

2422.

SOLDIER'S RELIEF—APPLICANT MUST HAVE HONORABLE DISCHARGE TO DATE OF APPLICATION — PURCHASE OF DISCHARGE PRIOR TO EXPIRATION OF ENLISTMENT TERM IN NAVY DOES NOT PREVENT OPERATION OF SECTIONS 2930 TO 2941 G. C.

SYLLABUS:

1. *An applicant for soldiers' relief must be able to exhibit to the Soldiers' Relief Commission an honorable discharge, based on the records and rolls of the Adjutant General of the United States Army up to and including the date of the application for relief.*

2. *An honorably discharged enlisted man who by reason of the purchase of his discharge, did not serve his full term of enlistment in the navy is eligible for relief under Sections 2930 to 2931, inclusive, of the General Code.*

Columbus, Ohio, June 18, 1940.

Hon. Paul T. Landis, Prosecuting Attorney,
Lima, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

“The Soldiers' Relief Commission of Allen County has requested a ruling on the eligibility of certain applicants for soldiers' relief. This involves two stated sets of facts, as follows:

(1) An applicant for soldiers' relief served an enlistment in the Army and was honorably discharged from this enlistment. Later this same man reenlisted and shortly thereafter deserted and was dishonorably discharged. He now presents his honorable discharge in support of his application for relief. Does this dishonorable discharge disqualify the applicant from receiving soldiers' relief?

(2) An applicant for soldiers' relief enlisted for full peacetime enlistment in the navy. Prior to his enlistment he was married, and a few months after his enlistment his wife gave birth to a child. On the plea of the wife and the enlisted man, and in order to take care of his family, the navy discharged this man with only a portion of his enlistment served. During peace times

releases from the navy can be secured before the full enlistment is served when good cause for the release is shown. Does enlistment of this kind where full time is not served, make this person eligible for soldiers' relief under our Ohio Law?"

Section 2934, General Code, reads in part, as follows:

"Each township and ward soldiers' relief committee shall receive all applicants for relief under these provisions, from applicants residing in such townships 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.

* * *

In determining whether or not the applicant is a "soldier" within the meaning of the above section, your attention is directed to Section 2949, General Code, which reads in part, as follows:

"The word 'soldier' shall mean: An honorably discharged soldier, sailor, or marine, who served in the army or navy of the United States of America."

The charge of desertion now standing on the rolls and records in the office of the Adjutant General of the United States Army against the applicant in the instant case, has the effect of completely separating this person from the service of the United States Army. In addition to incurring the penalties attaching to the crime of desertion the deserter by his act forfeits all rights to any pension which he may have acquired. See Title 10, Chapter 34, Section 1432, Federal Code Annotated. A deserter under Title 8, Chapter 1, Section 11, and Title 24, Chapter 2, Section 50, Federal Code Annotated, loses his right to citizenship as well as his right of admission to the Soldiers' Home.

Under Title 10, Chapter 25, Section 906, Federal Code Annotated, it is provided that the savings of a deserter on deposit with the pay department of the United States Army shall be forfeited. It is also provided under Title 43, Chapter 19, Section 808, Federal Code Annotated, that a person charged with desertion on the rolls and records in the Adjutant General's Office shall be ineligible to receive land bounty warrants.

It would therefore appear that "desertion" described by a resolution of Congress (June 20, 1777, 2 Journal, Congress, 173) as a "crime most atrocious and detestable" disqualifies any person from the benefits and privi-

leges ordinarily afforded by the United States Government to a soldier in good standing on its rolls and records.

It would therefore be illogical to assume that a dishonorably discharged soldier, as shown by the rolls and records of the United States Army, would be entitled to any monetary assistance from a political subdivision of this state, in view of the fact that the Congress of the United States has seen fit by legislative enactment to deprive him by reason of his army record, of all federal benefits, privileges and emoluments. The instrument presented to the Soldiers' Relief Commission is merely an integral part of the applicant's army record; for its authenticity reference must be made to the official records in the Adjutant General's Office. When a reference is made and the record is viewed in its entirety the dishonorable discharge has the effect of pervading the entire record of the applicant, so that the prior favorable enlistment is completely obscured and is of no consequence either for the purpose of federal relief or state relief. The applicant's record certainly can have no greater weight with the Soldiers' Relief Commission than it does with Federal Government.

In regard to your second question, I find Sections 195 and 196 of Title 34, Chapter 2, Federal Code Annotated provide as follows:

"Section 196. In time of peace the President may in his discretion, and under such rules and such conditions as he may prescribe, permit any enlisted man to purchase his discharge from the Navy or the Marine Corps, the amounts received therefrom to be covered into the treasury."

"Section 195. Under such regulations as the Secretary of the Navy may prescribe, with the approval of the President, any enlisted man may be discharged at any time within three months before the expiration of his term of enlistment or extended enlistment without prejudice to any right, privilege or benefit that he would have received, except pay and allowances for the unexpired period not served, or to which he would thereafter become entitled, had he served his full term of enlistment or extended enlistment; Provided nothing in this Act shall be held to reduce or increase the pay and allowance of enlisted men of the Navy now authorized pursuant to law."

Since by the words of these statutes, the discharge was given without prejudice to any federal right, privilege or benefit that the person may have been entitled to had he served his full enlistment, I am inclined to the opinion that the applicant in question, should not be denied state assistance, and

is entitled to assistance under the Soldiers' Relief Act. (Sections 2930 to 2941, inclusive, General Code). Therefore, in specific answer to your questions, it is my opinion that:

1. An applicant for soldiers' relief must be able to exhibit to the Soldiers' Relief Commission an honorable discharge, based on the records and rolls of the Adjutant General of the United States Army up to and including the date of the application for relief.

2. An honorably discharged enlisted man, who by reason of the purchase of his discharge, did not serve his full term of enlistment in the navy is eligible for relief under Sections 2930 to 2941, inclusive, of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.