

OPINION NO. 70-001

Syllabus:

The Soldiers' Relief Commission must consider service-connected pensions when figuring budgets; as a practical matter, the facts of each case and the judgment of the Commission will dictate the weight to be given these service-connected pensions.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: Paul W. Brown, Attorney General, January 7, 1970

Your request for my opinion queries whether the Soldiers' Relief Commissioners have the power and legal ability to disregard service-connected pensions when figuring budgets.

The Soldiers' Relief Commission was established under the provisions of Section 5901.02 to Section 5901.15, inclusive, of the Revised Code. Sections 5901.08, Revised Code, sets out a list of persons entitled to relief. This section reads as follows:

"Each township and ward soldiers' relief committee shall receive all applications for relief under sections 5901.02 to 5901.15, inclusive, of the Revised Code, from applicants residing in such township or ward. Such committee shall 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, marines, and airmen and of their needy parents, wives, widows, and minor children, who reside in such township or ward. The list shall include soldiers, sailors, marines, and airmen of the Spanish-American War, World War I, World War II, or the Korean War and their wives, widows, needy parents, minor children, wards, who have been bona fide residents of the state one year, and of the county six months, and who, in the opinion of such committee, require aid and are entitled to relief under such sections."
(Emphasis added.)

Section 5901.09, Revised Code, states what items must be declared by a veteran making an application for relief. This section provides:

"On or before the last Monday in May in each year, the chairman of each township or ward soldiers' relief committee, or any other member thereof who is authorized by such committee, shall deliver the list required by section 5901.08 of the Revised Code to the soldiers' relief commission, or its secretary, with a statement by each applicant for relief concerning his income and the amount of taxable property, both real and personal, stocks, bonds, moneys on hand, loaned or deposited in any bank or elsewhere, shares in building associations, mortgages, notes, or other articles of value from which an income or revenue is derived by such applicant. Such statement shall be made upon blanks furnished by the commission, and shall be subscribed by the applicant."

Section 5901.11, Revised Code, further states:

"On the last Monday in May in each year, the soldiers' relief commission shall meet and determine from the lists provided for in section 5901.08 of the Revised Code, the probable amount necessary for the aid and relief of 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 are established to the satisfaction of the commission. * * *"

(Emphasis added.)

The laws relating to veterans' benefits are revised, codified, and enacted in Title 38, United States Code, "Veterans' Benefits". Under the General Provisions section, pension is defined as "a monthly payment made by an Administrator to a veteran because of service, age, or non-service-connected disability, or to a widow or child of a veteran because of the non-service-connected death of the veteran." Title 38, Section 101, U.S.C.A.

I am not unmindful of Section 5901.09, Revised Code, which sets forth items to be considered by the Soldiers' Relief Commission in granting relief to each applicant. However, this section appears to be merely directive as to the information to be furnished to the Commission by an applicant. The purpose of this information is to aid the Commission in exercising its discretion with respect to "* * * the probable amount necessary for the aid and relief of indigent persons for the ensuing year* * *." Section 5901.11, supra. The Soldiers' Relief Commission has the duty to exercise its discretion and judgment (See Section 5901.11, supra.) and to examine the facts of each case (See Section 5901.08, supra.) in determining the amount sufficient to furnish relief to its recipients. Consequently, while the Soldiers' Relief Commission may not disregard service-connected pensions when figuring budgets, it may consider such payments to the recipient on less than a dollar-dollar basis in computing the individual's budget if, in the judgment of the Commission, such an action is necessary to satisfy the recipient's requirements. In the absence of an abuse of discretion, it would appear that the Commis-

sion's judgment on all aspects of the granting of relief is controlling.

It is therefore my opinion and you are hereby advised that the Soldiers' Relief Commission must consider service-connected pensions when figuring budgets. However, as a practical matter, the facts of each case and the judgment of the Commission will dictate the weight to be given these service-connected pensions.