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SOLDIER, SAILOR OR MARINE WHO WAS KILLED OR WHO DIED IN LINE OF DUTY WHILE IN MILITARY SERVICE—NEEDY PARENTS, WIDOW AND MINOR CHILDREN—ELIGIBLE FOR RELIEF TO BE ADMINISTERED BY SOLDIERS' RELIEF COMMISSION—SECTION 2930 ET SEQ., G. C.

## SYLLABUS:

Under the provisions of Section 2930, et seq., General Code, the needy parents, widow and minor children of a soldier, sailor or marine who was killed or died in line of duty while in the military service are eligible for relief to be administered by the soldiers' relief commission.

Columbus, Ohio, July 19, 1946

Honorable John S. Phillips, Prosecuting Attorney  
Chillicothe, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Are the needy parents, widow and/or minor children of a soldier, sailor or marine who was killed or died in line of duty while in the service during the time of war eligible for relief as administered by the County Soldiers and Sailors Relief Commission?”

The soldiers' relief commission is established and its powers and duties defined by Sections 2930 to 2941, inclusive, of the General Code. The only section in which the qualifications of beneficiaries entitled to the relief provided by this law are set forth is Section 2934, General Code, which reads as follows:

“Each township and ward soldiers' relief committee shall receive all applications for relief under those 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 added.)

The only question which appears to me to be raised by your inquiry is whether the death of a soldier, sailor or marine *while engaged in active service* during a war, excludes his needy parents, widow and minor children from the benefits to which they would be entitled if he died after return to civil life. In other words, are the time, place or circumstances of his death to determine their eligibility to receive the relief provided by the law?

I can see nothing in the terms of the statute that suggests such a limitation. The law says in plain language that the list of persons who are to receive aid shall consist of “all needy soldiers, sailors and marines and of their needy parents, wives, widows and minor children.” The whole system is one designed for giving relief to those who are *needy* and who fall within the terms of the law and it appears to me that a parent, widow or minor child of a soldier could be just as sorely in need of relief if the soldier was killed in battle as if he had met his death out of service by disease or in an accident or at the hands of a murderer.

You possibly have in mind the fact that the soldier killed in battle or dying as a result of his active service as a soldier might by virtue of the pension laws of the United States leave his dependents in a position to receive aid from the federal government. While this is true, there would be no assurance that such a pension as the federal government would grant would save his dependents from being in need. Pensions may and may not be adequate for support, depending on a great variety of circumstances. A pension of fifty dollars a month might keep a widow with four children in comfort if she and the children were healthy and able to earn something. On the contrary, if she were an invalid and the children were too young or for other reasons unable to assist, the family might suffer real want. On the other hand, if the parents, widow or minor children of a soldier have sufficient means of support from other sources, whether from pension, investments, earnings or otherwise, they would be excluded from the list of needy persons which is to be made up pursuant to said Section 2934.

Section 2935, General Code, requires the applicant whose name is put on the list mentioned in the preceding section to submit a statement showing all his other income, and under Sections 2936 and 2938, General Code, only such persons are placed on the list for relief as are found on examination of these statements to be "indigent," and the amount of relief to be awarded each one is determined.

There seems to me to be no inconsistency between the conclusion which I have above indicated and an opinion which I rendered on June 29, 1945, being No. 325. (See 1945 Opinions Attorney General, page 346). It was there held:

"Relief provided under Sections 2930 to 2941 inclusive, of the General Code, to soldiers and their named dependents, is not to be extended to soldiers who are in active service or to the dependents of such soldiers."

In that opinion, it was pointed out that the soldier while still in active service, is on the payroll of the government, and that under the federal law and army regulations, his family is presumably receiving adequate maintenance. Of course it may be conceded that such maintenance may not be wholly adequate, but an examination of the entire law seems to me to lead to the conclusion there expressed that the system was intended to afford relief to soldiers and their families after the military service was ended. As a matter of fact several opinions might be cited in which the right to relief to a soldier was predicated on a discharge from military service. See 1940 Opinions Attorney General, page 595; 1944 *id.* pages 306 and 684. Nothing in those opinions, however, excluded the death of a soldier as a qualification for relief to his dependents.

Whatever may be said as to the right of a soldier who himself applies for relief, I cannot believe that the intention of the law was to grant relief to the dependents of one who had been discharged from service honorably or otherwise and then died, and to exclude from such benefits the dependents of a soldier who had given his life on the battle field. There would seem to be no possible basis for such a discrimination and I see nothing in the terms of the statute which would suggest it. The widow of one is just as clearly and completely the widow of a soldier as is the widow of the other and if she is in need her need is just as

acute; and the same may be said of his orphaned children, or destitute parents.

Accordingly, in specific answer to your question, it is my opinion that under the provisions of Section 2930, et seq., General Code, the needy parents, widow and minor children of a soldier, sailor or marine who was killed or died in line of duty while in the military service are eligible for relief to be administered by the soldiers' relief commission.

Respectfully,

HUGH S. JENKINS  
Attorney General