

of facts relating to persons who receive or apply for relief, the infirm superintendents, township trustees or officers of a city shall accept such investigation and information and may grant relief upon the approval and recommendation of such organization. Every reasonable effort shall be made by the township trustees and municipal officers to secure aid from relatives and interested organizations before granting relief from public funds."

This latter section authorizes the trustees to accept investigation and information from benevolent associations, but makes no provision for paying therefor. I am unable to find any statutory provision authorizing township trustees to appoint an investigator in connection with poor relief and to pay him compensation therefor. In the opinion referred to by you, I held that such an office may be established by the council of a municipality because section 4214, General Code, expressly authorizes council to determine the number and to fix the compensation of officers, clerks and employes.

I am therefore of the opinion that the township trustees have no authority to appoint a person to make investigations of the poor and to pay him compensation therefor from the public funds.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

4643.

SOLDIERS' RELIEF—APPLICANT FAILING TO LIST CERTAIN ASSETS  
—PENALTY UNDER SECTION 2938, G. C., EXCLUSIVE.

SYLLABUS:

*Where an applicant for relief from the county by reason of the soldiers' relief act, makes an application, and therein neglects to list certain bonds which the applicant owned, and which were required by such act to be listed, and after investigation by the township and ward relief committee and the soldiers' relief commission they find such applicant to be entitled to relief and payments have been made to such ward, the penalty for such false statement contained in Section 2935, General Code, is exclusive, and neither the county soldiers' relief commission, the county commissioners, nor other parties can recover the amount so paid to such applicant as relief under such act from the administrator of the recipient of such relief after her demise.*

COLUMBUS, OHIO, September 22, 1932.

HON. WM. M. VANCE, *Prosecuting Attorney, Urbana, Ohio.*

DEAR SIR:—YOUR request for opinion reads as follows:

"STATEMENT OF FACTS .

On October 12, 1932, one H. F. applied for relief under the provisions of Section 2935 et seq., General Code, as the widow of a veteran of the 5th Ohio Cavalry. In her written application and statement, she averred that she owned no taxable personal property. Under strict construction

this was true. The Soldiers' Relief Commission of this county allowed her \$10.00 per month, which was later increased to \$15.00. A total of \$1,075.00 was paid her up until the time of her death in May, 1929.

At the time of her death, an administrator was appointed and his inventory revealed two Liberty Bonds, valued at \$1,100.00 besides certain household furniture and other personal property of slight value. On December 10, 1929, the Administrator filed his final account showing \$1,075.00 available for distribution. A claim was made by the Auditor of this county against him for the money paid out for soldiers' relief, on the ground that the applicant had misrepresented her worth, and was not in fact entitled to the relief given.

A claim was filed with the Administrator de bonis non by the Auditor on Nov. 13, 1931, and rejected January 22, 1932.

#### QUERY

(1) Under the facts, is there a cause of action against the estate of H. F. for \$1,075.00 paid the decedent by the Soldiers' Relief Commission?

(2) If so, who is the proper party plaintiff? The Soldiers' Relief Commission? The individual members of the Commission, as it existed at the time of the award? The individual members of such commission as now constituted? The County Commissioners? The County Auditor, or who?"

From your request for opinion I assume that the applicant prepared an affidavit or statement such as that described in Section 2935, General Code, which section reads as follows:

"On or before the last Monday in such month of May, the chairman of each township or ward soldiers' relief committee, or other member thereof authorized by such committee, shall deliver such list to the soldiers' relief commission, or its secretary, with a statement of each applicant for relief, of the income, if any, of the applicant, the amount of *taxable property, real and personal*, stocks, *bonds*, moneys on hand, loaned or deposited in any bank or elsewhere, shares in building associations, mortgages, notes or other articles of value from which an income or revenue is derived by such applicant. Such statement shall be made upon blanks which shall be furnished by the soldiers' relief commission, and shall be subscribed by the applicant. In case any false statement is made therein by an applicant for relief, or guardian for such applicant, such applicant or guardian shall be fined not less than twenty dollars, nor more than fifty dollars, and be imprisoned in the county jail not less than thirty days, nor more than sixty days." (Italics the writer's.)

You will observe that the language of this section requires the applicant to make a statement of not only what taxable property she owns, but also what bonds, and her income, if any.

There is an ambiguity in the section, such as you suggest, that is, whether the language "taxable property" followed by the words "real and personal, stocks, bonds, moneys on hand, loaned or deposited in any bank or elsewhere, shares in building associations, mortgages, notes or other articles of value from which

an income or revenue is derived by such applicant' are intended as general words, followed by an enumeration of types, or whether such enumeration was intended by the legislature as an itemization of the different types of property which the applicant should itemize. If the latter, there is clearly an ambiguity in that the term "taxable property" would include all of the subsequent enumerated items each being a form of taxable property under the tax laws of Ohio. However, in answering your inquiry, I do not believe it is necessary to specifically interpret this language.

It is a general rule applied by the courts, that when a judgment or order is made by the court which has jurisdiction over the subject matter, such judgment or order is valid until reversed however erroneous such judgment or order may be. There is an apparent exception to this rule, that is, where the jurisdiction of the court was invoked by means of fraud, the entire proceedings are void. This exception is based upon the reasoning that owing to the fraud, the court never obtained jurisdiction.

From the facts as stated in your inquiry, I am unable to determine whether the two Liberty bonds now having a value of \$1,100.00 were acquired prior to the date of the application or not. If these bonds were acquired by gift or otherwise, subsequent to the date of the application, there would clearly be no fraud, and neither the soldiers' relief commission nor the county auditor would have cause to complain since Sections 2939 and 2940, General Code, place it within the power of the soldiers' relief commission to alter the allowance at any time. I, therefore, assume that these bonds were owned by the applicant on the date of the application.

It is apparent, from the language of Section 2935, supra, that if these bonds were owned at the date of the application, the failure to so list them would render the applicant liable to the imposition of the penalty prescribed in such section. Your inquiry, however, is whether such false statement, so contained, would vitiate the entire award and authorize the recovery of the sums paid.

In the first paragraph of the syllabus of the case of *Warren People's Market Company vs. Corbett & Sons*, 114 O. S., 126, the court held:

"1. In construing a statute which imposes specific penalties for its violation, the court must examine the entire act to determine whether or not it was the purpose of the Legislature, in addition to imposing express penalties for the violation of the law, to render void any contract based on the prohibited act."

On page 132 of the opinion the court said:

"\* \* \* as a general proposition a penalty does imply a prohibition. However, this rule has been somewhat modified in the state of Ohio, where it has been held that to determine whether a contract made contrary to a penal statute is illegal and void the statute must be considered as a whole to ascertain whether or not it was the intention of the Legislature that the statute should have such effect. *Vining vs. Bricker*, 14 Ohio St. 331; *Tod vs. Wick Brothers & Co.*, 36 Ohio St., 370."

In examining the act, of which Section 2935, General Code, is a part, it appears that the legislature has placed a duty upon each of the township and ward soldiers' relief committees to *carefully examine* into the case of each applicant before delivering the list of "indigent", or as it is now called, "needy" soldiers, etc., to the soldiers' relief commission. Such section of the statutes was amended by the 89th

General Assembly by the deletion of the word "indigent" and the substitution of the word "needy", and now 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 needy soldiers, sailors and marines, and of their needy parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried, but again have become needy 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, needy 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, require aid, and are entitled to relief under these provisions."

A careful examination of Section 2935, General Code, reveals that the statement described in such section would show clearly the condition of the applicant or ward as to whether or not he or she would be in need of the relief authorized by such section. If such statement were to be received without investigation by the township and ward soldiers' relief committee, the soldiers' relief commission and the county commissioners the statements therein contained might be construed as warranties. Such reliance was not intended by the legislature, for as stated above, Section 2934, General Code, requires a careful examination into each case by the township or ward soldiers' relief committee.

Section 2937, General Code, specifically authorizes the soldiers' relief commission to inquire into and allow relief to persons who have not filed the statement described in Section 2935, *supra*. Such section reads as follows:

"On the fourth Monday of November of each year and at such other times as may be necessary the soldiers' relief commission shall meet at the office of the county commissioners, or in a suitable room furnished by the county for that purpose, and examine carefully, the lists and statements of those reported by the township and ward soldiers' relief committees, and also all cases not included in such lists, who, before and during their session, have been recommended to the commission for aid under these provisions. If satisfied that those so recommended, or any of them are in need of assistance and are entitled thereto under these provisions, the commission shall fix the amount to be paid each month in each case to such person or family."

The legislature further has given to the Commission the authority to increase, decrease, or entirely eliminate the payment of the award when its investigation shows a condition warranting such action. See Sections 2939 and 2940, General Code.

It is evident that the legislature intended to punish a false statement in such application. It is to be noted that this application is to be subscribed by the applicant or the guardian for the applicant, and I do not believe the court would presume that it was the purpose of the legislature to deprive a needy or indigent soldier, sailor, marine, or other dependent of such of the relief provided in such

section when the township or ward soldiers' relief commission has carefully examined into the case and found it to require aid and where relief is otherwise authorized by the act merely because the guardian made a false statement in the application, nor do I believe that the court, taking into consideration the physical and mental condition of the indigent and needy soldier, etc., could arrive at the conclusion that any such purpose existed in the mind of the legislature at the time of the enactment of the section above referred to even though the application was signed by the recipient.

I do not find any provision in the statute which would prohibit the soldiers' relief commission from awarding relief to the applicant even though such application did show that the applicant was the owner of some property, if upon careful examination such commission became of the opinion that the circumstances of the applicant entitled her or him to the relief. It might well be that the applicant was the owner of a small parcel of real estate in which she made her home, and still was in need of funds to provide the other necessities of life. Such fact should undoubtedly be taken into consideration by the commission in determining the amount of relief to which the applicant was entitled. I do not believe it would necessarily determine whether she or he was entitled to *any* relief. It might well be that the then relief commission considered the fact that the applicant in question was the owner of some property, and for that reason awarded her only ten dollars per month. It is not to be presumed that the soldiers' relief commission considered this sum adequate for the support and maintenance of the applicant.

I am therefore of the opinion that where an applicant for relief from the county by reason of the soldiers' relief act, makes an application, and therein neglects to list certain bonds which the applicant owned, and which were required by such act to be listed, and after investigation by the township and ward relief committee and the soldiers' relief commission they find such applicant to be entitled to relief and payments have been made to such ward, the penalty for such false statement contained in Section 2935, General Code, is exclusive, and neither the county soldiers' relief commission, the county commissioners, nor other parties can recover the amount so paid to such applicant as relief under such act from the administrator of the recipient of such relief after her demise.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4644.

APPROVAL: CORRECTED ABSTRACT OF TITLE TO LAND OF MAY  
M. BISHOP AND JACOB H. BISHOP IN RICHLAND TOWNSHIP,  
DEFIANCE COUNTY, OHIO.

COLUMBUS, OHIO, September 22, 1932.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a corrected abstract of title, warranty deed and encumbrance record No. 42 relating to a certain tract of 3.93 acres of land in Richland Township, Defiance County, Ohio, which tract of land is owned of record by May M.