

2976.

SOLDIERS RELIEF—EXTENDED TO INDIGENT PARENTS, WIVES, WIDOWS AND MINOR CHILDREN—WAR SERVICE OF SOLDIERS, SAILORS OR MARINES NOT A NECESSARY REQUISITE.

SYLLABUS:

The provisions of section 2930, et seq. of the General Code, extend the relief therein provided to all indigent soldiers, sailors and marines and their indigent parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried but again have become indigent widows, irrespective of the fact that such soldiers, sailors and marines may not have had any war service.

COLUMBUS, OHIO, February 24, 1931.

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

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“At the request of the Grand Army of the Republic of Ohio, we are submitting the following question to you for your opinion:

Under the provisions of sections 2930 to 2942 of the General Code, relating to the relief of indigent soldiers, sailors and marines, are the indigent parents, wives and minor children of soldiers, sailors and marines other than those of soldiers, sailors and marines who served in the Civil War, the Spanish American War, Indian Wars, and World War entitled to the benefits of the soldiers' relief act? In other words, and for example, is an indigent child or an indigent widow of a soldier who has no war service entitled to the benefits of this act?”

Section 2934 of the General Code, as amended by the 88th General Assembly, reads as follows:

“Each township and ward soldiers' relief committee, shall receive all applications for relief under these provisions, from applicants residing in such township or ward, examine carefully into the case of each applicant and on the first Monday in May in each year make a list of all indigent soldiers, sailors and marines, and of their indigent parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried, but again have become indigent widows, who reside in such township or ward, and including the soldiers, sailors and marines of the Spanish-American war, or of the World War and their wives, widows, indigent parents, minor children and wards, who have been bona fide residents of the state one year and of the county six months, next prior to such first Monday in May, and who, in the opinion of such relief committee, requires aid, and are entitled to relief under these provisions.”

You will observe that the explanatory phrases referring to the soldiers, sailors and marines of the Spanish-American War and the World War follow what are apparently more inclusive terms, namely, “all indigent soldiers, sailors and marines.” An examination of the history of this section and other legislation

providing for the relief of soldiers, sailors and marines fails to throw any light upon the problem.

The first legislation of this character was enacted in May, 1886 (83 O. L. 232), and provision was then made with respect to Union soldiers, etc. only. While various amendments occurred thereafter, the act continued to apply only to Union soldiers until April 14, 1900, when the word "Union" was omitted, and the section then referred to all indigent soldiers, sailors and marines. The purpose of this amendment, following closely after the Spanish-American War, was quite evidently to include the soldiers of that war within the meaning of the section. Again, on May 6, 1917, there was an amendment which contained an express provision to include the indigent soldiers, sailors and marines of the Spanish-American War. The significance of this change is not apparent, since these veterans were already included in the general language of the section as amended in 1900. On May 10, 1919, the legislature again amended this section so as to include indigent soldiers, etc. who served in the war against Germany, and the 88th General Assembly made the final change in the statute to its present form.

From this history, I am unable to ascribe to the terminology used any different meaning than that which is apparent upon its face. If the words "all indigent soldiers, sailors and marines" are of no significance and one must look to the explanatory phrases thereafter for the authority to extend benefits, then quite obviously a very substantial number of persons who have always been entitled to relief would be omitted. I have reference to Civil War Veterans, and those of our military, naval and marine forces who have served in lesser conflicts such as Indian Wars, the Boxer Rebellion, Mexican Expedition and other like occasions. Manifestly, no such restricted meaning may be applied, for surely it was not the intention of the legislature to confine the beneficiaries of relief to soldiers, sailors and marines of the Spanish-American War and the World War only.

It accordingly seems to be necessary to import some substantial meaning to the phrase "all indigent soldiers, sailors and marines." Your specific question is, however, whether a soldier of the regular army who has had no war service is entitled to relief. The language of the statute itself makes no such requirement, and there is no rule of statutory construction with which I am familiar permitting a restriction upon the otherwise broad terms employed.

The maintenance of a standing army, navy and marine corps is not a new matter and the legislature, at the time of the enactment of the varying forms of relief sections, must have been aware of the fact that soldiers, sailors and marines exist as such outside of war time. It would be doing violence to the definition of the term "soldier" to say that a person in the regular army is not a soldier simply because the country is not in a legal state of war.

It must be further borne in mind that the provisions for the extension of what amounts practically to poor relief are remedial in character and are entitled to a liberal construction. The construction which would exclude a member of the armed forces of the United States from participating in this relief simply because the country has never during his term of employment been technically in a state of war, could scarcely be said to be liberal. Such a construction would also exclude from the benefits of the section those who might have engaged in actual fighting, although the government was not then technically at war. An instance of this would be the present employment of marines in Nicaragua.

The construction which I have placed upon 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 of the 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."

The view which I here express is also in accord with my Opinion No. 600, found in Opinions of the Attorney General for 1929, page 925, wherein, in construing a somewhat similar statute, I reached the conclusion that a soldier in the regular army of the United States, who had not served at any time when there was a state of war, was entitled to admission to the Ohio Soldiers' and Sailors' Home.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that the provisions of section 2930 et seq. of the General Code, extend the relief therein provided to all indigent soldiers, sailors and marines and their indigent parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried but again have become indigent widows, irrespective of the fact that such soldiers, sailors and marines may not have any war service.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2977.

DEPENDENT CHILDREN—CARED FOR BY FRIENDS WHEN PARENTS
INDIGENT—NO PROCEEDINGS TAKEN UNDER POOR LAWS—
COUNTY COMMISSIONERS MAY NOT MAKE ALLOWANCE FOR
SUCH SUPPORT AFTER SERVICE RENDERED.

SYLLABUS:

Where children have a legal settlement in a township and are taken and cared for by friends, without any proceedings taken under the poor laws, the county commissioners may not properly, after the service has been rendered, make an allowance for such support.

COLUMBUS, OHIO, February 24, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Your recent communication reads:

"I have a rather small matter, but one that is rather other than ordinary, on which I desire your opinion.

Some three months ago the Juvenile Court sentenced a man to the