

This happened before a charter existed and the court in discussing the matter held that it was clearly implied that the duty devolved upon the municipal council to fix the rates for current from the city's plant and that other officers, agents or employes in doing so for the city was unwarranted.

In the instant case, we have even a stronger situation in that the city charter of Cleveland expressly provides that the rates must be approved by council.

In *Hommel and Co. vs. Woodsfield*, 122 O. S. 148, the first branch of the syllabus reads:

“Where the board of public affairs of a village has contracted for the delivery to such village of supplies or material, without authorization and direction by ordinance of council and without advertising for bids as required under Sections 4328 and 4361, General Code, such contract imposes no valid obligation upon the village. (*Ludwig Hommel & Co. vs. Incorporated Village of Woodsfield*, 115 Ohio St. 675, 155 N. E. 386, approved and followed.)”

In view of the above authorization, it is my opinion that the city is not estopped to deny the lack of authority of the board of control to establish the rate provided in this case when the same was not approved by council as provided for in the charter of the City of Cleveland. My Opinion No. 613 is, accordingly, affirmed.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

1935.

TAXES AND TAXATION—WORLD WAR VETERAN—WHERE HE PURCHASES REAL ESTATE OR OTHER PROPERTY FROM PROCEEDS OF DISABILITY COMPENSATION OR INSURANCE AWARDED TO VETERANS—SUCH PROPERTY NOT EXEMPT FROM TAXES.

SYLLABUS:

*Real estate or other property in this state purchased by a World War veteran or his guardian from the proceeds of disability compensation awarded to the veteran under the provisions of Part II of the*

*World War Veterans' Act, 1924 (U. S. C. Title 38, Secs. 471, et seq.), or disability benefits under a policy of war risk insurance issued to such veteran under the provisions of Part III of said Act (U. S. C. Title 38, Secs. 511, et seq.), or from moneys paid to such veteran or his guardian as adjusted service compensation to the veteran under the World War Adjusted Compensation Act (U. S. C. Title 38, Secs. 591, et seq.), is not exempt from state or local property taxes. (Opinions of Attorney General, 1931, Vol. I, page 80, overruled; Opinions of Attorney General, 1933, Vol. I, page 108, approved and followed.)*

COLUMBUS, OHIO, February 17, 1938.

HON. D. HARLAND JACKMAN, *Prosecuting Attorney, London, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you request my opinion on the question therein stated "whether or not a parcel of real estate purchased by the guardian of a World War veteran with funds received from the federal government is exempt from taxation." You do not state whether the parcel of real estate referred to in your communication was purchased by the guardian from the proceeds of disability compensation awarded to the veteran under the provisions of Part II of the World War Veterans' Act (U. S. C. Title 38, Secs. 471, et seq.), or disability benefits under a policy of war risk insurance issued to such veteran under the provisions of Part III of said Act (U. S. C. Title 38, Secs. 511, et seq.), or whether such real estate was purchased by the guardian from moneys paid to him as adjusted service compensation to the veteran under the World War Adjusted Compensation Act (U. S. C. Title 38, Secs. 591, et seq.).

Touching the question presented in your communication, it is noted that in and by the World War Veterans' Act of 1924, above referred to, it was provided:

"The compensation, insurance and maintenance and support allowance payable under Parts II, III and IV, respectively, shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation." Act of June 7, 1924, chap. 320, Sec. 22; U. S. C. Title 38, Sec. 454.

More immediately applicable to the question of the exemption from taxation of real estate or of other property purchased by a veteran or by his guardian out of moneys paid to such veteran or to his guardian as adjusted service compensation under the World War Adjusted Com-

pensation Act which has been carried into the United States Code as Chapter 11 of Title 38, it is provided:

“No sum payable under this Act to a veteran or his dependents, or to his estate, or to any beneficiary named under Part 5, no adjusted-service certificate, and no proceeds of any loan made on such certificate shall be subject to attachment, levy, or seizure under any legal or equitable process, or to National or State taxation, and no deductions on account of any indebtedness of the veteran to the United States shall be made from the adjusted-service credit or from any amounts due under this Act.” U. S. C. Title 38, sec. 618.

Construing and applying the above quoted sections as the same were found in the World War Veterans' Act and in the World War Adjusted Compensation Act, respectively, in the consideration of questions of the kind here presented, it was held in most of the jurisdictions where the question was involved that these sections did not exempt real estate or other property purchased by a World War veteran or by his guardian, from state and local taxes, whether such real estate or other property was purchased from moneys paid as disability compensation, disability benefits or as adjusted service compensation. See *State vs. Wright*, 224 Ala., 357; *Ford vs. Harrington*, 189 Ark., 48; *Martin vs. Guilford County*, 201 N. C. 63; *Lambert vs. Guilford County*, 241 N. C., 67; *Raburn vs. McIntosh County*, 168 Okla., 4; *Johnson vs. Yankton County*, 61 S. D., 372; *State vs. Blair*, 165 Tenn., 519; *Saxe vs. Board of Revision*, 311 Pa., 545. The contrary was held by the Supreme Court of Georgia in the case of *Rucker vs. Merck*, 172 Ga., 793, with respect to real estate purchased with funds received by a veteran under the provisions of the World War Veterans' Act. However, this case was in effect overruled by the later decision of the Supreme Court of that state in the case of *Augusta vs. Ransom*, 179 Ga., 179.

However, this question was put to rest by the decision of the Supreme Court of the United States in the case of *Trotter Guardian, vs. State of Tennessee*, 290 U. S., 354, affirming the decision of the Supreme Court of Tennessee in the case of *State vs. Blair*, supra. In this case, it appeared that the veteran became mentally incompetent by reason of his service in the army during the World War; that thereafter the United States government paid disability compensation to his guardian in accordance with the provisions of Part II of the World War Veterans' Act, and disability benefits under a policy of war risk insurance in accordance with the provisions of Part III of this Act. Some time later the guardian purchased certain land and buildings thereon

and paid for the same out of moneys theretofore received from the government. Referring to Sections 454 and 618 of Title 38 United States Code, but quoting only the first section here referred to, the court in its opinion (Cardozo, J.) said:

"Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced. *Chicago Theological Seminary vs. Illinois*, 188 U. S. 662, 674, 47 L. Ed. 641, 649, 23 S. Ct. 386. On the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers. The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. *McIntosh vs. Aubray*, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. Cf. *McIntosh vs. Aubrey*, *supra*; *State ex rel. Smith vs. Shawnee County*, 132 Kan. 233, 294 Pac. 915; *Wilson vs. Sawyer*, 177 Ark. 492, 6 S. W. (2d) 825; and *Surace vs. Danna*, 248 N. Y. 18, 24, 25, 161 N. E. 315. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here."

The case of *Trotter vs. State of Tennessee*, *supra*, was decided December 4, 1933. Thereafter, on August 12, 1935, an act was passed by Congress amending Section 21 of the World War Veterans' Act, 1924, as amended, so as to further safeguard moneys paid to veterans under disability under any law administered by the Veterans' Administration. Section 3 of this Act of August 12, 1935, provides as follows:

"Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or

under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments. Section 4747 of the Revised Statutes and Section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries."

It is noted that Section 3 of the Act of August 12, 1935, which has been carried into the United States Code as Section 454a of Title 38, repeals Section 4747 of the Revised Statutes (prohibiting the attachment, levy or seizure of moneys due pensioners) and likewise Section 22 of the World War Veterans' Act, 1924, which was Section 454 of Title 38 U. S. C. It is further noted from the provisions of this later enactment that the exemption from taxation thereby provided for with respect to payments made to, or on account of, a beneficiary under any of the laws relating to veterans, shall not extend "to any property purchased in part or wholly out of such payments." In the case of *Lawrence, Guardian, vs. Shaw and Others, Members of and Constituting the Board of Commissioners of Hartford County*, 300 U. S., 245, in which case was involved the question of the exemption from taxation of bank deposits standing to the credit of a veteran or his guardian and which were made from moneys paid to the veteran as compensation and insurance, the court in its opinion, after citing with apparent approval the case of *Trotter vs. Tennessee*, supra, on the point involved in that case, referred to the exemption provisions of the World War Veterans' Act, 1924, and to those of the later Act of 1935, above quoted, as follows:

"The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation.' The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary.' There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and was expressly made

applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive."

Upon the considerations above noted and by way of specific answer to the question presented in your communication, I am of the opinion that real estate or other property purchased by a World War veteran or by his guardian with funds received from the federal government under the acts of Congress hereinabove referred to, is not exempt from taxation.

It is proper to note in this connection that the question presented in your communication has been the subject of consideration in two former opinions of this office. In the first opinion here referred to, which was rendered under date of January 26, 1931, Opinions of the Attorney General, 1931, Vol. I, page 80, it was held that lands purchased with funds paid to the guardian of a veteran under the World War Veterans' Act are not taxable until the termination of such guardianship. In the other opinion here noted, which is under date of February 6, 1933, Opinions of the Attorney General, 1933, Vol. I, page 108, a contrary conclusion was reached on this question. On the considerations above noted and discussed, I am required to overrule the first of the former opinions above noted and to approve the other.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

1936.

CHARTER CITY—ORDINANCE—POWER TO CREATE INDUSTRIAL PEACE BOARD—MAY CONTINUE BOARD—ESTABLISH MUNICIPAL ADVISORY BOARD—PUBLIC PURPOSE—POLICE REGULATION—PAYMENT COMPENSATION AND EXPENSES OF BOARD.

*SYLLABUS:*

1. *A charter city has the power to create by ordinance an Industrial Peace Board for the purpose of promoting industrial harmony and to assist in the maintenance of law and order.*
2. *Such charter city has the further power to provide by ordinance for the continuation of such board and for establishing same as a Municipi-*