

lected and all moneys arising from bond forfeitures from persons apprehended or arrested by the State Highway Patrol, one-half to be paid to the state treasurer and one-half to the treasurer of the city or village where such case is prosecuted, modifies the provisions of Section 1579-744, inasmuch as the later provisions would be inconsistent with the Municipal Court Act in question, and as such enactments are later in point of time, under established rules of statutory construction, the former statute would yield to this later enactment.

Specifically answering your inquiry, it is my opinion that the fines collected in state cases in the Municipal Court of Springfield should be paid over in accordance with the provisions of section 3056, General Code, and the excess over six thousand dollars per calendar year should be paid to the treasurer of the City of Springfield, except as modified by later specific enactments relative to the distribution of fines and bond forfeitures such as Section 1181-5, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3631.

WAR VETERAN—PROCEEDS POLICY OF WAR RISK INSURANCE
SUBJECT TO PROPERTY TAXATION WHEN—ADJUSTED SERVICE
CERTIFICATE EXEMPTED WHEN.

SYLLABUS:

1. *The proceeds of a policy of War Risk Insurance issued to a World War veteran in his lifetime, and paid to the administrator of the estate of such World War veteran after his death, are subject to property taxation in this State.*
2. *The proceeds of an Adjusted Service Certificate issued on the application of a World War veteran in his lifetime and paid to the administrator of his estate after his death, are exempt from property taxation in this State under the provisions of section 618, chapter 11, Title 38, United States Code.*

COLUMBUS, OHIO, December 15, 1934.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—As previously acknowledged, I am in receipt of a communication from you in which my opinion is asked on certain questions stated therein as follows:

“1. Are funds, in the hands of an administrator of an estate of a deceased World War Veteran, received as proceeds from a U. S. Government insurance policy, and on tax listing day kept partly in a safety deposit box and partly on deposit in a financial institution, subject to taxation.

2. Are funds, in the hands of an administrator of an estate of a deceased World War Veteran, received from the Veterans Bureau in the form of an adjusted compensation award under the World War

Adjusted Compensation Act, and on tax listing day kept partly in a safety deposit box and partly as money on deposit in a financial institution, subject to taxation.

3. When, if ever, do the funds above mentioned become subject to taxation."

The funds referred to in your first question are the proceeds of a policy of War Risk Insurance issued to the World War Veteran referred to in your communication under the provisions of Part III of the World War Veterans Act (U. S. C., Title 38, section 511, et seq.); and, as I am advised from facts appearing in the files of your office, these funds are the proceeds of such insurance policy which were paid to the insured's administrator after his death, and not the proceeds of disability benefits paid to the insured under such War Risk Insurance policy during his life, and which passed to the administrator of his estate upon his death.

Section 514, Title 38, U. S. C., relating to the payment of insurance under a policy of this kind to the estate of the deceased beneficiary, provides, among other things, as follows:

"If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: Provided, That all awards of yearly renewable term insurance which were in course of payment on March 4, 1925, shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this chapter. When any person to whom such insurance was awarded prior to such date dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: Provided further, That no award of yearly renewable term insurance made to the estate of a last surviving beneficiary prior to March 4, 1925, shall be affected by the foregoing provisions."

I assume that the funds now in the hands of the administrator, referred to in the statement of your first question, are the proceeds of a War Risk Insurance policy paid to such administrator under the provisions of the War Risk Insurance Act above quoted.

The question presented in your communication is whether these funds as the proceeds of such War Risk Insurance policy are subject to property taxation in the hands of the administrator. Under the terms of section 5368, General Code, all taxable personal property, whether tangible or intangible, except as is otherwise specially provided, is required to be listed for taxation as of the first day of January, annually. And, with respect to the question at hand, section 5370, General Code, provides that the estate of a deceased person shall be returned for taxation by his executor, administrator or personal

representative. The question presented in your communication arises, I assume, by reason of the terms of section 22 of the World War Veterans Act which has been carried into the United States Code as section 454 of Title 38. The provisions of this section, so far as the same are pertinent to this question, are as follows:

"The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; 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."

It is obvious that the question whether these funds in the hands of the administrator are exempt from taxation under the section of the War Risk Insurance Act above quoted, depends on whether such funds as the proceeds of a War Risk Insurance policy paid to the administrator of the insured have the status of "insurance payable", as this term is used in the section above quoted. And this question, in turn, depends upon the inquiry as to the relation of the administrator in such case to the government with respect to the payment of the insurance moneys in his hands to those entitled to receive the same. Under the provisions of section 511, Title 38, U. S. C., the insurance provided for by a policy of War Risk Insurance is payable after the death of the insured "only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law or sister-in-law, or to any or all of them." Touching the question here presented, it is noted that in the case of *Tax Commission vs. Rife*, 119 O. S., 83, 89, the court, in the consideration of the question whether the proceeds of a War Risk Insurance policy in the hands of the administrator of the estate of a deceased World War veteran insured under such policy, were subject to inheritance taxes under the laws of this State on the successions by which such proceeds were taken by the beneficiaries receiving the same, and in reaching the conclusion that such proceeds and the successions thereto were not subject to inheritance taxes in this State, said:

"The question may be stated as follows: If the payment is to the beneficiaries by the government, then under Section 22 of the War Risk Insurance Act there can be no succession tax. If, on the other hand, the payment to the administrator of the deceased ends the connection of the government with the fund in question, then the same becomes subject to the state inheritance tax, the same as any other assets coming from whatsoever source into the hands of the administrator would be subject to the succession tax.

We cannot take this view of the War Risk Insurance Act, and we believe that the same provides for a payment arising from a contract between the soldier and the government, which under certain circumstances inures to the benefit of the permitted class, including uncles and aunts of the deceased soldier. This right to take this property is by virtue of a contract between the United States government and the soldier; and does not arise by reason of the statutes of descent and distribution of this state, even though the government has seen fit to distribute such fund through the agency of an administrator acting under the statutes of descent and distribution of the state of Ohio.

It is reasonable to assume that the purpose of Congress in making the payments to the administrator of the deceased soldier was for the benefit of the government, to relieve the government of the necessity of selecting and determining the next of kin of the deceased soldier to whom payment should be made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the government to make the payments to the persons entitled to the same under the provisions of the federal law. The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance. Congress had a right to adopt the course of descent prevailing in the state of the residence of the soldier, and the proceeds of the insurance therefore pass under the federal act, the intestate laws of Ohio being adopted as a standard or guide for ascertaining the next of kin to whom payment shall be made."

In the case of *Wanzel's Estate*, 295 Pa. 419, the Supreme Court of that State, following the decision of the Supreme Court of this State in the case of *Tax Commission vs. Rife*, *supra*, held that a direct inheritance tax could not be assessed against unmatured installments of War Risk Insurance paid by the federal government to the estate of a deceased soldier to be distributed in accordance with the intestate laws of the domicile of the decedent. In reaching this conclusion, the Supreme Court of Pennsylvania further held that:

"The fact that the United States government has taken advantage of the statutes of descent and distribution of the state of the residence of the soldier, to determine who shall receive the funds in question, does not make such fund any less a payment direct by the United States to the beneficiaries who are within the permitted class.

The Federal War Risk Insurance Act of March 4, 1925, 43 Stat. 1310, provides for a payment arising from a contract between a soldier and the government, which, under certain circumstances, inures to the benefit of the permitted class of beneficiaries.

Such right to take is by virtue of a contract, and does not arise by reason of the statutes of descent and distribution, even though the Government of the United States has seen fit to distribute the fund through the agency of an administrator acting under the statutes of descent and distribution of the State."

In the later case of *Fisher's Estate*, 302 Pa. 516, 522, the Supreme Court of Pennsylvania, after referring to the earlier case of *Ogilvie's Estate*, 291 Pa. 326, in which it was held that unmatured insurance of this kind was payable to the estate and distributable as a part thereof, said:

"We did not there hold that in distribution the fund lost the quality attached to it when it left the federal government.

If we keep in mind the purpose and cause for the creation of war risk insurance we will better understand the subject. The primary object was to aid the soldier and his relatives within a limited class; it was given for a very small sum in recognition of services the

soldiers were giving for their country. It might be called a bounty, donation, or a gift; it certainly did not possess the incidents of ordinary insurance. Though it was predicated on a contract, that feature will not obscure the real reasons for issuing war risk insurance. The right to change the contract (*White vs. United States et al.*, 270 U. S. 175) does not alter the original conception of the plan, nor affect the quality of the beneficence. *Ogilvie's Est.*, *supra*, did not override this purpose or make the fund subject to taxes, debts and every conceivable vicissitude of an ordinary estate. The fund arising from war risk insurance is an earmarked fund that has impressed on it the quality given to it by the United States Government—the quality of a national donation, bounty, or gift for services in defense of the nation. The fund may be traced through the various agencies until it reaches its final destination in consummation of the original purpose for its creation. The badge of national obligation to a soldier protects it from liability for taxes, debts and the like; these attributes control the instant case. There is nothing in *Ogilvie's Est.*, *supra*, that decides otherwise.

The 'estate' was employed by Congress as a conduit so that distribution could be made to the proper persons, or as a method of determining what relatives were to get the money and in order to place the distribution under a safeguard of state laws *Wanzel's Est.*, 295, Pa. 419; see *Clement's Est.*, 160, Pa. 391. The gift was what its name implies, war risk insurance. Congress was not interested in setting up a fund for creditors and excisors. The estate may sue to recover it from the United States (*United States vs. Worley*, 281 U. S. 339), but when recovered the fund is still marked with the same purpose that Congress intended it to have."

On the views expressed by the Supreme Court of this State in the case of *Tax Commission vs. Rife*, *supra*, and by the Supreme Court of the state of Pennsylvania in the other cases above cited, it appears that an administrator of the estate of a deceased World War veteran is but a trustee or agent of the federal government with respect to the proceeds of a War Risk Insurance policy paid to him as such administrator, for the purpose of distributing this fund to the members of the permitted class who are beneficiaries under the policy. In this view, such funds while in the hands of the administrator are, in legal contemplation, in the possession of the government and are still "payable" to the persons in the permitted classes of beneficiaries designated by the Act. And as a logical conclusion from the view thus expressed, such funds while in the hands of the administrator would be exempt from taxation under the provisions of section 454 of Title 38, U. S. C., as was held by the Supreme Court of this State in the case of *Tax Commission vs. Rife*, *supra*.

However, as noted by the Supreme Court of the United States in its opinion in the case of *Singleton vs. Check*, 284 U. S. 493, the views expressed by the Supreme Court of this State in the case of *Tax Commission vs. Rife* and in a number of cases in other jurisdictions following the decision in the *Rife* case, with respect to the construction to be placed upon section 514 of Title 38, U. S. C., are opposed to those expressed by the courts in the majority of the cases in which this section of the War Risk Insurance Act has been construed and applied. Among these cases is that of *Palmer vs. Mitchell*, 117 O. S. 87, wherein it was held that under this section, which was enacted in its

present form as section 303 of the Act of Congress approved March 4, 1925, "if the designated beneficiary survives the insured and dies prior to receiving all the installments of insurance payable, the present value of the insurance thereafter payable must be paid to the estate of the insured soldier and in case of his intestacy, distributed according to law of descent and distribution enforced at the date of the soldier's death". This question as to the purpose and effect of the payment of the proceeds of a policy of War Risk Insurance to the administrator of the estate of a deceased World War veteran, the insured, was set at rest by the Supreme Court of the United States in the case of *Singleton vs. Cheek*, *supra*, where it was held that when the insured and the designated beneficiary die successively intestate, the commuted amount of the installments not accrued when the beneficiary dies is to be paid to the estate of the insured for distribution to his heirs and that the heirs are to be determined as of the time of his death in accordance with the laws of the state where he resided, and are not limited to the class of beneficiaries designated in the Act. Following the decision of the Supreme Court of the United States in the case of *Singleton vs. Cheek*, *supra*, that court, in the case of *Pagel vs. Pagel*, 291 U. S. 473, had under consideration the question whether proceeds of a War Risk Insurance policy in the hands of the administrator of the estate of an insured World War Veteran were subject to the claims of creditors of the estate of the insured, against which claims an exemption was sought under the provisions of section 454 of Title 38, U. S. C., above quoted. Touching this question, the court in its opinion in this case, after noting its prior decision in the case of *Singleton vs. Cheek*, *supra*, said:

"The purpose of the exemption, section 454, is to safeguard to the insured soldier and the beneficiary payments made under the policy to them or for their benefit. *Spicer vs. Smith*, 288 U. S. 430, 434. Upon the death of the insured, the father whom he had designated as beneficiary was by the Bureau awarded monthly payments to continue until death. The language of the statute limits the exemption to 'any person to whom an award is made'. It is clear that the statute does not extend the exemption beyond the insured and the beneficiary. And, as said by the State Supreme Court after referring to our decision in *Singleton vs. Cheek*, 284 U. S. 493, 'it cannot be held now that exemption of the fund survives both insured and beneficiary for the benefit of the heirs of the former'."

The decision of the Supreme Court of the United States in this case is that War Risk Insurance money paid to the estate of an insured soldier upon the death of the designated beneficiary before receiving all of the installments, is not exempted from the claims of his creditors by the provisions of section 454 of Title 38, U. S. C., that the insurance "shall not be subject to the claims of creditors of any person to whom an award is made".

With respect to the question here presented, there is no authority for extending the terms of section 454 of Title 38, U. S. C., providing for the exemption from taxation of War Risk Insurance, beyond the terms of said section providing that the same shall not be subject to the claims of creditors.

As with respect to the claims of creditors, any exemption from taxation of such War Risk Insurance funds in the hands of the administrator of the estate of the insured would inure not to the benefit of the insured or his beneficiaries but to his creditors and to the heirs and distributees of his estate. I am of the

opinion, upon the authority of the cases of *Pagel vs. Pagel, supra*, and *Singleton vs. Cheek, supra*, that such funds in the hands of the administrator of the estate of an insured World War veteran, are not exempt from property taxes under the laws of this State.

With respect to your second question, I assume that the funds therein referred to are the proceeds of an Adjusted Service Certificate issued on the application of a World War veteran under the provisions of the World War Veterans Adjusted Compensation Act set out in chapter II of Title 38, U. S. C., sections 591, et seq., and that such funds were paid directly to the administrator of such World War veteran after his death. Under the World War Veterans Compensation Act above referred to, such compensation is paid to the World War veteran or to his dependents in an amount measured by the service credits to which such World War veteran is entitled. It will not be necessary in the consideration of your second question to note any considerable number of the sections of the United States Code relating to the subject of World War veterans' adjusted compensation. By section 661 in the chapter and title of the United States Code above referred to, it is provided:

"If the veteran has died before making application under section 302 (§ 612 of this title), or if entitled to receive adjusted service pay, has died after making application but before he has received payment under Title IV (part IV of this chapter), then the amount of his adjusted service credit shall (as soon as practicable after receipt of an application in accordance with the provisions of section 604 (§ 663 of this title), but not before March 1, 1925) be paid to his dependents, in the following order of preference:

- (1) To the widow;
- (2) If no widow entitled to payment, then to the children, share and share alike;
- (3) If no widow or children entitled to payment, then to the mother;
- (4) If no widow, children, or mother, entitled to payment, then to the father."

Section 618d in said chapter and title provides that the face value of the Adjusted Service Certificate shall be paid to the beneficiary named by the veteran in his application, or, if the beneficiary died before the veteran and no new beneficiary was named or if no beneficiary was named in the application, then the face value of such Adjusted Service Certificate is to be paid to the estate of the veteran. This section further provides that if in any such case any payments have already been made to the veteran or his dependents, the amount of such payments shall be deducted from the face value of the Adjusted Service Certificate.

Section 618e in said chapter and title provides:

"Wherever under this chapter it is provided that payment shall be made by the Director of the United States Veterans' Bureau to the estate of any decedent, such payment, if not over \$500, may, under regulations prescribed by the director, be made to the persons found by him to be entitled thereto, without the necessity of compliance with the requirements of law in respect of the administration of such estate."

Section 618 in this chapter and title, relating to the exemption of such Adjusted Service Certificate and the proceeds thereof from the claims of creditors and from taxation, provides:

"No sum payable under this chapter to a veteran or his dependents, or to his estate, or to any beneficiary named under Part V of this chapter, 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 chapter."

In the case of *Jones vs. Price, Administrator*, 107 W. Va. 55, the Supreme Court of that State, upon consideration of the provisions of section 618, chapter 11 Title 38, U. S. C., held that the administrator of a deceased World War veteran may not divert to the creditors of such veteran the proceeds of an Adjusted Service Certificate in the hands of such administrator. The court in its opinion in this case said:

"This is a suit brought by the widow and children of James S. Jones, deceased, against his administrator. Its purpose is to recover from the administrator the proceeds of a U. S. Adjusted Service Certificate in favor of the deceased. The administrator seeks to pay the debts of the estate out of the proceeds. The circuit court found in favor of the administrator.

In the first instance, this certificate is not properly a part of the decedent's estate and the administrator was not entitled to collect it. Under the express provisions of section 661 of title 38 Mason's U. S. Code, Ann., the amount of the adjusted service credit in such case, *shall be paid*, not to the veteran's estate, but *to his dependents*, the widow being preferred.

In the second place the sum payable to the dependents is expressly exempted by section 618 of same title from 'attachment, levy or seizure under any legal or equitable process.' It is settled law, that as payments such as this are mere bounties which the government may grant or withhold at pleasure, Congress may surround these gratuities with such conditions as it deems proper to impose. *Hissem vs. Johnson*, 27 W. Va. 644, 652; *Kellog vs. Waite Tr.*, 94 Mass. (12 Allen), 529, 530; *U. S. vs. Hall*, 98 U. S. 343, 357. In discussing an exempting phrase similar to the one above, the court said in *Hissem vs. Johnson, supra*: 'The exemption here declared is absolute and unqualified.' Congress has manifestly intended to so surround this fund with protection that creditors cannot take it away from dependents."

It will be noted that the court in its opinion in this case expresses the view that the Adjusted Service Certificate issued to a World War veteran under this chapter, and the proceeds thereof, are not properly a part of the decedent's estate and that his administrator is not entitled to collect the same. However this may be, it is clear that the exemptions provided by section 618, above quoted, with respect to Adjusted Service Certificates and the proceeds thereof, extend beyond

those provided for in section 454 in chapter 10 of Title 38 relating to the proceeds of War Risk Insurance. As noted by the court in the recent case of *Trotter, Guardian, vs. State of Tennessee*, 290 U. S. 354, section 454, before quoted, speaks of "compensation, insurance, and maintenance and support allowance payable" to the veteran, and provides that these shall be exempt from the claims of creditors and from taxation. However, as noted in the case of *Pagel vs. Pagel, supra*, when the proceeds of a War Risk Insurance policy have been paid to the estate of a deceased World War veteran, the transaction is one past the point where such insurance is payable to the veteran and for this reason, as held by the court in the *Pagel* case, the proceeds of such insurance paid into the hands of the administrator of the deceased World War veteran are subject to the claims of the creditors of the veteran's estate; and by parity of reason the proceeds of such insurance paid into the hands of the administrator of the veteran's estate would, in my opinion, be subject to taxation.

In this connection, it will be noted, section 618 in chapter 11, Title 38, extends the exemptions therein provided for, with respect to Adjusted Service Certificates and the proceeds thereof, not only to the veteran and his dependents but "to his estate". And by reason of this fact and the further consideration that Adjusted Service Certificates and the proceeds thereof are issued and paid primarily for the benefit of the veteran and his dependents, I am of the opinion, in answer to your second question, that the proceeds of such Adjusted Service Certificate paid to the administrator of a deceased World War veteran after his death are exempt from taxation.

What I have said above in answer to your first question constitutes a sufficient answer to your third question so far as War Risk Insurance and the proceeds thereof are concerned. With respect to Adjusted Service Certificates and the proceeds thereof, I am inclined to the view that the same are exempt from taxation until the moneys paid on such certificates, after the distribution thereof, get into the hands of persons other than the dependents of the deceased World War veteran, or until such moneys are invested in some other form of property as in lands or securities. See *Trotter vs. Tennessee, supra*; *State vs. Wright*, 224 Ala. 357; *Martin vs. Guilford County*, 201 N. C. 63.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3632.

WORKMEN'S COMPENSATION LAW—EMPLOYEES OF OHIO RELIEF PRODUCTION UNITS, INC., COME WITHIN THE PROVISIONS THEREOF.

SYLLABUS:

1. *The Ohio Relief Production Units, Inc., is a private employer within the meaning of the Workmen's Compensation Law of Ohio, and those engaged in its service are employees within the meaning of that law and are entitled to the benefits thereof.*

2. *The Ohio Relief Production Units, Inc., is subject to all the burdens and penalties of the Workmen's Compensation Law of the State of Ohio.*