

uous to an adjoining county containing a registration city, when deemed necessary by a board of elections to prevent fraud, it does not fix the time for such registration nor does it confer upon the boards of elections the authority to fix the time therefor. However, the right of a board of elections to require such registration should not fail because of the failure to fix the time for holding such registration, especially when the statutes show that it is the intention that all general registrations should be held only at certain times, namely, on Thursday in the fifth week and Friday and Saturday in the fourth week preceding a general election.

In the case of *Rulledge vs. State Medical Board*, 106 O. S. 544, it was held that the right of appeal from certain orders of a medical board given by section 1276, General Code, does not fail because of the failure to provide the mode of perfecting it.

In the case of *Wellsville vs. Connor*, 91 O. S. 28, it was held that by analogy to section 5070, General Code, which provided that if for any reason it was impossible to determine the voter's choice for an office, his ballot should not be counted for such office, the ballot of a voter should not be counted under section 3947, General Code, upon a question submitted at an election if from his ballot it was impossible to determine his answer to such question.

By analogy to section 4785-36, General Code, I am of the opinion that a general registration in a territory adjoining and contiguous to a county containing a registration city can be held only on Thursday in the fifth week and Friday and Saturday in the fourth week preceding a general election in November, and therefore cannot be held prior to the primary election on May 10, 1932.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4239.

TAX AND TAXATION—REAL ESTATE PURCHASED BY GUARDIAN WITH FUNDS RECEIVED FROM UNITED STATES VETERANS BUREAU—WARDS INTEREST TO EXTENT PAID FROM SUCH MONEY IS EXEMPT FROM TAXATION.

*SYLLABUS:*

*When a guardian of an incompetent person or minor, with the approval of the probate court, purchases real estate, paying a portion of the purchase price thereof with funds received from the United States Veterans Bureau by said guardian for said ward, the balance of said purchase price to be paid in installments or at a future time, and title to said real estate is taken in the name of such ward, the interest of said ward in said real estate, to the extent of the amount of the purchase price so paid, is exempt from taxation.*

COLUMBUS, OHIO, April 7, 1932.

*The Tax Commission of Ohio, Wyandotte Building, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your communication in which you inclose a letter from County Auditor A. J. Thatcher which reads in part as follows:

"We are transmitting to you application for exemption from taxation of property held in the name of Geo. H. & Eva E. Branne, located at 466 Townsend Avenue this city. The application for exemption is made by Eva E. Branne (wife) as guardian of Geo. H. Branne (husband) an insane world war veteran, said application being for one half of the appraised value.

We are disapproving said application for the reason that said property was purchased and owned by the two in 1928, nearly three years before declaration of the husband's insanity and resulting appointment of the wife as guardian.

As relating to this application and others I request through you an opinion from the Attorney General on a question now arising with frequency, in one case even to the point of asking if the husband agreed to secure the appointment of his wife as guardian would his property be exempt.

I have read the Attorney General's opinion, especially No. 2860 of Jan. 26, 1931, but to me it does not seem to reach as far as some are claiming. TO ILLUSTRATE:

The wife, guardian of her incompetent husband, buys a \$6000 home, paying thereon \$600 she has saved from Federal pension to her husband. She does one of two things as to future payments of \$54 per month; pays the whole of each \$54 from her ward's pension, or pays half from such source and pays the other half from her own earnings. We have had both cases.

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It would seem to be advisable that a definite opinion, covering cases such as I have described, be secured; because the number seeking such exemptions from taxation on property purchased on but slight investments with balances to be met in future years is increasing."

Section 454, title 38 U. S. C., reads 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."

The United States has long assumed the power which is inherent in a government to grant compensation, pensions and bounties to the veterans of its wars and their dependents. The exercise of this power is demanded from the considerations of gratitude and patriotism as well as of policy. The legislation in these matters manifests the intention that these awards be made for the sole use of the beneficiaries, and that the money in its transmission to them be protected from taxation and claims of creditors. This protection has been carefully guarded by this office in several opinions. For instance, in the Opinions of the Attorney General for 1928, Vol. IV, page 2822, it was held that estates that have been built up by guardians out of money received as payments under the World War Veterans' Act are exempt from taxation; in Opinion of the Attorney General for 1929, Vol. I, page 183, it was held that "the funds received and held by guardians under the provisions of the World War Veterans' Act of 1924, are exempt from taxation as long as said funds, in whatever form invested, are under the control of said guardians"; in the Attorney General's opinion No. 2860, dated January 26, 1931,

it was held that "lands purchased with funds derived solely from the United States Veterans Bureau and paid the guardians of veterans bureau beneficiaries under the World War Veterans Act are not taxable until the termination of said guardianship."

It is unnecessary to cite again the authorities which support these opinions and which are cited therein. It is sufficient to say that they are based on the theory that a guardian receiving such funds is the instrumentality through which the government distributes them to the proper party, and until such funds reach the beneficiary they are still under the control of the federal government. In other words, the guardian is treated as the agent of the government and payment of said funds to him is not payment to the beneficiaries. Therefore, while the statute only protects such funds as are "payable," funds paid to a guardian are still "payable" to the beneficiary, and consequently entitled to exemption. Where, however, the money has been paid direct to the beneficiary, it is no longer "payable."

In the case of *McIntosh vs. Aubrey*, 185 U. S. 122, 46 L. ed. 834, it is held:

"Real estate purchased by a pensioner of the United States government with pension money is not exempted from seizure and sale on execution, by U. S. Rev. Stat. §4747, declaring that no money due or to become due to any pensioner shall be liable to attachment, levy, or seizure, whether the same remains with the Pension Office or any officer or agent thereof, but shall inure wholly to the benefit of such pensioner, since the exemption provided by that section protects the fund only while in the course of transmission to the pensioner."

While this case dealt with pensions, it is nevertheless applicable here, as the words "due" and "payable" are synonymous. The Supreme Court held that money received is not money due and in the opinion said:

"We think the purpose of Congress is clearly expressed. It is not that pension money shall be exempt from attachment in all of its situations and transmigrations. It is only to be exempt in one situation, to wit, when 'due or to become due.' From that situation the pension money of plaintiff in error had departed."

While there are some cases in other states which held contrary to the decision of the Supreme Court in the case of *McIntosh vs. Aubrey*, *supra*, the decided weight of authority is in accord with this case. Moreover, in most, if not all of the cases, which hold contrary to the rule announced, state statutes exempting such funds were involved. Most of them also deal with the exemption of such funds from attachment or execution, and it is a well settled rule of construction that statutes, in so far as they relate to exemption from attachment or execution, are liberally construed but, in so far as they relate to exemption from taxation, they are strictly construed.

"A liberal policy is usually pursued in interpreting exemptions from ordinary debts, but grants of privilege with respect to taxation are strictly construed." *Pefly vs. Reynolds*, 155 Kans. 105 at 107.

Coming now to the other situation you present, that of a guardian of an incompetent veteran purchasing a home for him paying only a portion of the purchase price from funds received from the veterans bureau, the balance of said purchase

price to be paid in monthly payments, I assume that title to said real estate has passed to the ward. Clearly, the entire property can not be exempt from taxation because it does not represent an investment of funds derived solely from the United States Veterans Bureau. However, I see no reason why the interest of such ward to the extent of the amount paid for him should not be exempt. If a guardian, with the approval of the Probate Court, as required by section 10506-41, General Code, purchases an undivided half interest in real estate with funds of his ward received from the Veterans Bureau, the entire real estate could not be exempt from taxation, but surely the one-half interest owned by such ward, which represents an investment solely of funds received from the Veterans Bureau, would be entitled to exemption.

In the case of *Yates County National Bank vs. Carpenter*, 119 N. Y. 550, in construing a New York statute which exempted pensions granted by the United States for military services from levy by virtue of an exemption the court held that where the pension funds are so mingled with other funds so as to be incapable of identification or separation, the pensioner loses the benefit of the exemption, but where "a pensioner who had a wife and family purchased a house and lot for a home, paying a portion of the purchase price out of the proceeds of a pension certificate, and giving a mortgage on the premises to secure the balance, held, that the premises were exempt from levy and sale on execution." This holding was based on the theory that the only interest the pensioner had in the real estate was an equity of redemption which did not exceed in value the sum paid for it, and it therefore represented to the extent of his interest the proceeds of his pension.

By like reasoning, the interest of the ward in the real estate to the extent of the portion of the purchase price paid represents the proceeds of the compensation, insurance or allowance received by his guardian from the Veterans Bureau.

I am of the opinion, therefore, that when a guardian of an incompetent person or minor, with the approval of the probate court, purchases real estate, paying a portion of the purchase price thereof with funds received from the United States Veterans Bureau by said guardian for said ward, the balance of said purchase price to be paid in installments or at a future time, and title to said real estate is taken in the name of such ward, the interest of said ward in said real estate, to the extent of the amount of the purchase price so paid, is exempt from taxation.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4240.

DISAPPROVAL. ABSTRACT OF TITLE TO LAND OF ANNA M. ROSELL,  
IN VILLAGE OF LEBANON, WARREN COUNTY, OHIO.

COLUMBUS, OHIO, April 9, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter submitting for my analysis an abstract of title, warranty deed, approval of board of control, tax receipts for December, 1931, and encumbrance estimate No. 1380, relating to the proposed purchase of three tracts of land in the village of Lebanon, Warren County, Ohio,