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1. RELIEF, SOLDIERS'—PERSON ELIGIBLE UNDER SECTION 2934 G. C. HAS BEEN PLACED ON LIST OF RECIPIENTS FOR A CERTAIN YEAR UNDER SECTION 2938 G. C.—REMOVES TO ANOTHER COUNTY OR WITHOUT STATE—SOLDIERS' RELIEF COMMISSION HAS AUTHORITY TO CONTINUE PAYMENT OF RELIEF DURING REMAINDER OF SUCH PERIOD.
2. SOLDIERS' RELIEF COMMISSION AUTHORIZED TO GRANT AND PAY RELIEF TO VETERAN OUT OF WORK BECAUSE OF LABOR STRIKE, PROVIDED HE IS OTHERWISE ELIGIBLE.

SYLLABUS:

1. When a person eligible under Section 2934, General Code, for soldiers' relief has been placed on the list of recipients for a certain year under the provisions of Section 2938, General Code, and thereafter removes to another county or without the state, the soldiers' relief commission has authority to continue payment of his relief during the remainder of such period.

2. The soldiers' relief commission is authorized to grant and pay relief to a veteran who is out of work because of a labor strike, provided he is otherwise eligible.

Columbus, Ohio, August 28, 1947

Hon. C. E. Kirby, Commissioner, Division of Soldiers' Claims
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Two questions have been raised by the Soldiers Relief Commission of Butler County concerning the laws governing soldiers relief. The Commission conferred with the County Prosecutor, who asked that this office obtain your opinion.

The first question raised is can the Soldiers Relief Commission furnish financial aid to a veteran who has left the state or county. If so, for how long a period. Regarding this question the Commission states that there has been considerable comment as to the legality of sending the funds of one county into another state or county.

The second question is can the Commission grant relief to a veteran who is out of work because of a labor strike but who is otherwise eligible.

These questions have often been raised by other counties indicating that they are matters of state-wide interest. Would you please furnish us with your opinion at the earliest possible date."

The statutes relative to soldiers' relief are found in Sections 2930 to 2940, both inclusive, of the General Code. Section 2934, General Code, 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." (Emphasis added.)

Here, it will be noted, the lists of applicants for relief are to be made up each year on or before the first Monday in May by each township and ward soldiers' relief committee; such applicants must be then resident in the township or ward and must have been bona fide residents of the state for one year and of the county for six months next prior to the first Monday in May.

By the provisions of Section 2935, General Code, these lists, together with the applicants' statement as to resources and income, are to be delivered to the soldiers' relief commission of the county on or before the last Monday in May.

Section 2936, General Code, provides as follows:

"On such last Monday in May the commission shall meet and determine from such lists the probable amount necessary for the aid and relief of such indigent persons for the ensuing year,

together with an amount sufficient in the judgment of the commission, to furnish relief to any such indigent persons not named on such lists, whose rights to relief shall be established to the satisfaction of the commission. After determining the probable amount necessary for such purpose, the commission shall certify it to the county commissioners, who, at their June session shall make the levy necessary to raise the required relief, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county hereinafter authorized."

By the provisions of Section 2937, General Code, the commission, on the fourth Monday in November, is to examine these lists and statements, together with any other cases not included in such lists which have been recommended to them. The section concludes as follows:

"* * * 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."

Section 2938, General Code, provides as follows:

"Upon the conclusion of such examination and the determination of the monthly allowance, the relief commission shall make a complete list of those to whom relief has been so awarded, showing the monthly amount awarded to each person, and the place of residence of each, and certify it to the auditor of the county. Within ten days thereafter the county auditor shall transmit to each township clerk a list of the names of the persons in his township, and the amount payable monthly to each."

Section 2939, General Code, provides:

"To each person certified by the relief commission to the auditor, the auditor shall issue his warrant upon the county treasurer for the monthly allowance awarded such person. * * * The commission at any meeting, may increase, decrease or discontinue any allowance theretofore awarded, which action shall be certified to the county auditor, who shall amend his list in accordance therewith."

From these statutory provisions it is quite clear that any person who receives relief in a given year must have been a resident of the county where he makes his application for six months prior to May of the preceding year. There is nothing whatever in the statutes which requires that an applicant who has once been recommended and placed on the

eligible list must retain his residence in the county in which he has been certified and found eligible. The obligation to give relief and to continue the relief once awarded, does not appear to be in any way contingent upon a continued residence in the county where the applicant resided at the time the preliminary lists are made up. Nor is there anything in the statute which requires or authorizes the commission, in making up final lists of those to whom the relief is to be given, to strike from the recommended lists those who have ceased to reside in the county or state.

If the system is to afford any certainty of relief to indigent soldiers and sailors and their dependents, it must certainly be so administered as to enable them to receive such relief regardless of the fact that they may move to a county other than that in which their right was originally determined. Manifestly, on removal to another county, they can not acquire the right to relief in that county until they have resided there long enough to establish the residence qualifications, a process which, under the law, requires a considerable period of time.

In an opinion found in 1933 Opinions of the Attorney General, page 61, it was held, as shown by the second paragraph of the syllabus:

“All such persons eligible to relief must be bona fide residents of the county six months next prior to the first Monday in May of the year in which such eligibility is determined.”

The opinion concludes with the following language:

“* * * I am therefore of the opinion that the county commission can extend aid directly only to persons, in other respects qualified, who have been bona fide residents of the county for a period of six months next prior to the first Monday in May of the year in which eligibility for relief is determined. It should be noted that this is the year immediately preceding the one in which the sums granted are actually paid, since under Section 2937, the regular meeting for determining those eligible to receive aid during any particular year is held on the fourth Monday of November in the preceding year.”

In an informal opinion which I rendered to the prosecuting attorney of Cuyahoga County on April 29, 1946, the question presented was as to a veteran who with his family had been receiving relief in Cuyahoga County since 1942 but on September 11, 1945, moved to Geauga County, and I was asked to decide which county after May 1, 1946, should be

obligated to provide for the support of the family concerned. It was there held that the veteran's eligibility to receive relief for the year 1946 depended upon his residence for the six months prior to the first Monday in May, 1945 and accordingly the obligation to furnish relief in that particular case for the year 1946 would fall upon Cuyahoga County. Further, it was pointed out that his eligibility to receive relief during the year 1947 and the county obligated would be determined in November, 1946, based upon his residence during the six months prior to the first Monday in May, 1946.

Manifestly, many a veteran on relief will move from one county to another. The system which we are considering would certainly be lame if such removal must cut him off from relief, especially as he would not for a long time—possibly a year and a half—qualify for relief in the county to which he moves. I do not think that was the intent of the law.

The right to relief under the statutes in question is not an absolute right. A large measure of discretion is lodged in the commission in making up the final list of persons who are to receive relief, in determining their actual need and the amount which each is to receive. Plainly, the situation of a soldier or his dependents who have been originally found to be in need of relief and eligible therefor may radically change. Their need, for various reasons, may be greatly intensified or alleviated, or may cease altogether. That is the reason why the law gives to the commission, as above noted, the right to increase, decrease or discontinue any allowance theretofore awarded.

In the case of *State, ex rel. Lentz v. DePue*, 71 O. App. 83, it was held:

“The right of needy soldiers, sailors and marines, or their parents, wives, widows and minor children to relief under Section 2930 to 2941, General Code, is not a vested right or a right in the nature of a pension, but, at all times, is a matter within the discretion and control of the Soldiers' Relief Commission.”

I do not, however, consider that the discretion thus allowed to the commission can be carried to the point of mere caprice or favoritism or arbitrary discrimination. After all, the funds which the commission has to distribute are public funds raised by taxation for the purpose of furnishing relief to the specific classes mentioned in the statute and based

on the estimated needs of certain persons already recommended, and should be distributed impartially so as to accomplish the full purpose of the plan which the law has set up.

Your first question is whether the soldiers' relief commission has the *authority* to furnish financial aid to a veteran who has left the state or county. It appears to me that at least so long as he remains in the state the right of the commission is clear to continue his relief once granted during the period for which he was found eligible, although he has moved into another county, and I believe that along with the right goes the duty.

As to the removal from the state to another state, the question becomes more difficult. To a large extent the laws of the state relating to public relief appear to be based upon a recognized obligation of the state to take care of its own indigent people. The facilities are present for following indigents from one county to another and ascertaining and caring for their needs; when, however, the recipient of relief leaves the state and moves perhaps to a far distant state, it is obvious that there is no definite means of keeping in touch with his situation and I question seriously whether there is a continued obligation to furnish him with relief from the public funds of this state.

Some light, I think, is thrown on the general policy of the state by the provisions of Section 3476, General Code, relating to poor relief where it is said:

“ * * * It is the intent of this act that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township or city as described in Sections 3477 and 3479. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, * * * ”

Further light is found in Section 3391-2, General Code, which provides in part as follows:

“4. The following persons shall not be deemed eligible for poor relief in this state:

a. Those who have removed or departed from the state of Ohio and have obtained a legal settlement for poor relief purposes in another state.

b. Those who have removed or departed from the state of Ohio, not maintaining a residence therein, and have resided or sojourned in another state for such period of time as under the laws of that state, under like circumstances, would operate to terminate a like settlement in that state of one previously resident therein.”

These provisions lead to a clear implication that the state recognizes the right of the relief authorities to continue relief to persons entitled thereto, even though they have permanently left the state, at least until such a time as they may obtain the right to receive relief under the laws of the other state. Applying the same principle to soldiers' relief, and in the absence of any provision in the statute relating thereto, barring the recipient who has been duly qualified, because of his removal from the state, I am of the opinion that it is within the power of the commission to continue such relief for the remainder of the period for which he was certified. In case, however, the commission has information which leads it to believe that the recipient is no longer in need or in the event information as to his condition is not readily obtainable, I would consider it to be within the power of the commission in the exercise of sound discretion to remove his name from the list and discontinue his payments.

Your second question is as to the right of the commission to grant relief to a veteran who is out of work because of a labor strike but who is otherwise eligible. I find nothing whatever in the statutes relating to soldiers' relief which bears on this question or which in any way requires or authorizes a recipient of relief to be stricken from the list by reason of any labor disputes or by reason of a labor strike if he is otherwise eligible. Whether in a given case his name should be stricken from the list because of his arbitrarily refusing to work when work is available, is a matter that I believe must be left to the sound discretion of the commission for its appropriate action. However, reference may be made to another sentence from Section 3391-2, supra, which contains a legislative expression relative to relief generally, and which might well be a guide to the commission. It reads:

“No person shall be eligible for poor relief if, being able and competent to perform labor, he shall refuse work relief or shall refuse employment, if available, except at a place where there is a labor dispute, when offered at reasonable wages and under reasonable conditions as determined by the local relief authority ;

* * * ”

Accordingly, in specific answer to the questions submitted, it is my opinion :

1. When a person eligible under Section 2934, General Code, for soldiers' relief has been placed on the list of recipients for a certain year under the provisions of Section 2938, General Code, and thereafter removes to another county or without the state, the soldiers' relief commission has authority to continue payment of his relief during the remainder of such period.

2. The soldiers' relief commission is authorized to grant and pay relief to a veteran who is out of work because of a labor strike, provided he is otherwise eligible.

Respectfully,

HUGH S. JENKINS,
Attorney General.