the word "dependents." This opinion considers whether a stepchild may be an applicant for financial assistance under R.C. 5901.08, but does not consider whether a stepchild may be considered a dependent of a veteran for any other purpose covered by R.C. 5901.07.

Stepchildren Are Not Eligible for Direct Financial Assistance Under R.C. Chapter 5901

R.C. 5901.08 states:

Each applicant for financial assistance under sections 5901.02 to 5901.15 of the Revised Code shall be either of the following:

(A) *A needy veteran or the needy spouse, surviving spouse, parent, minor child, or ward of a veteran, who has been a bona fide resident of the state for at least one year and of the county for at least six months;*

(B) *The needy surviving spouse, surviving minor child, or surviving ward of a member of the armed forces of the United States who was killed while on active duty or who has been declared to be a prisoner of war or missing in action by the United States department of defense and who had been a bona fide resident of the state for at least one year and of the county for at least six months. (Emphasis added.)*

R.C. 5901.08 thus lists the persons who are eligible to apply for financial assistance under R.C. Chapter 5901. The list includes a veteran; the spouse, parent, minor child, or ward of a veteran; and the spouse, minor child, or ward of a member of the armed forces of the United States who was killed while on active duty or who has been declared to be a prisoner of war or missing in action.² In each case, the applicant must be needy and other applicable requirements must be satisfied. The list of eligible persons does not mention a stepchild.

When several classes of person are expressly listed as included within a particular statute, it is implied that those not listed are excluded. *See, e.g., Fort Hamilton-Hughes Memorial Hospital Center v. Southard*, 12 Ohio St. 3d 263, 265, 466 N.E.2d 903, 905 (1984) ("[i]t is a basic doctrine of construction that the express enumeration of specific classes of persons in a statute implies that the legislature intended to exclude all others" (citation omitted)). Since stepchildren are not among the classes enumerated in R.C. 5901.08, stepchildren must, accordingly, be excluded from the coverage of the statute, unless they are included within one of the listed classes. The only classes that might possibly include a stepchild are "minor child" and "ward."

The word "child" is not defined in R.C. Chapter 5901. R.C. 1.59(A) contains a general definition that applies throughout the Revised Code, except where another definition is provided, as follows: "'Child' includes child by adoption." *Accord* R.C. 5910.01(A) (adopting, for purposes of awarding war orphans scholarships, a definition of "child" that includes both natural and adopted children). This definition is clearly not complete in itself, but is based upon the common meaning of "child." In ordinary usage, "child" means a son or daughter. *See, e.g., Webster's New World Dictionary* 247 (2d college ed. 1978); *see also Black's Law Dictionary* 239 (6th ed. 1990) (defining "child" as "[p]rogeny; offspring of parentage"). Since adopted children are expressly included in R.C. 1.59(A) and stepchildren are not, the implication is that stepchildren are not included as "children" for purposes of the Revised Code unless a particular statute indicates that such inclusion is intended. *See, e.g., State v. Bristow*, No. 42576 (Ct. App. Cuyahoga County Aug. 6, 1981) (unreported) and *State v. White*, 116 Ohio App. 522, 189 N.E.2d 160 (Montgomery County 1962) (statute permitting one spouse to testify against the other in proceedings relating to cruelty to "their children" encompasses stepchildren; the statute may be read as "his or her child or children," and the intent is to protect offspring of either spouse).

² This opinion discusses the eligibility of a stepchild of a veteran to receive financial assistance under R.C. Chapter 5901. The analysis contained in this opinion is applicable also to the stepchild of a member of the armed forces of the United States who was killed while on active duty or who has been declared to be a prisoner of war or missing in action by the United States Department of Defense. *See generally* 1946 Op. Att'y Gen. No. 1089, p. 502.

There is no indication in R.C. 5901.08 that the word "child" includes a stepchild. Rather, the statutory scheme for providing benefits to veterans and members of their families has been construed as being strictly limited to persons who hold the legal relationships expressly named in the statute. In 1933 Op. Att'y Gen. No. 590, vol. I, p. 523, a prior Attorney General concluded that the *stepmother* of a veteran was not eligible for relief under provisions then in effect, which included "parents" as potential beneficiaries, because she was not a member of any of the classes of beneficiaries listed in the statute. *See, e.g., State v. Barger*, 14 Ohio App. 127, 129 (Muskingum County 1920) ("in the legal or ordinary acceptance of the term 'parent,' it does not include a step-father or a step-mother"). An analogous literal reading of the statute also excludes a stepchild from the coverage of R.C. 5901.08.

The exclusion of stepchildren from the class of "children" in R.C. 5901.08 is appropriate in light of the fact that, when the General Assembly has intended to grant benefits to stepchildren, as well as to natural or adopted children, it has expressly included mention of stepchildren. *See, e.g., R.C. 2105.06* (the statute of descent and distribution, providing for the disposition of the property of a person who dies intestate, permits "stepchildren" to take property under certain circumstances, as a class distinct from "children"); R.C. 4141.30(E)(1) (for purposes of unemployment compensation benefits, "dependent" includes "[a]ny natural child, stepchild, or adopted child"). The use of "stepchild" as a statutory term distinct from "child" suggests that stepchildren are not intended to be included when a statute provides financial benefits for "children." *See, e.g., 1988 Op. Att'y Gen. No. 88-090* (for purposes of survivor benefits under the Public Employees Retirement System or the State Teachers Retirement System, the term "child" does not include a stepchild); *see also Blair v. Keller*, 16 Ohio Misc. 157, 241 N.E.2d 767 (C.P. Wood County 1968) (finding that stepchildren qualified for workers' compensation death benefits under R.C. 4123.59 as "members of the family," and not as "children"). Thus, when a stepchild has not been adopted, the stepchild does not come within the meaning of the word "child," as that word is used in R.C. 5901.08.

The word "ward" is, similarly, without definition in R.C. Chapter 5901. That word is, however, commonly used to indicate that a court has appointed a guardian to take certain responsibility for an incompetent person. *See, e.g., Black's Law Dictionary* 1583 (6th ed. 1990) (defining "ward" as "[a] person, especially a child or incompetent, placed by the court under the care and supervision of a guardian or conservator"); R.C. 2111.01(B) (defining "ward," for purposes of R.C. Chapters 2101-2131, as "any person for whom a guardian is acting or for whom the probate court is acting pursuant to [R.C. 2111.50]"); R.C. Chapter 5905; *Webster's New World Dictionary* 1601 (2d college ed. 1978). When there is no court order establishing the responsibility of a veteran for a stepchild, the relationship of guardian and ward has not been created, and the stepchild is not a ward for purposes of R.C. 5901.08. Therefore, if there has been no adoption or declaration of guardianship, a stepchild is neither a child nor a ward for purposes of R.C. 5901.08, and accordingly is not eligible to apply for financial assistance pursuant to R.C. 5901.08.

An Award of Financial Assistance Under R.C. Chapter 5901 May Include Provision for the Care of the Stepchildren of a Veteran

The conclusion that stepchildren are not eligible to apply for financial assistance under R.C. 5901.08 does not, however, mean that there is no instance in which they may benefit from financial assistance granted pursuant to R.C. 5901.08-15. R.C. Chapter 5901 does not specify the amounts that are to be granted to particular persons or in particular situations. Those amounts are within the discretion of the veterans service commission, given its budget limitations. *See, e.g., State ex rel. Lentz v. DePue*, 71 Ohio App. 83, 47 N.E.2d 796 (Ottawa County 1941) (the granting of relief is within the discretion and control of the commission). Since the intent of the scheme is to assist the needy, it is appropriate for the commission to consider the financial obligations of a person who applies for assistance under R.C. 5901.08. If, for example, the surviving spouse of a veteran has financial responsibility for raising the veteran's stepchildren, and that financial burden is contributing to the financial need of the surviving spouse, the commission may consider that responsibility in awarding an allowance to the surviving spouse.

notwithstanding the fact that the stepchildren would not themselves be eligible to apply directly for financial assistance pursuant to R.C. 5901.08. In this sense, tax dollars derived under R.C. Chapter 5901 may be used to support the stepchildren of veterans. *See generally, e.g.*, 1965 Op. Att'y Gen. No. 65-71 (moneys under R.C. Chapter 5901 may be expended to pay land contract or mortgage obligations for the benefit of an eligible person or family if making such payments is consistent with the actual housing need); 1939 Op. Att'y Gen. No. 1089, vol. II, p. 1577 at 1578 (a veteran who receives a federal pension may also receive local benefits if a review of "the health condition of the veteran and his dependents and likewise his financial condition and all his sources of income" shows him to be in need of additional money).

R.C. 5901.14 permits an allowance made by the veterans service commission to be endorsed by the person for whom the allowance is intended to a suitable person who is to expend it "for the benefit of the person and the indigent members of his family." The term "family" is broad and may include persons who are not themselves eligible to apply for financial assistance pursuant to R.C. 5901.08. *See generally* Op. No. 65-71. R.C. 5901.14 thus lends support to the conclusion that, although stepchildren are not eligible to apply for financial benefits pursuant to R.C. 5901.08, moneys awarded under R.C. Chapter 5901 may be used for the benefit of the stepchildren of a veteran.

Conclusion

It is, therefore, my opinion, and you are hereby advised, as follows:

1. When there has been no adoption or declaration of guardianship, the stepchild of a veteran is not eligible to apply for financial assistance from the veterans service commission pursuant to R.C. 5901.08.
2. When the veterans service commission awards an allowance to a needy person who is eligible for financial assistance pursuant to R.C. 5901.08, the commission may, in its discretion, include amounts to relieve the financial obligations of caring for the stepchildren of a veteran.