

2036

DISCHARGE—"OTHER THAN HONORABLE"—MILITARY OR NAVAL SERVICE OF UNITED STATES—DOES NOT ENTITLE A VETERAN'S CHILD TO ADMISSION TO OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME—SECTION 1932 G. C.

## SYLLABUS:

A discharge indicating service "other than honorable" does not entitle a veteran's child to admission to the Ohio Soldiers' and Sailors' Orphans' Home under the provisions of Section 1932 of the General Code.

Columbus, Ohio, July 14, 1950

Mr. Floyd R. Hartpence, Superintendent  
Ohio Soldiers' and Sailors' Orphans' Home  
Xenia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"During World War II it became the practice of the government to issue several different types of discharges to veterans. Some are honorable, some are marked 'other than honorable' and some are dishonorable.

"Under Section 1932 of the General Code, admission to the Home is based upon honorable service in the military or naval forces during any war. We desire an opinion upon this question:

“Does service ‘other than honorable’ entitle a veteran’s child to admission to the Home, provided all other requirements are met?”

“Perhaps it should be pointed out that ‘other than honorable’ services does in some cases entitle a veteran to benefits from the Veterans Administration. It is the desire of the Board to admit all children entitled to the protection of this Home, but they also wish to avoid extending those benefits to children who are not entitled to them.”

The section of the General Code applicable to this question is Section 1932, and reads as follows :

“Under such rules and regulations as they adopt, the trustees shall receive into the home such children of deceased, permanently disabled or indigent soldiers, sailors, marines and nurses who served honorably in the military or naval forces of the United States during any war, as are destitute of means of support and education. Provided however, that no such child shall be admitted to the home, unless said child, and the parent, or the person having the legal custody and control of said child, shall have been a legal resident of the state of Ohio for at least one year immediately prior to the filing of the application for admission. Admission of an ex-soldier to the United States National Military Home, from another state shall not constitute the child of such soldier eligible for admission into the Ohio Soldiers’ and Sailors’ Orphans’ Home.”

A reading of this section discloses that only children of those deceased, permanently disabled or indigent soldiers, sailors, marines and nurses “who served honorably in the military or naval forces of the United States \* \* \*” are entitled to admission.

Your inquiry concerns those applicants for admission whose parent received “other than honorable” discharge from the military or naval services of the United States.

The military and naval services of the United States issue many types of discharges. The most prominent of all is the honorable discharge. The most disreputable type, the dishonorable discharge. Between the honorable and the dishonorable are many shades of discharges. In this instance we are concerned with the words and meaning of Section 1932 of the General Code as it applies to these discharges.

Clearly, the intent of the legislature is manifest in the wording “served

honorably." It means to extend the privileges of the Orphans' Home to the dependent children of those whose military or naval record was one of honor. It did not specify "honorable discharged" persons nor persons with "honorable discharges," as that language would tend to limit these facilities to those receiving only the highest type of discharge. However, it did see fit to limit these facilities to the dependents of those who "served honorably."

With this distinction in mind, it would be hard to conceive that the legislature meant to extend these privileges to those whose service was dishonorable or other than honorable.

Whether or not a discharge bearing the legend "other than honorable" would entitle certain veterans to some consideration under the rules and regulations of the Veterans' Administration is beside the point. We are here solely concerned with the wording of Section 1932, which limits the benefits of the Orphans' Home to dependent children of those who "served honorably" in the military or naval forces of the United States.

Therefore, it is my opinion that a discharge indicating service "other than honorable" does not entitle a veteran's child to admission to the Ohio Soldiers' and Sailors' Orphans' Home under the provisions of Section 1932 of the General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.