

1447

RELIEF COMMISSION, SOLDIERS—AUTHORITY TO REQUIRE APPLICANT FOR RELIEF TO SUBMIT TO PHYSICAL EXAMINATION—INVESTIGATOR MAY BE PHYSICIAN OR PSYCHIATRIST EMPLOYED BY COMMISSION—EXAMINATION MUST BE DEEMED ADVISABLE TO DETERMINE ABILITY OF APPLICANT TO PERFORM LABOR AND HIS NEED FOR RELIEF—SECTIONS 2930 ET SEQ., 2933-1 G. C.

SYLLABUS:

Under the provisions of the statutes relating to the soldiers' relief commission, (Section 2930, et seq., General Code) such commission has authority to require an applicant for relief to submit to a physical examination by an investigator who may be a physician or physchiatrist, employed by the commission under authority of Section 2933-1, General Code, when such examination is deemed advisable by the Commission for the purpose of determining the ability of the applicant to perform labor and his need for relief.

Columbus, Ohio, December 20, 1946

Honorable Mathias H. Heck, Prosecuting Attorney
Dayton, Ohio

Dear Sir:

I have before me your communication in which you enclose a letter addressed to you by the soldiers' relief commission of Montgomery County, reading in part as follows:

“Pursuant to the instructions from the Montgomery County Soldiers Relief Commission made at their last regular meeting, December 3rd, they are requesting a legal opinion through your office from the Attorney General of the State of Ohio.

Applicants for assistance from this office frequently insist that they are unable to perform gainful employment. The members of the Soldiers Relief Commission feel that if they are able to work, they should work, but they have no way of knowing the applicants physical condition.

The Soldiers Relief Commission would like an opinion from the Office of the Attorney General of the State of Ohio if it is permissible under Sect. 2934 G. C. to require applicants for assistance to submit to a physical examination when deemed advisable by the Soldiers Relief Commission and pay for such examination from the funds of the Soldiers Relief Commission.”

The provisions governing the organization and powers of the soldiers' relief commission are found in Sections 2930 to 2941, inclusive of the General Code.

Section 2933, General Code, requires the county soldiers' relief commission on the first Monday of January in each year to appoint for each township outside of a city and for each ward in each city in the county a soldiers' relief committee consisting of three persons, honorably discharged soldiers.

Section 2934 states in general terms the class of persons who may be entitled to relief, to wit, needy soldiers, sailors and marines, and certain of their dependents. Applications for relief are to be made to these committees, who are required to examine carefully into the case of each applicant, and on the first Monday in May of each year to make a list of those who in their opinion require aid and are entitled to relief.

Section 2935, General Code, requires each of said township and ward committees to deliver such list to the soldiers' relief commission, together with the written statement of each applicant as to his income, if any, and the amount of his taxable property, moneys on hand, and securities held by him from which any income or revenue is derived.

Section 2936 requires the county relief commission to determine from the lists so furnished the probable amount necessary for aid and relief of such indigent persons for the ensuing year, together with an amount sufficient to furnish relief to indigent persons not named on said lists whose rights may be established to the satisfaction of the commission.

Section 2937, General Code, reads as follows:

“On the fourth Monday of November of each year and at such other times as may be necessary, the soldiers' relief commission shall meet at the office of the county commissioners, or in a suitable room furnished by the county for that purpose, and examine carefully the lists and statements of those reported by the township and ward soldiers' relief committees, and also all cases not included in such lists, who, before and during their session, have been recommended to the commission for aid under these provisions. *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.”

(Emphasis added.)

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 for the issuance of warrants by the county treasurer for the monthly allowances. This section concludes with the following:

“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.

Section 2941, General Code, provides in part:

“In case of sickness, accident or great destitution, upon the recommendation of a township or ward committee, the relief commission may, at any time, grant immediate relief to any person entitled thereto under these provisions, under such rules as it may designate. * * *”

From an examination of the statutes hereinabove referred to, it appears clear that there is thrown upon the relief commission a serious task of determining who of the applicants for relief are really in need and deserving of receiving relief. True, the local committees must make a preliminary investigation and report their recommendations, but the final decision must be made by the commission. The general assembly having cast that responsibility upon the commission, it would seem to follow that they should be allowed a rather broad discretion in determining the methods by which they make their investigation and determination. Furthermore, any effective investigation would of necessity involve some expense. In an opinion rendered by one of my predecessors and found in 1931 Opinions Attorney General, page 243, it was held:

“Members of a soldiers’ relief commission are entitled to their actual expenses incurred in connection with the organization of township and ward committees within their county and also

such necessary expenses as are actually incurred in connection with the investigation of any or all cases of indigent persons entitled to soldiers' relief."

That opinion turned upon a construction of Section 2932, General Code, which reads as follows:

"On the presentation of an itemized statement thereof, the county commissioners shall allow the persons composing the soldiers' relief commission, their actual expenses incurred in the performance of their duties, and a fair compensation for their services. The county auditor shall issue his warrant upon the county treasurer for the amount so allowed."

It would appear from the latter part of the syllabus and from the discussion, that the then attorney general did not consider that the expenses allowable were confined to the personal expenses of the members of the commission, but that they might be reimbursed for other incidental expenses growing out of the steps necessary to be taken to make the investigation which the law required. In the course of the opinion it was said:

"Consideration of the foregoing sections setting forth the detailed machinery for the functioning of soldiers' relief commissions and their township and ward committees clearly discloses that the responsibility of passing upon the merits of specific cases alleged to be entitled to compensation, rests in the first instance, generally, with the township and ward committees. The final responsibility, however, of determining whether or not indigent persons are entitled to soldiers' relief is vested in the soldiers' relief commission in view of the provisions of Section 2937, *supra*. Before any amount may be fixed to be paid to any such person, the commission must be 'satisfied that those so recommended, or any of them are in need of assistance and are entitled thereto.' I do not believe that it may be contended that the commission must predicate its judgment as to the merits of the various cases before it, solely upon the information and findings of the various committees,—this especially in view of the fact that the commission may at their November meeting consider any 'cases not included in such lists' as are submitted by the township and ward committees.

It follows, therefore, that any necessary expenses incurred by members of the soldiers' relief commission in connection with a valid investigation of any or all cases of indigent persons entitled to soldiers' relief, is an expense incurred in the performance of their duties and properly payable by the county commissioners under the provisions of Section 2932, *supra*."

It might be inferred from a reading of that opinion that the then attorney general would have sanctioned the expense or compensation of an investigator and perhaps of a physician employed to determine the real condition of the applicant and his right to relief. However, in a later opinion in the same year, the attorney general held that under the law as it then stood a soldiers' relief commission had not the power to employ and compensate persons for making investigations of applicants for soldiers' relief. 1931 Opinions Attorney General, page 343. This conclusion was predicated upon the proposition that no provision was contained in said Section 2932 authorizing the employment or compensation of persons for making an investigation of applicants for relief, and that an examination of the other statutes pertaining to the subject failed to reveal any authority for such employment and payment.

At the next session of the general assembly, Section 2933-1 was added to the law. That section, with slight verbal changes since made, reads as follows:

"The soldiers' relief commission is hereby empowered to employ such investigators and clerks as may be necessary to carry on relief work when the necessity arises. These investigators and clerks shall be honorably discharged veterans of the civil war, the war with Spain, or the world war, or the wife, widow, son or daughter of such a veteran, and shall not be required to take a civil service examination. Their compensation shall be such as established by the soldiers' relief commission, and shall be paid from the county allotment of soldiers' relief funds."

It will be observed that while the investigators and other assistants authorized by this section are to be honorably discharged veterans of one of the wars, or the wife, son or daughter of such a veteran, there is no limitation as to the nature or extent of their duties or as to the scope of the investigation which they may be called upon to make. The statute authorizes the commission to employ "such investigators * * * as may be necessary to carry on relief work *when the necessity arises.*" Certainly the determination of "when the necessity arises" is left wholly to the discretion of the commission. Consistent with the language of this section the commission might employ some investigators for full time and one or more for special cases as the necessity arises. I can see no reason why the question as to whether an applicant for relief is genuinely

unable to work or is malingering should not be the subject of an investigation, and manifestly the determination of that question might require the services of a physician or a psychiatrist.

It is a well recognized fact that one of the penalties of war is that frequently a soldier returns in apparently good physical condition but with his nervous system shattered or his mentality clouded so that he is genuinely unable to so control himself as to be fit for work of a profitable nature. Cases of this sort are difficult to diagnose and are perhaps the most deserving of sympathy and help. It would manifestly be impossible for a soldiers' relief commission as ordinarily constituted to arrive at any safe or just conclusion as to the merits of such case and if the system must be so narrowly construed as to deny to the board the right to get reliable information and form a just conclusion in such cases then the system is lamentably lame.

I recognize the rule that boards created by statute are limited to the powers expressly granted to them and to those which are necessarily implied from the granted powers. But given the express mandate and authority to accomplish a certain purpose—in this case the relief of needy soldiers—and the authority to employ investigators to assist the board in determining the worthiness of an applicant, it appears to me that the mere failure of the law to define explicitly what kind of investigators could be employed and what should be the character of their investigation should not be construed as a denial of the power to employ such investigators as a particular case may require. Statutes granting broad and general powers do not usually contain an explicit enumeration of the precise steps by which the powers are to be carried out and I consider that we are justified in construing such statutes in a reasonable manner so long as our construction is not inconsistent with the statute or foreign to its manifest purpose.

It might be suggested that the board could require the applicant to furnish at his own expense a certificate of a physician as to his inability to work. That, it appears to me would place an unwarranted and possibly prohibitive burden on the applicant. Obviously the first question that the board must decide in reference to any applicant is whether he is *needy*. If he is not, then of course no further investigation need to be made as to his ability to work. If, however, it is determined that he is

indigent or needy, plainly he cannot have placed upon him the expense of a physical examination.

Furthermore, if we conclude that the commission may lawfully have such physical examination made, it is clear that it may pay the cost thereof out of the funds allotted to it. The statute above quoted as to the employment of investigators expressly provides that their compensation "shall be paid from the county allotment of soldiers' relief funds."

It is further to be noted that as a matter of general principle, statutes granting relief are to be liberally construed. As stated in Sutherland on Statutory Construction, Section 7208:

"Statutes enacted in fulfilment of the recognized public obligation of relief for the poor should at all times be liberally interpreted so that the undesirable social effects resulting from the neglect of the poor may be eliminated."

To the same effect, 37 O. Jur., p. 36.

In the light of the foregoing, it is my conclusion, and you are advised that under the provisions of the statutes relating to the soldiers' relief commission, (Section 2930, et seq. General Code) such commission has authority to require an applicant for relief to submit to a physical examination by an investigator who may be a physician or psychiatrist, employed by the commission under authority of Section 2933-1, General Code, when such examination is deemed advisable by the commission for the purpose of determining the ability of the applicant to perform labor and his need for relief.

Respectfully,

HUGH S. JENKINS
Attorney General