

diminution of sentence for good behavior provided for in section 2210, General Code.

4. Life termers convicted and sentenced for the crime of murder in the second degree, prior to the enactment of section 2210-1, General Code, are eligible for parole at the expiration of ten years' imprisonment, as provided by section 2169, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4456.

OHIO NATIONAL GUARD—MEMBERS NOT IN FEDERAL SERVICE—
MAY NOT RECEIVE BENEFITS OF SOLDIERS RELIEF COMMISSION.

SYLLABUS:

Members and former members of the Ohio National Guard who were not mustered into federal service are not entitled to the benefits of relief to be allowed by a soldiers' relief commission under the provisions of sections 2930 to 2941, General Code.

COLUMBUS, OHIO, June 27, 1932.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge a request for my opinion over the signature of your assistant which reads as follows:

“We would appreciate an opinion from your office, on the following question, to-wit:

Are members, and former members of the Ohio National Guard, entitled to the benefits of relief to be allowed by the Soldiers Relief Commission, under the provisions of §§ 2930 to 2941?”

I assume for the purpose of this opinion that the member or members in question were not at any time engaged in active federal service.

Section 2934, General Code, relative to those who are entitled to pecuniary relief allowed by soldiers' relief commission, reads:

“Each township and ward soldiers' relief committee shall receive all applications for relief under these provisions, from applicants residing in such township or ward, 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, and marines, and of their needy parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried, but again have become needy widows, who reside in such township or ward, and including the soldiers, sailors and marines of the Spanish-American war, or of the world 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, next prior to such first Monday in May, and who in the opinion of such relief committee, require aid, and are entitled to relief under these provisions."

Your question resolves itself into a determination of whether or not a member of the Ohio National Guard is a soldier within the language of the section just quoted. It is a well-known rule of statutory construction that the history of a section may be examined in order to ascertain the legislature's intent in its enactment and amendments. The first legislation of this character was enacted in 83 O. L. 232 (1886). The provision was then made with regards to union soldiers, etc., only.

While various amendments occurred thereafter, the act continued to apply only to Union soldiers until April 14, 1900, when the word "Union" was omitted, and the section then referred to all indigent soldiers, sailors and marines. The purpose of this amendment, following closely after the Spanish-American War, was quite evidently to include the soldiers of that war within the meaning of the section. Again, on May 6, 1917, there was an amendment which contained an express provision to include the indigent soldiers, sailors and marines of the Spanish-American War. The significance of this change is not apparent, since these veterans were already included in the general language of the section as amended in 1900. On May 10, 1919, the legislature again amended this section so as to include indigent soldiers, etc., who served in the war against Germany, and the 89th General Assembly made the final change in the statute to its present form. The latest enactment did not alter the section in relation to the matter here presented.

It follows from the above history that this section contemplates that the soldiers to whom relief may be afforded be soldiers who were in federal service (Opinions of the Attorney General for 1931, No. 2976), and consequently does not include members of the Ohio National Guard.

In this respect it is enlightening to examine the statutes relative to the powers and duties of a soldiers' relief commission in counties where a burial plot has been provided or purchased, which sections are in *pari materia* with the ones here under consideration.

Section 2949, General Code, provides in part as follows:

"The word 'Soldiers' shall mean: An honorably discharged soldier, sailor, or marine, who served in the army or navy of the United States of America."

Construing such section in connection with section 2934, General Code, it follows that members of the Ohio National Guard are not included within the terms of section 2934 of the General Code.

A consideration of section 1909, General Code, relative to who may be admitted to the Ohio Soldiers' and Sailors' Home further strengthens the conclusion above indicated. Such section provides as follows:

"All honorably discharged officers, soldiers, sailors and marines, who served in the regular or volunteer forces of the United States, including the Ohio national guard, who have actively served in the army of the United States, and who have been citizens of Ohio one year or more at

the date of making application for admission, who are disabled by disease, wounds or otherwise, and by reason of such disability incapable of earning their living, and all soldiers of the national guard of Ohio who heretofore have lost or hereafter may lose an arm, or leg, or his sight, or may become permanently disabled from any cause, while in the line and discharge of duty, and are not able to support themselves, may be admitted to the home under such rules and regulations as its board of trustees adopts."

It should be noted that the above section indicates that when the legislature intended members of the Ohio National Guard to be included within the terms of a relief section they have specifically mentioned them therein.

It follows from the above discussion that since section 2934, General Code, relative to who are entitled to benefits of relief to be allowed by a soldiers' relief commission under the provisions of sections 2930 to 2941, General Code, includes "soldiers, sailors and marines" without specifically mentioning members of the Ohio National Guard, and taking into consideration the definition of soldiers contained in section 2949, General Code, which is in *pari materia* with section 2934, and in view of the fact that the legislature when intending that the members of the Ohio National Guard should participate in the benefits of a relief section specifically mentions the same, I am of the opinion that members and former members of the Ohio National Guard who were not mustered into federal service are not entitled to the benefits of relief to be allowed by the soldiers' relief commission under the provisions of sections 2930 to 2941, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4457.

LEASEHOLD—HELD BY ADJUTANT GENERAL—LEGISLATURE MUST AUTHORIZE DISPOSAL OF SUCH INTEREST—PROPERTY SO HELD NOT SUBJECT TO TAXATION.

SYLLABUS:

1. *Where, in connection with the execution of an indenture of lease, and as an inducement therefor, the Adjutant General of Ohio, as lessee, receives a written agreement from the lessor, which authorizes him, as such lessee, to purchase the leased property for a stipulated sum, and receives as a credit on such purchase price the amount of the rentals paid after deducting therefrom the taxes, assessments, insurance premiums, trustees' fees and interest on the unpaid portion of the purchase price, such agreement or certificate constitutes property, and may not be surrendered by the Adjutant General without authority from the legislature.*

2. *Where the Adjutant General is the lessee under written indenture of lease, for a period of two years, which indenture gives to the Adjutant General the right to renew such lease for like periods, indefinitely, the Adjutant General is not liable for the taxes assessed against the leased property, even though the county*