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UNITED STATES—SERVICEMEN'S DEPENDENTS ALLOWANCE ACT OF 1942—PERSONS NOW SERVING IN ARMED FORCES—NOT ENTITLED TO RECEIVE, WITHOUT CHARGE, FROM CLERK OF COURTS, CERTIFICATES AND CERTIFIED COPIES, DIVORCE DECREES OR OTHER CERTIFIED DOCUMENTS, PURPOSE, TO ESTABLISH DEPENDENCY.

SYLLABUS:

Persons now serving in the armed forces of the United States are not entitled to receive from the clerk of courts certificates and certified copies of divorce decrees or other certified documents for the purpose of establishing dependency under the provisions of the Servicemen's Dependents Allowance Act of 1942 without charge being made therefor.

Columbus, Ohio, February 27, 1943.

Hon. Frederick R. Parker, Prosecuting Attorney,  
Bryan, Ohio.

Dear Sir:

This is to acknowledge receipt of your request for my opinion, which reads:

"I have received from Mr. Vaughn E. Bolles, Clerk of Courts of Williams County, Ohio and President of the Ohio County Clerks' Association, a request for your opinion as follows:

'The Ohio County Clerks' Association held its annual convention in Columbus on Sunday January 24, 1943.

During the course of the business meeting discussion arose as to Section 2905, General Code, as to whether or not parties now serving in the armed forces of the United States are entitled to receive from the Clerk of Courts certificates and certified copies of divorce decrees or any other certified documents which may be required by the War Department in establishing dependents' allotments, without charge being made by the Clerk of Courts.

The discussion disclosed that the practice of the various clerks of Ohio is very un-uniform, that is some of said clerks charge a fee and some do not, therefore a motion was made and carried that there be obtained from the Ohio Attorney General

his formal opinion as to the specific interpretation of Section 2905, General Code.

As President of the Ohio County Clerks' Association, I hereby request that you gain the Attorney General's formal opinion."

You undoubtedly have reference to the provisions of the Servicemen's Dependents Allowance Act of 1942 (hereinafter also referred to as Act) pursuant to which the Congress of the United States has provided for the payment of a monthly family allowance to dependents of certain enlisted men in the armed forces. See Title 37, Sections 201 to 220, inclusive, Federal Code Annotated. The basic question that appears to be presented is, whether or not this is a "pension" or "bounty" act. Section 2905, General Code, to which you call attention in connection with charges for services in such matters, reads:

"The Clerk of Courts shall make no charge whatever for *certificates made for pensioners* of the United States government, or any oath administered in pension and bounty cases, or on pension vouchers, applications, or affidavits." (Emphasis mine.)

A careful examination has been made of the several provisions of above act. Sections 201 and 202 thereof read:

Section 201:

"The dependent or dependents of any enlisted man of the fourth, fifth, sixth, or seventh grades in the Army of the United State, the United States Navy, the Marine Corps, or the Coast Guard, including any and all retired and reserve components of such services, *shall be entitled to receive a monthly family allowance* for any period during which such enlisted man is in the active military or naval service of the United States on or after June 1, 1942, during the existence of any war declared by Congress and the six months immediately following the termination of any such war."

Section 202:

"The monthly family allowance payable under this title (sections 201 to 220 of this title) to the dependent or dependents of any such enlisted man *shall consist of the Government's contribution* to such allowance *and the reduction in or charge to the pay of such enlisted man.*" (Emphasis mine.)

Section 205 specifies the amount of the Government's contribution to the family allowance which is based upon the number of dependents

and their degree of relationship. It is of particular significance that this section provides that "the *monthly pay* of such enlisted man *shall be reduced* by or charged with, the amount of \$22.00, etc." The consequence of this provision is to establish a means whereby *part* of the compensation or pay of the enlisted man is allocated for the support of his dependents. I apprehend it will not be disputed that the compensation one receives for service in the armed forces can not be considered as a "pension" or "bounty." And the fact that a portion of such compensation constitutes part of the family allowance certainly would not change its character and bring it within the meaning of these terms just quoted.

This leaves, then, the question of whether or not the Government's contribution is encompassed within the meaning of the aforesaid words. In discussing the subject of "pensions" the following statement appears in 40 Am. Jur., at page 961 :

"Regular allowances paid to an individual by the government in consideration of *services rendered*, or in recognition of merit, civil or military, are called pensions. Formerly, the term 'pensions' commonly referred only to gratuities paid by the government in recognition of *past services* in the Army or Navy. A bonus is a reward for *past military services*, payable at once; a pension is such a reward payable in instalments. Military pensions are divisible into two classes, those which are gratuitous and granted to invalided or disabled persons, and those which are granted as rewards for eminent services, irrespective of physical disability. The purpose of Congress in granting military pensions has been said to be to alleviate, as far as may be, a class of men who suffered in the military service by the hardships they endured and the dangers they encountered. *Bounties* for military and naval service, which are treated in another article, although analogous to pensions, are distinguished therefrom primarily because they are granted as *an inducement to future service* rather than as a gratuity for *services rendered*. \* \* \*" (Emphasis mine.)

It will be noted that pensions are generally regarded as allowances for services theretofore rendered. The definition of a "pension" as given by Webster's New International Dictionary is :

"A stated allowance or stipend made, in consideration of past services, or of the surrender of rights or emoluments to one retired from service; esp., a regular stipend paid by a government to retired public officers, disabled soldiers, the families of soldiers killed in service, etc."

In *Manning v. Spry*, 121 Iowa 191, that word was defined as :

“A mere *bounty* or gratuity given by the Government in consideration or recognition of meritorious past services rendered by the pensioner or by some kinsman or ancestor.” (Emphasis mine.)

To the same effect are :

*Milner v. Stafford*, 239 Ill. App. 346;  
*Ryan v. Foreman*, 181, Ill. App. 262;  
*In re Opinion of the Justices*, 88 N. H. 511;  
*State. ex rel. Wander v. Kimmel*, 256 Mo. 611;  
*Rohe v. City of Covington*, 255 Ky. 164;  
*Walton v. Cotton*, 60 U. S. (19 How.) 355; 15 L. Ed. 658;  
*Frisbie v. United States*, 157 U. S. 160, 39 L. Ed. 657.

In the light of the foregoing, I am of the opinion that the Government's contribution under the Servicemen's Dependents Allowance Act to the dependents of one serving in the armed forces is not a “pension” within the meaning of that word as it is ordinarily and customarily understood.

I pass now to the question of whether or not it is a “bounty” act. A liberal interpretation of the word “bounty” could probably be said to include money paid by the Government by way of monthly family allowance. In 8 Am. Jur. at page 824, it is stated :

“The term ‘bounty’ primarily suggests a gift or favor bestowed as an expression of liberality or kindness. In a legal sense it has been defined sometimes as an unusual or additional benefit paid to a class of persons. In a *narrower and more precise legal sense*, it is moneys paid, or a premium offered, to encourage or promote an object, or to procure a particular act or thing to be done. \* \* \*” (Emphasis mine.)

Section 2905, *supra*, has been in effect many years. (73 O. L. 127. Section 10) Any expression as to the specific purpose of its enactment would be indulging in conjecture. It probably had some relation to matters involving the grant of money or lands for past military service. But consideration of the various provisions of said Servicemen's Dependents Allowance Act leads to the belief that one of its fundamental purposes is to establish a means whereby the dependents of one who is serving his nation in this present crisis may be provided for in order to forestall or prevent the possibility of collapse of civilian morale, the maintenance of which is necessary to prosecute war in an effective manner. Whether it can be said that this family allowance or contribution by the Government, in the

case of one who has dependents, is indirectly additional compensation I do not here specifically attempt to decide. However, it might be so considered notwithstanding such allowance does not come into actual possession of one serving in the armed forces. If that view were adopted, then the Act would be neither a pension nor bounty act. This is consistent with my views as previously expressed herein.

I have found only one case wherein judicial consideration was given to the legal effect of certain steps that were taken to make provision for the dependent of one who entered military service. In the case of Board of County Commissioners v. Mertz, 27 Ind. 103, the facts disclose that in August of 1862, for the purpose of inducing men to enter the military service, the Commissioners of Adams County entered an order by which it was provided that *there should be paid to the wife of each soldier* volunteering for such duty the sum of \$5.00 per month during the time of his services. This order was subsequently rescinded and some time after his discharge from military duty Mertz brought an action to recover the unpaid portion of such award. That the court considered this a "bounty" act seems evident from the statements appearing on page 106 of the opinion, which I quote:

"We do not think that this is a law for the support of the poor, but that it can be maintained upon the same principle, and is of the same class, as the state laws giving bounties to persons enlisting in the service of the United States."

One of my predecessors had occasion to consider the question of the right of probate judges to make charges for furnishing certificates of birth, deaths or marriages in connection with the procurement of compensation or insurance due a soldier of the first World War under the Federal War Risk Insurance Act. Opinions of the Attorney General for the year 1920, page 233. At that time the provisions of Section 1604, General Code (now Section 10501-46), were under consideration. That section read:

"The probate judge shall administer oaths, and make certificates in pension and bounty cases, without compensation."

The similarity of wording of that section and Section 2905, *supra*, should be noted. The syllabus of this opinion reads:

"Under the provisions of Section 1604, G. C. it is not only permissible for probate judges to furnish free of charge certificates of births, deaths or marriage in the matter of the procurement of compensation or insurance, due a soldier of the world war under the federal war risk insurance act, but under said

section probate judges are prohibited from making any charge for such services."

In discussing the question it is stated in the concluding paragraph of said opinion that:

"It is believed that the recent federal enactments relative to compensation or insurance to be paid soldiers, or their dependents in effect provides for a 'pension' or 'bounty' within the meaning of Section 1604, supra, \* \* \* ."

I do not consider the reasons advanced for the conclusion reached in that opinion as applicable in the matter which I have under consideration. The federal enactment then under scrutiny differs materially from the legislation here considered. However, for reasons that will hereinafter be stated, I find it unnecessary to here specifically determine whether said Servicemen's Dependents Allowance Act is a "bounty" act.

You have asked as to the furnishing, without charge, of *certificates* and certified copies of divorce decrees or any other certified documents. Section 2905, supra, is not lengthy, and at the risk of being repetitious, I again set forth its provisions and respectfully invite your attention to that portion thereof which is emphasized, to-wit:

"The clerk of courts shall make no charge whatever for certificates made for pensioners of the United States government, or any oath administered in pension and bounty cases, or on pension vouchers, applications, or affidavits." (Emphasis mine.)

Manifestly, this portion thereof has no application or particular significance with respect to certificates and certified copies. The word "pensioners" as used above means, of course, persons who are receiving or are entitled to a "pension".

I heretofore pointed out that the federal legislation or act discussed does not provide for a "pension". That portion of Section 2905, supra, just emphasized alludes to the administering of *oaths*, and nothing else, in pension and bounty cases. The furnishing of certificates and certified copies of documents is a separate and distinct function. There is nothing whatever in this section that says the clerk of courts shall make no charge for the furnishing of certified copies of documents, whether the same be for pensioners of the United States Government or not. The inhibition against the making of a charge applies solely to *certificates*.

Answering your question specifically, it is my opinion that persons now serving in the armed forces of the United States are not entitled to

receive from the clerk of courts certificates and certified copies of divorce decrees or other certified documents for the purpose of establishing dependency under the provisions of the Servicemen's Dependents Allowance Act of 1942 without charge being made therefor.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.