

## OPINION NO. 75-027

**Syllabus:**

A determination made by the Commissioners of the Sinking Fund pursuant to Article VIII, Section 2j., Constitution of Ohio, concerning an applicant's eligibility for compensation from the Vietnam Conflict Compensation Fund, is not appealable pursuant to R.C. 119.12.

To: Randall W. Sweeney, Director, Ohio Vietnam Veterans Bonus Commission, Columbus, Ohio

By: William J. Brown, Attorney General, April 24, 1975

You have requested my opinion on the following question:

"Is a determination made by the Director of the Ohio Vietnam Veterans Bonus Commission, and affirmed by The Commissioners of the Sinking Fund denying compensation to a veteran from the Vietnam Conflict Compensation Fund under Article VIII, Section 2j of The Ohio Constitution and Sections 129.45 and 129.46 of The Ohio Revised Code, and pursuant to The Commissioners of the Sinking Fund Rule VCcf-1-29, "Review Of Allowance Or Disallowance Of A Claim For Compensation", a final appealable order?"

Your specific concern is whether such a determination by the director and commissioners is subject to review by a court pursuant to R.C. 119.12. R.C. Chapter 119 sets out the Administrative Procedure Act, and R.C. 119.12 permits an adversely affected party to appeal to the Court of Common Pleas of Franklin County from an adjudication by an administrative agency.

The Vietnam Veterans Bonus is provided for in detail by Article VIII, Section 2j, Constitution of Ohio, which reads in pertinent part:

"The board of commissioners created by section 8 of Article VIII of the Ohio Constitution shall, forthwith upon the adoption of this amendment, proceed to issue and sell, from time to time, bonds or notes of the state in such amounts of face value as are necessary to provide the funds, or such part thereof, as may be required to pay the compensation and the expenses of administering this section. The aggregate face value of bonds or notes so issued shall not exceed three hundred million dollars. The full faith and credit of the state is hereby pledged for the payment of such bonds or notes.

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"Out of the proceeds of the sale of all bonds or notes, that amount that represents accrued interest, if any, shall be paid into the state treasury into a fund to be known as the Vietnam Conflict Compensation Bond Retirement Fund, and the balance shall be paid

into the state treasury into a fund to be known as the Vietnam Conflict Compensation Fund. The General Assembly may appropriate and cause to be paid into the Vietnam Conflict Compensation Bond Retirement Fund or the Vietnam Conflict Compensation Fund, out of the funds in the treasury not otherwise appropriated, such amount as is proper for use, upon order of the commissioners for the purposes for which such funds are created. If the General Assembly appropriates any funds to the Vietnam Conflict Compensation Fund prior to the time the commissioners have issued bonds or notes of the aggregate amount of face value authorized in this section, the aggregate amount of face value of bonds or notes so authorized to be issued shall be reduced by the amount of the funds so appropriated.

" \* \* \* \* \*

"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. Persons medically discharged or medically retired from service due to combat related disabilities sustained in Vietnam service shall be paid five hundred dollars. Service in the Merchant Marine of the United States shall not be considered for the purpose of this section. 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.

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"Either the surviving spouse, or the surviving child or children, or the surviving parents, including persons standing in loco parentis for one year preceding commencement of service in the armed forces of the United States, of a deceased person shall be paid the same amount of compensation that the deceased would have been entitled to receive under this section, if living. 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 as herein designated, are entitled to one thousand dollars, regardless of the amount of compensation which the deceased would have been entitled to receive under this section, if living. The amount of compensation payable to such survivors shall be payable only to one of the three groups of survivors herein designated in the order in which said groups are named.

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"The General Assembly shall provide by law for an educational assistance bonus which may be taken in lieu of the cash bonus by any person who served on active duty in the armed forces of the United States and who qualifies for a cash bonus under this section. The educational assistance bonus shall offer financial assistance at any educational institution deemed appropriate by the General Assembly. Such financial assistance shall be equal to twice the amount of the cash bonus for which such person qualifies under this section.

"No sale or assignment of any right or claim to compensation under this section shall be valid, no claims of creditors shall be enforceable against rights or claims to or payments of compensation under this section, and no fees shall be charged for services in connection with the prosecution of any right or claim to compensation or the collection of any compensation under this section. The commissioners shall have complete charge of making payments of the compensation provided for in this section and shall adopt and promulgate regulations governing their procedure in connection therewith, including determinations as to who are proper beneficiaries and the amounts to which such beneficiaries are entitled, determinations as to whether an applicant has the necessary residence requirements, and such other regulations that are necessary and proper. All applications for payment of compensation or educational bonuses under this section shall be made to the commissioners before January 1, 1978.

"The commissioners shall select and appoint such legal counsel and employees as are necessary, fix their compensation and prescribe their duties, and all such appointees shall serve at its pleasure. When practical, the commissioners shall employ Vietnam veterans to fill such positions.

"The commissioners shall permit review of individual records of claims by representatives of recognized veterans organizations when authorized to do so by the applicant.

"There is hereby transferred to the Vietnam Conflict Compensation Fund, for the purpose of defraying the immediate cost of administration and compensation, out of the funds known as the 'Korean Conflict Compensation Fund' and the 'Korean Conflict Compensation Bond Retirement Fund' created by Section 2d of Article VIII of the Ohio Constitution, the balance remaining after provision for payment of all outstanding bonds or notes, coupons, and charges.

"The people of this state declare it to be their intention to in no manner affect or change any of the existing provisions of the constitution except as herein set forth. The provisions of this section shall be self executing.

"Upon payment of all valid claims for cash compensation made within the limitations of time as prescribed herein, the commissioners may transfer any funds in the Vietnam Conflict Compensation Fund to the Vietnam Conflict Compensation Bond Retirement Fund.

"Upon retirement of all of the bonds or notes that may be issued hereunder and the payment of all valid claims for cash compensation made within the limitations of time as prescribed herein, the commissioners of the sinking fund shall make a final report to the General Assembly, and any balance remaining in any of the funds herein created and referred to shall be disposed of as shall be provided by law."

(Emphasis added.)

R.C. 129.45 to which you refer provides that:

"The commissioners of the sinking fund in administering the Vietnam Veterans' bonus authorized by Section 2j of Article VIII, Ohio Constitution, shall award an educational assistance bonus to any person who served on active duty in the armed forces who applies for such bonus and who the commissioners determine is qualified for a cash bonus under such section subject to the following limitations:

"(A) Any person who receives a payment from an educational assistance bonus shall not receive any cash bonus or any portion thereof and no person who has received a cash bonus shall receive an educational assistance bonus payment;

"(B) The value of the educational assistance bonus

shall not exceed twice the amount of cash bonus to which the veteran otherwise qualifies;

"(C) The educational assistance bonus shall provide either reimbursement to a qualified veteran or direct payment to a qualified institution of any educational tuition or similar fee paid or to be paid for the applicant's education or training after January 1, 1974, in the manner and form as may be provided pursuant to rules adopted by the commissioners of the sinking fund;

"(D) Reimbursement or direct payment of educational fees shall be made only if the tuition or fee has been paid by the veteran or is to be paid by the commission to an educational institution designated on the beginning date of the educational term for which reimbursement or payment is requested, as an approved institution by an Ohio or other state approving agency or the veterans administration, under Subchapter I of Chapter 36, Title 38, U.S.C.A., in the manner and form as may be provided pursuant to rules adopted by the commissioners of the sinking fund;

"(E) No reimbursement or direct payment of educational fees shall be made after December 31, 1982;

"(F) In administering Sections 129.45 and 129.46 of the Revised Code the commissioners shall, in accordance with Chapter 119. of the Revised Code, adopt and promulgate regulations governing:

- "1. The sale of bonds or notes necessary to provide the funds, or such part thereof, as may be required to pay the cash and educational assistance bonuses and the expenses of administering Sections 129.45 and 129.46 of the Revised Code;
- "2. The procedure whereby the commissioners make payment of the bonuses, including determinations as to who are proper beneficiaries, the amounts to which the beneficiaries are entitled, and whether an applicant met the necessary residence requirements, and such other matters as are necessary and proper for the commissioners to determine."

(Emphasis added.)

Under Article VIII, Section 2j. *supra*, the commissioners of the sinking fund are given complete charge over the determination of eligibility for payments. Furthermore, this section is made self-executing by its own language, although it does provide that the educational bonus is to be implemented pursuant to laws enacted by the General Assembly. Therefore, with the exception of the educational bonus, the commissioners' authority to provide for payments is derived solely from Article VIII, Section 2j., *supra*, and such power, including the determination of an applicant's eligibility, may not be restricted or limited by legislation, R.C. 129.45(F)(2) notwithstanding. Pfau v. City of Cincinnati, 142 Ohio St. 101 (1943); State ex rel. Mitchell v. Council of the Village of

Milan et al., 133 Ohio St. 499 (1938); Link v. The Public Utilities Commission of Ohio, 102 Ohio St. 336, 338 (1921).

In a similar provision Article II, Section 35, Constitution of Ohio, grants the Industrial Commission "full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of the employers". That Section further states that the decision shall be final. It has repeatedly been held that Article II, Section 35, *supra*, gives the Industrial Commission exclusive jurisdiction over the question of whether there has been a violation of safety requirements, which would result in a right to compensation. State, ex rel. Ruggles v. Stebbins, 41 Ohio St. 2d 228 (1975); State, ex rel. Truckey, v. Indus. Comm. 29 Ohio St. 2d 132 (1972); State, ex rel. Haines v. Industrial Commission, 29 Ohio St. 2d 15 (1972); State, ex rel. Reed, v. Industrial Commission, 2 Ohio St. 2d 200 (1965).

It should be noted that challenges in the above cases to the Commission's determinations were not by appeal pursuant to R.C. Chapter 119, but by actions in mandamus. Furthermore, the Court's decision to grant or deny a writ of mandamus depended on a showing of an abuse of discretion by the Commission.

As noted above, Article VIII, Section 2j., *supra*, grants the commissioners of the sinking fund "complete charge" over the payment of compensation, including determination of the eligibility of applicants. It appears, therefore, that, irrespective of R.C. 129.45(F)(2), a determination by the commissioners pursuant to Article VIII, Section 2j., *supra*, is conclusive, and an appeal to the Court of Common Pleas of Franklin County, as provided by R.C. 119.12, is not an available remedy. This, of course, does not preclude an applicant from pursuing other courses of legal action available to him in the event that he believes that the commissioners have abused their discretion.

In specific answer to your question, it is my opinion and you are so advised that a determination made by the Commissioners of the Sinking Fund pursuant to Article VIII, Section 2j., Constitution of Ohio, concerning an applicant's eligibility for compensation from the Vietnam Conflict Compensation Fund, is not appealable pursuant to R.C. 119.12.