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RELIEF, SOLDIERS'

1. RESIDENT OF STATE ONE YEAR, COUNTY SIX MONTHS PRIOR TO FIRST MONDAY IN MAY—ELIGIBILITY REQUIREMENTS, § 5901.08 RC.
2. RESIDENCE OF STATE AND COUNTY MUST HAVE BEEN CONTINUOUS.
3. APPLICANT MUST RESIDE ON FIRST MONDAY IN MAY IN TOWNSHIP OR WARD TO BE INCLUDED ON TOWNSHIP OR WARD RELIEF LIST—§5901.08 RC.
4. SOLDIERS' RELIEF COMMISSION, AUTHORITY TO CONTINUE PAYMENT FOR THE PERIOD SET OUT IN §5901.13 RC.

SYLLABUS:

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.

2. An applicant for soldiers' relief must have at some time been a resident of the state continuously for one year, and of the county continuously for six months, in order to be eligible for relief under the provisions of Section 5901.08, Revised Code.

3. An applicant for soldiers' relief must reside and be residing, on the first Monday of May in the township or ward in which he applies, in order to be included on the ward or township relief list made up as provided in Section 5901.08, Revised Code.

4. Where a person eligible, under Section 5901.08, Revised Code, for soldiers' relief has been placed on the list of recipients for a certain year under the provisions of Section 5901.13, Revised Code, and thereafter removes to another county or without the state, the soldiers' relief commission has authority to continue payment of his relief during the remainder of such period.

Columbus, Ohio, July 3, 1957

Hon. Robert L. Marrs, Prosecuting Attorney
Butler County, Hamilton, Ohio

Dear Sir:

I have for consideration your request for my opinion in which the following questions are raised:

“No. 1. How long must an applicant for Soldiers Relief be a resident of the state and of the county before he becomes eligible and can be given Soldiers Relief?”

“No. 2. If the answer to question No. 1 is that only one year residence in the state and six months in the county prior to filing application is the requirement, then is it necessary that the applicant have been a resident in the state one year and in the county six months for the entire one year period and the entire six months period to be eligible for Soldiers Relief?”

“No. 3. Assuming that an applicant has lived in the state and the county long enough to become eligible for Soldiers Relief but at the time of making application for Soldiers Relief has moved from the county and from the state but has not been gone long enough to acquire residency for relief purposes in the state and the county to which he has removed, is he eligible for Soldiers Relief in the county from which he moved?”

“No. 4. Assuming a veteran is on the Soldiers Relief rolls in any given county in Ohio and while on such rolls he moves from the county and assuming the need continues, how long can the Soldiers Relief Commission of the county from which he has moved legally carry him on their relief rolls? Assuming the same facts but assume that the veteran moved out of the state, how long could the Soldiers Relief Commission legally carry him on the rolls after he has left the state?”

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 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, 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.

A brief review of the laws of Ohio pertaining to soldiers’ relief disclosed that House Bill No. 316, passed May 19, 1886, Laws of Ohio, Vol. 83, page 232, and known as “An Act to provide for the relief of indigent Union soldiers, sailors and marines and the indigent wives,

widows and minor children of indigent or deceased Union soldiers, sailors and marines.”

The above act provided that the only qualification as to residence was that the report be made on or before the first Monday of June in each year, containing a list of the names of all the resident indigent Union soldiers, *etc.*, and no fixed period of time for residence was provided therein other than that they be residents on the first Monday of May.

The requirement that those residents listed, “*who have been bona fide residents of the state one year, and of the county six months, next prior to said first Monday in May*” first appeared as part of the “Soldiers Relief Act,” in Section 2 of House Bill No. 419, passed April 5, 1888, 85 Ohio Laws, p. 158. The pertinent part of Section 2, for the purposes of this opinion, provides as follows:

“ * * * and who have been bona fide residents of the state one year, and of the county six months, next prior to said first Monday in May, * * *.”

My examination further reveals that said residence requirements have been part of the soldiers or veterans relief laws to and including October 1, 1953.

Section 5901.08, Revised Code, amended in Amended House Bill No. 307, effective October 2, 1953, 125 Ohio Laws, p. 41, does not include the words “next prior to the first Monday in May.”

The General Assembly having deleted the words “next prior to the first Monday in May,” the question in your letter requires an interpretation as to the legislative intent. The Court, in the case of *Slingluff v. Weaver*, 66 Ohio St., 621, stated:

“ * * * the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

Accordingly, as to your first question, and following the rules set forth by the court in the above case, we must first attempt to ascertain the meaning of the language used in the statute.

It will be observed that Section 5901.08, Revised Code, now provides that the 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," and that on the first Monday of May of each year a list shall be made of all needy soldiers, *etc.*, "who reside in such township or ward." The list shall include soldiers, *etc.*, "who have been bona fide residents of the state one year, and of the county six months." These appear to be the *only* requirements as to residence now found in the statute, and there is no requirement, it will be noted, that such prescribed *period* of residence shall be that immediately preceding the first Monday in May. Actually it would appear to have been the legislative intent to remove such requirement by the amendment of 1953.

For the purpose of convenience I shall discuss your second and third questions together. In consideration of the said questions I deem it advisable to consider first the meaning of the word "resident." "Resident" is defined in Burrell's Law Dictionary, as follows:

"One who has a seat or settlement in a place; one who dwells, abides or lives in a place; an inhabitant; one who resides or dwells in a place for some time."

The Supreme Court of Ohio in discussing a question of residence in *Sturgeon v. Korte*, 34 Ohio St., 525, at page 535 stated:

"It is not, however, necessary that he should intend to remain there for all time. If he lives in a place, with the intention of remaining for an indefinite period of time, as a place of fixed present domicile, and not as a place of temporary establishment, or for mere transient objects, it is to all intents, and for all purposes, his residence. * * * These are well settled rules relating to the selection or change of residence, existing when the constitution was adopted, and consequently apply in all cases where a change of residence results from or depends upon choice. The question is, and must always remain, one of fact, often attended with much difficulty; but to be determined by the preponderance of evidence favoring one place as against another."

The Supreme Court of North Dakota in the case of *O'Hara v. Bismark Bank, et al.*, 178 N. W., 1017, in defining residence, said:

"The home and residence of a person is the place in which he commonly resides; a place to which, when absent, he returns,

like a bee to its hive, a carrier pigeon to its home, a bird to its nest.”

Your question further requires for my consideration and determination whether the residence in the state for one year and in the county for six months must be continuous.

In *Henrietta Twp. v. Brownhelm Twp.*, 9 Ohio 76, the court had for consideration the term “residing one year in any township of this state,” appearing in a statute which did not specifically provide when the year was to begin or to end. The court in its opinion, at page 77, said:

“In order to gain such settlement, however, I apprehend the residence must be continuous. It will not suffice that a person shall have been in a township four months in one year, four months in another, and four months in a third. The residence must have continued for one entire year from the time of its commencement. In saying that the residence must be continuous, I would not be understood as intending that a person may not be occasionally absent, provided the intention to return be open and manifest. As if, for instance, an individual should go into a township, purchase property and take up his residence, or having a family, should, with his family take up his residence in such township, in either case a settlement would be gained at the end of the year, although the individual might have been absent for days or weeks.”

These definitions, together with the interpretation of the various courts respecting residence as above set forth, should in my opinion be used and followed in determination of residence qualifications of applicants for soldiers' relief.

In answer to your second question, in view of the language noted above in the *Henrietta Township* case, I conclude that an applicant for soldiers' relief must at some time have been a resident of the state continuously for one year and of the county continuously for six months in order to be eligible for soldiers' relief under Section 5901.08, Revised Code. Such residence should be determined as stated in the court's opinion in the *Henrietta Township* case, *supra*, by regard to the rule that occasional absence may be disregarded “providing the intention to return is open and manifest.”

In answer to your third question, it will be observed that Section 5901.08, Revised Code, specifically provides:

“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 carefully into the case of each applicant * * * who resides in such township or ward. * * *” (Emphasis added.)

This language permits of no interpretation other than a plain requirement that an applicant for soldiers’ relief must reside and be residing in the township or ward on the first Monday of May, in order to be eligible for soldiers’ relief.

In answer to your fourth question, I find that one of my predecessors in office has expressed an opinion on this question, having under consideration the provisions of former Section 2930, General Code, Sec. 5901.08, Revised Code, and former Section 2938, General Code, Sec. 5901.13, Revised Code. This ruling is found in Opinion No. 2190, Opinions of the Attorney General for 1947, page 457. The first paragraph of the syllabus therein reads as follows:

“1. When a person eligible under Section 2934, General Code, for soldiers’ relief has been placed on the list of recipients for a certain year under the provisions of Section 2938, General Code, and thereafter removes to another county or without the state, the soldiers’ relief commission has authority to continue payment of his relief during the remainder of such period.”

In this ruling and the reasoning advanced in support of it, I fully concur.

In specific answer to your inquiries, therefore, it is my opinion, and you are hereby advised that:

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.

2. An applicant for soldiers’ relief must have at some time been a resident of the state continuously for one year, and of the county continuously for six months, in order to be eligible for relief under the provisions of Section 5901.08, Revised Code.

3. An applicant for soldiers’ relief must reside and be residing, on the first Monday of May in the township or ward in which he applies, in

order to be included on the ward or township relief list made up as provided in Section 5901.08, Revised Code.

4. Where a person is eligible, under Section 5901.08, Revised Code, for soldiers' relief has been placed on the list of recipients for a certain year under the provisions of Section 5901.13, Revised Code, and thereafter removes to another county or without the state, the soldiers' relief commission has authority to continue payment of his relief during the remainder of such period.

Respectfully,

WILLIAM SAXBE

Attorney General