

1472.

BONDS—CITY OF BEDFORD, CUYAHOGA COUNTY, \$10,000.00.

COLUMBUS, OHIO, November 25, 1939.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the City of Bedford, Cuyahoga County,
Ohio, \$10,000.

The above purchase of bonds appears to be part of a \$420,617.63 issue of special assessment refunding bonds of the above city dated April 1, 1936. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission of Ohio under date of October 16, 1936, being Opinion No. 6203.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1473.

STUDENTS—MUSTERED INTO UNITED STATES MILITARY SERVICE—WHILE MEMBERS, STUDENT ARMY TRAINING CORPS—ENTITLED TO BENEFITS SOLDIERS' RELIEF ACT—STATUS: ACTUAL MUSTER INTO FEDERAL MILITARY SERVICE—QUESTION OF FACT TO DETERMINE IN EACH CASE.

SYLLABUS:

1. *Students, who while members of the Student Army Training Corps (S. A. T. C.) were actually mustered into the military service of the United States, are entitled to the benefits of the Soldiers' Relief Act.*

2. *Whether or not a member of the Student Army Training Corps (S. A. T. C.) was actually mustered into the military service of the Fed-*

eral Government is a question of fact to be determined by the proper authority in each particular case.

COLUMBUS, OHIO, November 25, 1939.

HON. CARL W. RICH, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion, which reads as follows:

"I have received a request for an opinion from the Soldiers' and Sailors' Relief Commission of this county with regard to whether or not members of the Student Army Training Corps (S. A. T. C.) are eligible for soldiers' and sailors' relief. Since this is a question of State-wide importance, I would appreciate your opinion with regard to the matter."

The Student Army Training Corps (S. A. T. C.) is to be distinguished from the Reserve Officers Training Corps (R. O. T. C.), which latter was first created and for which provision was first made in the National Defense Act of 1916 (Vol. 39, Statutes at Large of the United States, page 192, sections 40 to 51, inclusive).

I am informed by competent military authority that, due to the exigencies of the times, it was impossible, or at least impractical, for the War Department immediately to prescribe or promulgate the regulations necessary for the government and administration of the Reserve Officers Training Corps, and that for this reason under other broad provisions of the National Defense Act of 1916, including Section 56, the War Department created what was denominated by the War Department the Student Army Training Corps. Under these regulations members of the Student Army Training Corps were ordinarily mustered into the military service of the United States; that is, they were, as the expression is used, "Federalized," although, in some instances, through neglect or otherwise, it sometimes happened that certain members of the corps in question were not inducted or mustered into the Federal military service.

Any member of such corps who became a part of the armed forces of the United States would be entitled to all rights, privileges and perquisites granted to members of such armed forces by the Congress of the United States or by the legislature of the proper state.

The Soldiers Relief Act (Section 2934, G. C.), provides:

"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." (Emphasis the writer's.)

Construing this section, it was held in Opinion No. 2976, Opinions, Attorney General, 1931, Vol. I, p. 278, as follows:

"The provisions of section 2930, et seq. of the General Code, extend the relief therein provided to all indigent soldiers, sailors and marines and their indigent parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried but again have become indigent widows, irrespective of the fact that such soldiers, sailors and marines may not have had any war service."

An examination of the body of this opinion will show that the entire discussion was directed to "members of the armed forces of the United States," and in Opinion No. 4456, Opinions, Attorney General, 1932, Vol. II, p. 810, the then Attorney General held:

"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."

In the opinion proper, after giving a short resume of the history of the Act under consideration, it was said at page 811:

"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."

I concur in the reasoning and with the conclusions of my predecessor in office in the two opinions above cited, and I am of the opinion that to be eligible for soldiers' and sailors' relief, the soldier or sailor in question must have served in one of the component parts of the army of the United States while in the service of the United States Government, or in some other of the armed services of the United States. And, it follows, therefore, that if a member of the Student Army Training Corps was actually mustered into the Federal service he would be entitled to the relief provided for by Sections 2930 to 2941, inclusive, of the General Code, provided he otherwise meets the requirements of the sections in question.

Whether or not a member of the corps in question was actually in the military service of the United States is obviously a question of fact, to be determined in each particular case.

In view of the foregoing, and in specific answer to your question, it is my opinion that:

1. Students, who while members of the Student Army Training Corps (S. A. T. C.) were actually mustered into the military service of the United States, are entitled to the benefits of the Soldiers' Relief Act.

2. Whether or not a member of the Student Army Training Corps (S. A. T. C.) was actually mustered into the military service of the Federal Government is a question of fact to be determined by the proper authority in each particular case.

Respectfully,

THOMAS J. HERBERT,
Attorney General.