

OPINION NO. 70-039**Syllabus:**

A Soldiers' Relief Commission has only that authority provided by law and may not disregard the residency requirement in determining eligibility for veterans' relief under Sections 5901.02 to 5901.15, inclusive, Revised Code. Opinion No. 707, Opinions of the Attorney General for 1957, approved and followed.

To: C. Howard Johnson, Franklin County Pros. Atty., Columbus, Ohio

By: Paul W. Brown, Attorney General, April 8, 1970

You have requested my opinion on behalf of the Franklin County Soldiers' Relief Commission, who ask whether the recent United States Supreme Court ruling nullifies the provisions of Section 5901.08, Revised Code, with respect to the residency requirement.

Sections 5901.02 through 5901.15, inclusive, of the Ohio Revised Code, provide for the establishment in each county of a Soldiers' Relief Commission and provides specific authority to the commission to provide relief to indigent veterans and their families under certain conditions. This program is separate and distinct from the other public assistance programs of the State of Ohio. There are five state-wide programs of public assistance presently operative in the State of Ohio, authorized specifically by the General Assembly and set out in several chapters of Title 51, Revised Code. Each of these public assistance programs are administered by the county welfare departments under the supervision of the Department of Public Welfare, State of Ohio. The State determines the standards, amounts of minimum grants to be paid and sets the rules and regulations by which the county welfare department administers the program. The county funds used in these programs are a very small part of the expenditure in the county, as these programs are largely financed by state and federal funds.

The Soldiers' Relief Commission is a creature of statute and as a result, has only that authority which is provided by law. It should be noted, however, that except for certain expressed eligibility requirements, this commission has been granted a great deal of discretionary power.

The authority of a Soldiers' Relief Commission was discussed in the case of State, ex rel. Lentz v. DePue, 71 Ohio App. 83 (1941), wherein the Court of Appeals stated at page 85:

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"It is seen, therefore, that, first, the commission determines who shall receive the relief each year; and in what amount; second, they must certify to the county commissioners how much money will be required for relief during the ensuing year; and third, Section 2937, General Code, provides the commission must be 'satisfied that those so recommended, or any of them are in need of assistance and are entitled thereto under these provisions.'

"The latter part of Section 2939, General Code, provides that upon the recommendation of a township or ward committee, the commission, at any meeting, may increase, decrease or discontinue any allowance theretofore awarded, which action shall be certified to the county auditor and he shall amend his list accordingly.

"The securing of the relief provided for in these statutes is not just a matter of asking for it. It is a matter at all times within the discretion and control of the commission and the person awarded such relief has no vested right in a continuation of awards nor in any specific amount of award. It must be provided for in advance annually so that a levy may be made to provide the funds. The statutes do authorize relief in emergency cases, even though such applicant was not reported and included in the lists furnished by a township or ward committee or certified to the auditor by the commission, but again, such emergency relief is within the sole discretion of the commission. * * *

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* * * [/T/]he relief provided for under the statutes here being considered does not constitute a pension. It is what the statute designates it to be, to wit, relief to the 'needy soldiers, sailors and marines, and of their needy parents, wives, widows, and minor children,' etc. (Section 2934, General Code), a temporary, changing, fluctuating gratuity to be awarded under the control and discretion of the commission created by the act. * * *

(Emphasis added.)

General Code Section 2937, referred to therein, is now Section 5901.12, Revised Code, and Section 2939, General Code, is now Section 5901.14, Revised Code. Authority for emergency relief is presently found in Section 5901.15, Revised Code.

Section 5901.08, Revised Code, 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 careful-

ly 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, and 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.)

The Commission has only the authority set out in Section 5901.-12, Revised Code, to determine which applicants "are in need of assistance" and are entitled thereto under these provisions.

As the Court stated in the Lentz case, supra, there is no vested right to relief under this program, which is merely a gratuity with eligibility based upon specific factors as provided by these statutes.

Sections 5901.02 through 5901.15, Revised Code, have been discussed at length by several of my predecessors. All of these previous opinions are relevant inasmuch as these statutes have not been substantially changed in many years.

In Opinion No. 568, Opinions of the Attorney General for 1951, page 325, the syllabus reads in part as follows:

"In order for an applicant to qualify for relief under the soldiers' relief act, Section 2930, et seq., General Code, the only residence requirement is that he shall have been a bona fide resident of the state for one year and of the county in which application is made for a period of six months next prior to the first Monday in May of the year in which his eligibility is determined, as provided in Section 2934, et seq., General Code. * * *"

In Opinion No. 693, Opinions of the Attorney General for 1951, page 421, the fourth paragraph of the syllabus reads as follows:

"4. In order that a soldier, sailor or marine or any of his dependents mentioned in Section 2934, General Code, may obtain relief under the Soldiers' Relief Law, Sections 2930 to 2941, General Code, proof must be furnished that in addition to the residence requirements set forth in said Section 2934, the soldier, sailor or marine by virtue of whose service relief is claimed, was duly mustered into service in the military forces of the United States." (Emphasis added.)

In Opinion No. 707, Opinions of the Attorney General for 1957, the first paragraph of the syllabus reads as follows:

"1. An applicant for soldiers' relief must have been a bona fide resident of the state for one year and of the county six months at some time prior to the first Monday of May, in order to be eligible

for soldiers' relief under the provisions of Section 5901.08, Revised Code."

As shown at page 265 of this opinion, the residence requirement was first passed by the General Assembly in 1888.

The United States Supreme Court decision rendered in Shapiro v. Thompson, 89 S. Ct. 1322 (1969), spoke only to the specific statutes of Connecticut, Pennsylvania and District of Columbia, which provided a one-year residency requirement for Aid to Dependent Children or Aid to the Disabled, both of which are public assistance categories financed by federal-state funds and run in accordance with the standards set by federal and state law and regulation. They are programs for which state-wide standards as to eligibility and amounts of assistance have been promulgated and the county administration of these programs is bound by the federal-state standards.

The Soldiers' Relief Commission has the authority to use a wide discretion in determining the necessity for relief and amount of grants to be paid. The General Assembly has provided a gratuity and could abolish it at any time it sees fit. Until the General Assembly changes the provisions of this specific statute are invalid, the law must be followed as intended by the legislature.

Inasmuch as the statute requires proof of a bona fide residency prior to a consideration of need for eligibility to receive this gratuity and the General Assembly has not seen fit to amend Section 5901.08, Revised Code, in this regard it is my opinion and you are hereby advised that a Soldiers' Relief Commission has only that authority provided by law and may not disregard the residency requirement in determining eligibility for veterans' relief under Sections 5901.02 to 5901.15, inclusive, Revised Code. Opinion No. 707, Opinions of the Attorney General for 1957, approved and followed.