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DEPENDENTS OF SERVICEMEN CURRENTLY ON ACTIVE DUTY ARE ELIGIBLE FOR BENEFITS UNDER SOLDIERS RELIEF ACT—§5901.01 R.C., OPINION NO. 693, OAG FOR 1951, p. 421.

SYLLABUS:

Dependents of servicemen currently on active duty are if otherwise qualified, eligible to receive benefits under the Soldiers Relief Act, Section 5901.01, *et seq.*, Revised Code, even though said servicemen cannot exhibit honorable discharge certificates and have had no prior tour of active duty prior to their present tour of active duty. (Opinion No. 693, Opinions of the Attorney General for 1951, page 421, approved and followed.)

Columbus, Ohio, January 9 ,1962

Loren G. Windom, Major General
The Adjutant General
Building 101, Fort Hayes, Columbus, Ohio

Dear Sir :

Your request for my opinion reads :

“Section 5901.08, Ohio Revised Code, sets forth the classes of individuals who shall be included in the lists of those who require aid and are entitled thereto under soldiers relief statutes. This section in no way limits eligibility to veterans (separated from active duty) or war-time members of the military establishment.

“1951 OAG 693 quite clearly points out that the benefits of the Soldiers Relief Law are not restricted to those soldiers, sailors and marines who have been separated from military service, but also to those in such service and to their dependents.

“However, 1940 OAG 2422 states that an applicant for benefits under the Soldiers Relief Law must be able to exhibit to the Commission an honorable discharge from active duty.

“The question now arises whether dependents of members of the Reserve Military Forces and others, having no prior active military service, and who are now called to active federal military duty, qualify to receive benefits under the Soldiers Relief Law?

“Are dependents of non-prior service individuals currently in active military service eligible, if otherwise qualified, to receive benefits under the Soldiers Relief Law? Or, as held in 1940 OAG 2422, must the applicant therefor be able to exhibit an honorable discharge from active military service?”

Section 5901.08, Revised Code, reads :

“Each township and ward soldiers’ relief committee shall receive all applications for relief under sections 5901.02 to 5901.15, inclusive, of the Revised Code, from applicants residing in such township or ward. Such committee shall 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, marines, and airmen and of their needy parents, wives, widows, and minor children*, who reside in such township or ward. The list shall include *soldiers, sailors, marines, and airmen of the Spanish-American War, World War I, World War II, or the Korean 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, and who, in the opinion of such committee, require aid and are entitled to relief under such sections.” (Emphasis added)

In Opinion No. 325, Opinions of the Attorney General for 1945, page 346, it was held that this statute applied only to veterans and did not include persons in active service or their dependents. That opinion was based in part on the then existing Section 2949, General Code, which read:

“The word ‘soldiers’ shall mean: an honorably discharged soldier, sailor, or marine, who served in the army or navy of the United States of America.”

The opinion also relied on the argument that soldiers in service receive pay and allowances for dependents, and that, therefore, there was no need to give them relief. Said opinion No. 325 was, however, specifically overruled in Opinion No. 693, Opinions of the Attorney General for 1951, page 421. This later opinion held that the benefits of Section 2934, General Code (now Section 5901.08, *supra*), were not limited to veterans but were also available to persons in service. The third paragraph of the syllabus of that opinion reads:

“3. The benefits of the Soldiers’ Relief Law, Sections 2930 to 2941, General Code, are not restricted to those soldiers, sailors and marines who have been separated from military service, but apply equally to such soldiers, sailors and marines *while in such service*, and to their dependents mentioned in Section 2934, General Code. Opinion No. 325, Opinions of the Attorney General, page 346, 1945, overruled.” (Emphasis added)

And at pages 428 and 429 of the 1951 opinion it is stated:

“The 1945 opinion may seem to be sound as of the time when it was written, and in view of the history of the legislation up to that time. When, however, we turn to the recent amendment of Section 2934 above set forth, we may inquire whether the General Assembly may not have had an intention to broaden the scope of the law by making its provisions apply as well to the men in active military service and to their needy dependents, as to veterans who had been separated from service, and their dependents. This view seems plausible, since in the amendment for the first time there was a *reference to a pending conflict, to wit, the so-called ‘Korean War’, which threatens to last indefinitely*, and as a result of which a great many wives, children and parents of soldiers engaged in

that conflict might be in great need of relief, directly due to the fact that the husband, father or son is in military service. And it is no answer to that need to say that the government has made certain provisions, which it may change or suspend at will, for a family allotment. Emergencies of great variety could arise in any family which those governmental provisions might not nearly meet. I feel, therefore, that in view of changed conditions, and to avoid confusion, Opinion No. 325 of 1945, must be overruled." (Emphasis added)

On reading the provisions of Section 5901.08, *supra*, I am constrained to agree with the 1951 opinion which holds that the benefits of the relief law apply to soldiers while in service. That section clearly provides that the list contain *all* needy soldiers, sailors, marines, and airmen and their needy parents, wives, widows, and minor children; and the further reference to soldiers, etc., who have participated in the designated wars, extends the application to those who are no longer in service but who were in service during such wars.

I am aware of the provision of Section 5901.01, Revised Code, reading :

"As used in sections 5901.16 to 5901.37, inclusive, of the Revised Code: (A) 'Soldier' means an honorably discharged soldier, sailor, or marine, who served in the army or navy of the United States. * * *"

Under its own terms, however, that definition does not apply to "soldiers, sailors, marines, and airmen" as mentioned in Section 5901.08, *supra*. It applies only to Section 5901.16 to 5901.37, inclusive, Revised Code, pertaining to the soldiers' burial laws.

I might note that Section 5901.01, Revised Code, was formerly Section 2949, General Code. In Opinion No. 325, *supra*, in 1945, the then attorney general held that this definition should be applied to soldiers' relief, although the section, even then, clearly applied only to soldiers' burial. This is further reason for me to agree with the 1951 opinion which overruled said Opinion No. 325.

It follows from this discussion that the dependents of servicemen, presently called into active military status from their reserve status, are eligible for the benefits of Section 5901.08, Revised Code, if otherwise qualified.

Accordingly, it is my opinion and you are advised that dependents of servicemen currently on active duty are, if otherwise qualified, eligible to

receive benefits under the Soldiers Relief Act, Section 5901.01, *et seq.*, Revised Code, even though said servicemen cannot exhibit honorable discharge certificates and have had no prior tour of active duty prior to their present tour of active duty. (Opinion No. 693, Opinions of the Attorney General for 1951, page 421, approved and followed.)

Respectfully,

MARK MCELROY

Attorney General