

OPINION NO. 74-046

Syllabus:

1. Under Article VIII, Section 2j, Ohio Constitution, the bonus for a veteran, who died as a result of injuries or illness sustained in Vietnam military service, is payable regardless of whether such injuries or illness are combat-related.
2. A veteran is eligible for compensation for any active domestic or foreign service in the armed forces between August 5, 1964 and July 1, 1973, with the exception of Vietnam military service, if he was an Ohio resident for at least one year, immediately preceding the commencement of such active duty service, or immediately preceding August 5, 1964, if he was already on active duty on that date.
3. In addition to any payment for non-Vietnam active service he might receive for the period from August 5, 1964 through July 1, 1973, a veteran is eligible for compensation for Vietnam military service, between February 28, 1961, and July 1, 1973, if he was an Ohio resident for at least one year immediately preceding the date of his entrance into Vietnam military service.

To: John W. Bush, Director, Ohio Vietnam Veterans' Bonus Commission,
Columbus, Ohio

By: William J. Brown, Attorney General, May 31, 1974

I have before me your requests for my opinion, which
read as follows:

"It is noted in Article VIII, Section 2j of the Ohio Constitution, that a veteran who was medically discharged or medically retired from military service due to combat related disabilities sustained in Vietnam service shall be paid five hundred dollars bonus. (Underscoring supplied)

"However, this same section further provides that 'If such deceased person's death is determined by the Veterans Administration of the United States to have been the result of injuries or illness sustained in Vietnam service his survivors . . . are entitled to one thousand dollars.....' (Underscoring provided)

"The question now arises, in view of the requirement that disabilities sustained in Vietnam service must also be 'combat related' for entitlement of a living veteran to a \$500 bonus, whether this same requirement was intended to relate to the injuries or illness sustained in Vietnam service which resulted in a veteran's death, as a qualification for eligibility for the one thousand dollar bonus payment to eligible next of kin.

"Your opinion on this question is solicited."

Second question:

"Is an applicant eligible for benefits pursuant to Section 2j, Article VIII of the Ohio Constitution if he entered active military service as a non-resident of Ohio before the compensable period (August 5, 1964 through July 1, 1973), but during said period he established his domicile in Ohio for one year while on active duty or before Vietnam service?"

Your first question may be answered briefly. At one point, the language of Article VIII, Section 2j, refers to a bonus for medical discharge or retirement due to "combat related disabilities sustained in Vietnam service," while at another point it refers to a larger bonus for death resulting from "injuries or illness sustained in Vietnam service." There is no indication in the language of this second provision that its drafters intended to refer only to combat related injuries or illness. Nor is the effect of the language as it stands unreasonable. A disability which results in discharge may or may not be serious or permanent, but a fatal injury or illness is obviously both. It is understandable that the drafters would provide more liberal eligibility requirements, as well as greater benefits, to those who died as a result of their involvement in Vietnam service. I should note that "Vietnam service," as defined (*infra*) by Article VIII, Section 2j, includes military service in Southeast Asia, and not only in Vietnam.

Your second question requires careful construction of the language of Section 2j; which reads in part as follows:

"The Vietnam conflict compensation fund shall be paid out upon order of the commissioners, without appropriation by the General Assembly, in payment of the expenses of administering this section, and as compensation as follows: Every person, except persons ordered to active duty for training only, who has served on active duty in the armed forces of the United States at any time between August 5, 1964 and July 1, 1973, or who has served on active duty in the armed forces of the United States in Vietnam service, and who, at the time of commencing such service, was and had been a resident of the state, for at least one year immediately preceding the commencement of such service, and (1) who was separated from such service under honorable conditions, (2) who is still in such service, or (3) who has been retired, is entitled to receive compensation of ten dollars for each month during which such person was in active domestic service during the compensable period, fifteen dollars for each month during which such person was in active foreign service, but not Vietnam service, during the compensable period, and twenty dollars for each month during which such person was in active Vietnam service. The maximum amount of cash payable to any qualified applicant, unless such applicant qualifies for a payment based upon missing in action or prisoner of war status or unless such applicant qualifies for a survivors' payment, is five hundred dollars. No compensation shall be paid under this Section to any person who received from another state a bonus or compensation of a like nature or to any person who has not served on active duty in the armed forces of the United States during the compensable period for at least ninety days unless active duty within such compensable period was terminated as a result of injuries or illness sustained in Vietnam service. Compensation for a fraction of a month of service shall be paid on the basis of one-thirtieth of the appropriate monthly amounts for each day of such service." (Emphasis added.)

Section 2j also contains definitions of the terms, "domestic service," "foreign service," and "Vietnam service." That paragraph reads as follows:

"As used in this section 'domestic service' means service within the territorial limits of the fifty states, excluding sea duty; 'foreign service' means service in all other places, excluding Vietnam service; and 'Vietnam service' means military service within the Republic of Vietnam during the period between February 28, 1961 through July 1, 1973 or military service in Southeast Asia for which hostile fire pay was awarded pursuant to Title 37, Section 310,

United States Code, during the period February 28, 1961 through July 1, 1973."

The above language of Section 2j is quite similar to that of the Korean Veterans Bonus provision, Article VIII, Section 2d, Ohio Constitution. However, Section 2d contains nothing comparable to the clause "or who has served on active duty in the armed forces of the United States in Vietnam service", which appears in the emphasized language of Section 2j quoted above.

In the instant case, I can only conclude that the phrase "such service," in the emphasized language, has reference to the two alternatives in Section 2j: (1) active duty service, whether domestic or foreign, at any time between August 5, 1964, and July 1, 1973; and (2) Vietnam military service at any time between February 28, 1961 and July 1, 1973. The reason is that the residence requirements must apply to both types of service, either of which qualifies a person for compensation.

At the time of commencing either type of service, a person must have been an Ohio resident for at least one year immediately preceding such time. There can be little question that the term "resident of the state" refers to legal residence, or domicil, as opposed to mere temporary residence. Domicil requires the concurrence of two factors, residence and the intent to remain in such residence. A person has a residence wherever he dwells, even if temporarily, but his domicil is his legal home, where he abides with the present intent to remain indefinitely. Opinion No. 73-080, Opinions of the Attorney General for 1973. Temporary absences from his domicil do not affect its location, provided he intends to return. A person can have many residences, but has one and only one domicil at any given time. See generally Sturgeon v. Korte, 34 Ohio St. 525 (1878), Grant v. Jones, 39 Ohio St. 506 (1883), Baucher v. Board of Educ., 31 Ohio Misc. 49 (1971). Accordingly, the domicil of a person in the military service remains the same as it was upon his entry into the service, even though he is shifted from post to post, so long as he retains the intent to return eventually, when free to do so, to that original domicil. This is so because the various transfers are not necessarily of his own volition. On the other hand, if, while residing at one post of duty, he forms the intent to remain there permanently and to abandon his original domicil, he thereby establishes a new domicil. Spires v. Spires, 35 Ohio Op. 2d 289 (1966); Glassman v. Glassman, 75 Ohio App. 47 (1944). The drafters of the constitutional amendment did not intend mere temporary residence in Ohio to qualify a person for the veterans' bonus. There must be proof of an intent to establish domicil in Ohio.

It is apparent that, in the case of Vietnam service, the commencement of such service is at the time the person began such service in Southeast Asia. In the case of any other type of active service, the service in question commences at the time active duty was begun between August 5, 1964 and July 1, 1973. Therefore, if a person began his active duty between those dates, the date upon which he began active duty is the time of "commencing such service." However, if he was already in active duty prior to August 5, 1964, then his time of "commencing such service" is August 5, 1964.

A person is eligible for compensation for active duty service, whether domestic, foreign, or in Southeast Asia, if at

the time he commenced active duty between August 5, 1964, and July 1, 1973, he had established a domicile in Ohio for at least one year immediately preceding such time. He is eligible for compensation for Vietnam military service, if at the time he commenced such Vietnam military service he had established a domicile in Ohio for at least one year immediately preceding such time.

In the light of these principles, we may consider your hypothetical question. The person in question began active duty as a non-resident of Ohio before August 5, 1964, but established his domicile in Ohio after that date. Since he was on active duty on August 5, 1964, the commencement date for such service under Section 2j, but had not been an Ohio domiciliary for the year immediately preceding that date, he is ineligible for compensation under the first alternative, which provides bonuses for any active domestic or foreign service, with the exception of Vietnam military service. However, since you state that he had established an Ohio domicile for one year before commencing Vietnam service, he is eligible for compensation for his Vietnam service only, under the second alternative eligibility requirement.

It should be noted again that "Vietnam service" is defined to include the time period of February 28, 1961 through July 1, 1973. Therefore, "Vietnam service" includes the time period from February 28, 1961 to August 5, 1964, which is outside the time period for which all other active duty service is compensable. Consequently, under the second alternative eligibility requirement, a person may receive compensation for Vietnam military service without limitation as to date (except, of course, for those contained in the definition of "Vietnam service"). Therefore, regardless of whether a person qualifies for compensation for active duty of Vietnam military service between August 5, 1964, and July 1, 1973, he may be eligible for compensation for Vietnam military service between February 28, 1961 and August 5, 1964, or any part thereof, provided he was an Ohio resident for at least one year immediately preceding commencement of his Vietnam military service.

In specific answer to your questions, it is my opinion and you are so advised that:

1. Under Article VIII, Section 2j, Ohio Constitution, the bonus for a veteran, who died as a result of injuries or illness sustained in Vietnam military service, is payable regardless of whether such injuries or illness are combat-related.
2. A veteran is eligible for compensation for any active domestic or foreign service in the armed forces between August 5, 1964 and July 1, 1973, with the exception of Vietnam military service, if he was an Ohio resident for at least one year, immediately preceding the commencement of such active duty service, or immediately preceding August 5, 1964, if he was already on active duty on that date.
3. In addition to any payment for non-Vietnam active service he might receive for the period from August 5, 1964 through July 1, 1973, a veteran is eligible for compensation for Vietnam military service, between February 28, 1961, and July 1, 1973, if he was an Ohio resident for at least one year immediately preceding the date of his entrance into Vietnam military service.