

325

1. SOLDIERS AND THEIR NAMED DEPENDENTS—RELIEF PROVIDED UNDER SECTIONS 2930 TO 2941 G. C. NOT TO BE EXTENDED TO SOLDIERS WHO ARE IN ACTIVE SERVICE OR TO THE DEPENDENTS OF SUCH SOLDIERS.
2. COUNTY AUDITOR—AUTHORIZED TO WITHHOLD PAYMENT OF RELIEF GRANTED TO SOLDIERS AND DEPENDENTS UNDER SECTION 2930 ET SEQ., G. C. AS TO ANY APPLICANT HE DEEMS NOT LEGALLY ENTITLED THERETO—NOT AUTHORIZED TO WITHHOLD PAYMENT OF SUCH RELIEF TO APPLICANTS AS TO WHOSE RIGHTS THERE IS NO QUESTION.

## SYLLABUS:

1. Relief provided under Sections 2930 to 2941 inclusive of the General Code, to soldiers and their named dependents, is not to be extended to soldiers who are in active service or to the dependents of such soldiers.

2. The county auditor is authorized to withhold payment of relief granted to soldiers and their dependents under Section 2930 et seq., General Code, as to any applicant whom he believes is not legally entitled thereto, but he is not authorized to withhold payment of such relief to those applicants as to whose rights there is no question.

Columbus, Ohio, June 29, 1945

Miss Mary F. Abel, Assistant Prosecuting Attorney  
Bellevue, Ohio

Dear Madam:

Your request for my opinion reads as follows:

"I would appreciate your opinion on the following questions:

(a) May a Soldiers' Relief Commission under Sections 2934 and 2941 relating to Soldiers' Relief, allow relief payable from the General Fund of the County to any veteran or members of his family, the veteran being in some branch of military service, and not having, as yet, an honorable discharge from the United States Government?

(b) If such veteran, or member of such veteran's family are allowed relief by the Relief Commission, has the Auditor of such County the legal right to question such allowance, and if so, may he refuse to pay this one claim or will it be necessary to hold up the payment of all Soldiers' Relief allowances for that particular month?"

The provisions of the statutes establishing the soldiers' relief commission and defining its duties are contained in Sections 2930 to 2941, inclusive, of the General Code. Section 2934 reads:

"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."

It is not easy from an examination of the statutes governing the organization and administration of soldiers' relief to determine whether

soldiers who have been in the military services and are not yet discharged, and their dependents, are within the purview of the act and entitled to relief. We may, however, find some assistance in answering this question by considering the history of the legislation and the obvious purpose that lay behind its enactment.

The first legislation looking to the establishment of soldiers' relief was enacted in May, 1886, and provision was then made with respect to "Union" soldiers, sailors and marines only. Since the War of the Rebellion was then about twenty years past, the intent of the act and its provisions plainly applied only to soldiers who had been discharged from service, and could hardly have been construed to include any who might then be in active service. In April, 1900, which was shortly after the close of the Spanish-American War, the law was amended by dropping the word "Union", the obvious purpose being to include the soldiers who had served in that war. Some time later, to wit, in 1917, there was a further amendment, which contained the express provision to include the soldiers of the Spanish-American War. The significance of this change is not apparent since veterans of that war were already included in the general language of the section as amended in 1900. On May 10, 1919, the legislature again amended the law so as to include indigent soldiers etc., who served in the war against Germany. This likewise obviously referred to ex-soldiers and not to those who might then have been in the military service.

There has been up to this time no other amendment of the statute which would in express terms include veterans who have been or shall be discharged or dismissed from service in the present war. The question might therefore arise whether they come within the scope of the law without further amendment specifically including them. However, one of my predecessors, in an opinion found in 1931 Opinions, Attorney General, p. 278, after reviewing the course of this legislation as above given, held that the specific reference to the wars mentioned in the original enactment and in the successive amendments did not limit the benefits of the act to soldiers, sailors and marines who had served in the wars mentioned, but that it was intended to include and did include "all indigent soldiers, sailors and marines" who had served in lesser conflicts in which there may have been

no actual declaration of war, such as the Indian Wars, Boxer Rebellion, Mexican Expedition and other like occasions to which we might add the Philippine Insurrection and the Nicaraguan Intervention.

However, the Attorney General in that opinion without expressly so stating evidently had in mind throughout that the act applied not to men who were then serving in the army but rather to those who had served and whose services were concluded, in other words, to ex-soldiers only.

My immediate predecessor had occasion in several opinions to consider Section 2934 which I have quoted, and in Opinion No. 2422 found in 1940 Opinions, Attorney General, p. 595, held as follows:

"1. An applicant for soldiers' relief must be able to exhibit to the Soldiers' Relief Commission an honorable discharge, based on the records and rolls of the Adjutant General of the United States Army up to and including the date of the application for relief.

2. An honorably discharged enlisted man who by reason of the purchase of his discharge, did not serve his full term of enlistment in the navy is eligible for relief under Sections 2930 to 2931, inclusive, of the General Code."

The question which gave rise to that opinion did not directly raise the question which you have raised. It related to a situation where a soldier who had served an enlistment in the army and had been honorably discharged later re-enlisted and thereafter deserted and was dishonorably discharged. In determining that he was not entitled to relief from the soldiers' relief commission, the Attorney General adopted the definition given in Section 2949, General Code, which reads in part as follows:

"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."

Said Section 2949 is not found in the soldiers' relief act but does appear in the later act providing for the maintenance by the soldiers' relief commission of a burial plot and for the burial therein at the expense of the county, of soldiers defined as above stated. The Attorney General evidently considered that these statutes were sufficiently in *pari materia* that he was justified in adopting the definition above given as determining the scope of the right to relief under the soldiers' relief statutes.

In a later opinion rendered May 31, 1944, being Opinion No. 6951, the same Attorney General discussed his former opinion and modified it to the extent of holding that the statutes providing for soldiers' relief would include the soldiers and dependents of those soldiers who had received what is known as a "certificate of service" which, while not in terms an honorable discharge, is yet regarded as an honorable dismissal from active military service, subject to possible recall.

Again, on December 12, 1944, he rendered opinion No. 7249 in which he further enlarged his former definition to include a soldier who had been dismissed from military service by a discharge certificate designated by army regulations as a "blue discharge", which is a dismissal given because a soldier's record is bad, but not deserving of a court martial and dishonorable discharge.

In all of these opinions, however, there seems to have been a distinct recognition of the proposition that the soldier's service must have been terminated in order to bring him and his dependents within the scope of the act and entitle them to relief.

Soldiers who are still in service in the military forces of the United States are presumably receiving pay for such service, and their families under the army regulations and the federal laws relating thereto are presumably receiving maintenance, and regardless of whether such pay and such maintenance are adequate, I think we are bound to assume that they are not included within the classes of persons who are intended to be entitled to relief under the soldiers' relief system.

It is my opinion, therefore, that soldiers who are still in the military service, not yet having been discharged, are not within the intended scope of the soldiers' relief act and are not entitled to the relief provided thereby. The same conclusion must necessarily follow as to their dependents.

The second branch of your inquiry raises the question as to the right and duty of the county auditor in case he questions the allowance of relief to any veteran or member of such veteran's family. Section 2935, General Code, requires the chairman of each township or ward soldiers' relief committee, on or before the last Monday in the month of May to deliver to the soldiers' relief commission a list of recommended applicants; and Section 2936, General Code, requires the commission then to determine

from such list the probable amount necessary for relief for the ensuing year and to certify its determination to the county commissioners, who, at their June session are required to make the necessary levy, not exceeding five-tenths of a mill per dollar. Section 2937, General Code, requires the commission on the fourth of November of each year to meet and examine the list submitted from the townships and wards and to determine the amount to be paid each month to each person or family. Section 2938, General Code, requires this approved list to be certified to the auditor of the county who within ten days thereafter shall transmit to the several township clerks a list of the names in the respective townships and the amount payable to each, together with his warrant upon the treasurer for the amount awarded to the persons in such township, and the township trustees are thereupon to disburse such money in the amounts and to the persons named in such list. In the township embracing the county seat the county treasurer is to disburse such fund directly to the persons entitled to the same.

It will be seen that the duties of the county auditor are purely ministerial. He has a right to rely upon the certificate of the commission. Under the statute governing his office, Section 2570, General Code, he may issue his warrants on the county treasury in payment of claims only when the same have been allowed by the county commissioners "or by an officer or tribunal authorized so to do." There is no statute making him directly liable for the payment of any monies from the county treasury on claims that are not legal.

It is said in 11 O. Jur. p. 388:

"The duty of the county auditor as to the issuance of the required warrant for an amount fixed by law, or allowed by the proper officer or board, when a proper order or voucher is presented therefor, is subservient and ministerial in its character, and the courts will compel him to perform it. \* \* \* Nor has he authority to refuse to issue a warrant merely because he disagrees with the officer or board making the allowance, or has some doubt as to the propriety of such allowance.

This does not mean that the auditor is not called upon to exercise good faith and a reasonable degree of prudence and judgment in determining whether or not it is his legal duty to issue his warrant in any given case. He may properly refuse to issue his warrant if it appears that by mistake or fraud an amount has been allowed in excess of the sum lawfully due, or if the

