

Encumbrance Estimate No. 5146, submitted with said lease, shows that there is sufficient balance in the proper appropriation account to pay the rental for the six months term of this lease.

Subject to the signing of this lease by the Director of Public Works, as directed above, said lease is hereby approved as is evidenced by my approval endorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

124.

EXEMPTION FROM TAXATION—FUNDS FROM WORLD WAR VETERAN'S
ACT UNDER GUARDIAN'S CONTROL EXEMPT.

SYLLABUS:

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.

COLUMBUS, OHIO, February 26, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads as follows:

“Under date of December 10, 1928, your office rendered an opinion relative to the taxation of the estates of incompetent soldiers when the funds comprising the estate are received as gratuities from the Federal Government. We refer specifically to Opinion No. 3007.

The Tax Commission is in receipt of a letter, under date of January 25th, from the U. S. Veterans' Bureau, Cleveland, Ohio. The letter referred to raises the question of taxability of property held by guardians of incompetent soldiers. We request your further opinion as to whether or not the classes of property enumerated in the Veterans' Bureau letter are exempt from taxation.”

The letter which you inclosed is addressed to your Commission by Mr. A. M. Barlow, Regional Attorney for the U. S. Veterans' Bureau at Cleveland, Ohio, and reads as follows:

“Reference is made to your letter of January 7, 1929, concerning the opinion of the Attorney General of the State of Ohio in regard to the taxability of funds in the hands of guardians of Bureau beneficiaries.

The United States Veterans' Bureau is called on to advise guardians, attorneys and trust officers of banks regarding the taxability of their estates and so we wish to be in a position to advise them fully and accurately. The instruction of the United States Veterans' Bureau in this regard, to the various Regional Attorneys, is to advise guardians in accordance with the laws of the various states in which the guardians are located and in accordance with Section 22 of the World War Veterans' Act, which holds that compensation and insurance payments shall be exempt from taxation, and the prin-

ciple laid down in the line of decisions beginning with the case of the United States versus Hall which holds that the money in the hands of a guardian is still subject to Federal control until paid over to the beneficiary or expended for his benefit. For this reason we would like to get clear on what would seem to be an inconsistency in the opinion of the Attorney General above referred to.

You state that these funds are not taxable when they are in the form of bank deposits to the credit of the guardian. It would seem that if a guardian could loan this money to a bank and not have it subject to taxation he could also loan it to a building and loan company or to an individual or municipality, subject of course, to the general laws of the state governing the investment of trust funds.

Our opinion is asked in regard to the taxation of the following classes of investments made by guardians from funds received for the benefit of their wards under the provisions of the World War Veterans' Act, 1924, as amended.

1. When money is deposited in a bank subject to check.
2. When money is deposited in a savings account.
3. When money is loaned on a certificate of deposit.
4. When undivided trust fund participation certificates are purchased from a bank.
5. When money is on deposit with a building and loan company.
6. When money is used to purchase bonds secured by a real estate loan.
7. When money is loaned to individuals evidenced by notes secured by first mortgages on real estate.
8. When bonds of some state, other than the State of Ohio, are purchased.

Your opinion is respectfully requested as to the taxability of such funds under each of the above conditions. This office wishes to, if possible, rectify the seeming inconsistency of the last phrase of the opinion of the Attorney General above referred to with Section 21 of the World War Veterans' Act, the case of the *United States vs. Hall*, 98 U. S. 343, and the case of *Tax Commission of Ohio vs. Rife, et al.*, 119 O. S. 43. It is respectfully suggested that the apparent inconsistency would be eliminated if the last comma in the opinion of the Attorney General were changed to a period and the remainder of the matter deleted."

The opinion herein referred to is Opinion No. 3007, rendered by my predecessor to your Commission, December 10, 1928. The Commission's communication, at that time, quoted some of the provisions of the World War Veterans' Act of 1924, and cited court decisions construing said Act. Then followed the inquiry:

"In the light of the above quoted decisions and Act of Congress, this office will very much appreciate an opinion from you as to whether or not estates that have been built up by guardians out of money received as gratuity paid by the Federal Government, should be listed for taxation in the State of Ohio?"

My predecessor held as follows:

"Estates that have been built up by guardians out of money received as payments under the World War Veterans' Act of 1924, are exempt from taxation under the provisions of Section 22 of said Act (38 USCA, Section 454), as long as said funds are in their original form in the hands of the beneficiary or on deposit to the credit of his estate."

It will be noted that the limitation in said opinion is, "as long as said funds are in their original form, in the hands of the beneficiary, or on deposit to the credit of his estate," and not on deposit in banks, as stated in the letter of the Regional Attorney.

The disability, death compensation and insurance benefits to incompetent and minor beneficiaries made by the Federal Government as gratuities under the various Acts of Congress, are payable to guardians appointed by the various Probate Courts of Ohio, but the question now raised by the Regional Attorney in the Cleveland Office of the United States Veterans' Bureau is as to the taxability of said gratuities, when deposited or invested as specified in his letter. The Regional Attorney closes his letter to your commission with the suggestion that my predecessor's opinion should not have contained the limitation; "as long as said funds are in their original form, in the hands of the beneficiary, or on deposit to the credit of his estate."

The conclusion of my predecessor, however, including the aforesaid limitation, sufficiently answered the question before him, which was based upon the inquiry from the Dollar Savings and Trust Company of Youngstown, Ohio, concerning the taxability of estates which were made up of payments made by the Federal Government as gratuities, and were then on deposit with said Savings and Trust Company. The present inquiry goes to other forms of deposits and investments by the guardians of incompetents and minors, whose estates consist of gratuities paid by the Federal Government under the World War Veterans' Act of 1924. The question, therefore, now is not as to gratuities in the hands of the beneficiary, but as to said gratuities held by guardians for incompetents.

The provision for the exemption from taxation of the compensation, insurance, maintenance and support allowance is contained in Section 454 of Title 38 USCA and reads in part 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. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance or maintenance and support allowance is payable."

The case of the United States vs. Jeremiah Hall, 98 U. S. 343, was considered in said opinion number 3007 by my predecessor. In said case the Court was considering the status of pension money of a ward paid to his guardian and stated as follows:

"For the defendant, it is insisted that when the payment is made to the guardian, the money paid ceases to be within the constitutional control of the United States * * * but the Court is unhesitatingly of a different opinion, for several reasons: 1. Because the United States, as the donor of the pension, may, through the Legislative Department of the Government, annex such conditions to the donation as they see fit, to insure its transmission unimpaired to the beneficiary. 2. Because the guardian no more than the agent or attorney of the pensioner is obliged by the laws of Congress to receive the funds; but if he does, he must accept it subject to the annexed condition. 3. Because the word 'guardian' as used in the Act of Congress is merely the designation of the person to whom the money granted may be paid for the use and benefit of the pensioners. 4. Because the fund proceeds from the United States, and inasmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it

passes into the hands of the beneficiary, which is all that is necessary to decide in this case."

The Federal Statute provides that the gratuities in question shall be exempt from all taxation and the opinion last quoted holds that the Government may annex such conditions to the donation as it sees fit to insure its transmission unimpaired to the beneficiary. The guardian must accept the donation subject to the condition provided by the Government, and said opinion further holds that the word "guardian," as used in the Act of Congress is merely the designation of the person to whom the money granted may be paid for the use and benefit of those entitled to it.

In the case of *The Tax Commission of Ohio vs. Rife, et al*, 119 O. S. 43, decided June 13, 1928, Ohio Law Bulletin and Reporter, July 30, 1928, page 43, the Court at page 48, say:

"The provisions of Section 22 of the act of June 7, 1924, providing for exemption from taxation, must dominate over the succession tax statutes of Ohio, because of the provision of paragraph 2, Art. VI of the United States Constitution, providing that:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

The opinion concludes as follows:

"Entertaining the view that Congress has power to provide for payment to the next of kin of the deceased soldier in such manner as it may determine, and that such proceedings, being for the benefit of dependents, constitute a special, distinct class of property, different from a general estate of a deceased soldier, such fund, by Section 22 of the act is exempt from the inheritance tax under the Ohio statute. The judgment of the Court of Appeals is affirmed."

The opinion of the lower Court stated that:

"This insurance was provided for and awarded when the Nation was at war. It was a protective measure for the Government as well as for the insured, and the use of the language 'shall be exempt from all taxation,' in view of the fact that the government designated the permitted class and that the laws of Ohio are subject to the laws of the United States on this question, there can be no doubt that the language of the Act meant what it said in providing 'shall be exempt from all taxation.'"

The Supreme Court of Arkansas in the case of *Wilson vs. Sawyer*, reported in 6 S. W. (2nd) 825, had before it the question as to whether compensation paid to disabled soldiers under the World War Veterans' Act of 1924 was garnishable. The headnote of said opinion reads as follows:

"Money paid to disabled soldiers under guardianship by virtue of World War Veterans' Act of 1924 (38 USCA, Sec. 421 et seq.), held not subject to garnishment, whether in hands of soldier or guardian, by reason of Section 22 of act (38 USCA, Sec. 454), providing compensation paid shall not be subject to claims of creditors."

In the opinion in said case, the Court quoted from the opinion in the lower Court as follows:

"The court will dissolve this attachment. I do not think these funds can be attached until they come into the hands of Tom Sawyer, and they have never been in his hands. They are money derived from the federal government, and, under the federal laws, these funds cannot be garnished until they come into the hands of the party entitled to receive under the law. These funds were paid by the United States government to Mr. Wilson, as guardian. He has been discharged, and the funds have been paid over to the clerk of the Probate Court, and the funds are now in the hands of the register of the court, with instructions to turn them over to Tom Sawyer, and, until they come into the hands of Tom Sawyer, they cannot be attached. The petition to quash the garnishment and release the funds will be sustained."

The opinion of the Supreme Court then states:

"The court was correct in the declaration of law made, except that the funds were not subject to seizure, even after they had come into the hands of the ward. In 28 C. J. p. 187, Section 227 of the chapter of Garnishment, it is said:

'But after a pension or bounty has been paid to, and received by, the beneficiary, it is subject to garnishment in the hands of a third person to the same extent as other property, unless exempted by statute.'

The funds here involved are exempted by the statute under which they were allowed and paid to Sawyer. The act known as the 'World War Veterans' Act of 1924' * * *.

In the case of *Payne vs. Jordan*, 36 Ga. App. 787, 138 S. E. 262, it was held by the Court of Appeals of Georgia that a house purchased with proceeds only of war risk insurance, payable under the War Risk Insurance Act of Congress approved October 6, 1917 (38 USCA, Sections 287, 357, 502), was not subject to execution. In the case of the same style, 152 Ga. 367, 110, S. E. 4, it was held by the Supreme Court of Georgia that funds actually paid by the government to the beneficiary of an insurance policy, and by her deposited in a bank, are not subject to garnishment. In the case of *Succession of Deier*, 155 La. 167, 99 So. 26, 32 A. L. R. 353, the Supreme Court of Louisiana held that the heirs at law, who received insurance from a deceased service man, under the provisions of the War Risk Insurance Act, received the money as beneficiaries, and not as heirs, and that the money so received was not subject to the payment of an inheritance tax under the laws of that state taxing the right to inherit.

The World War Veterans' Act of 1924, contains substantially the same exemption from seizure as is found in the War Risk Insurance Act, and the cases cited which construe the latter act are applicable here. We think the manifest purpose of the legislation making provision for World War veterans was to devote the benefactions there provided to the sole use of the beneficiaries, and that the same should not be subject to the demands of creditors, even after the money had come into their hands, or was held by another for their benefit."

Preliminary to a specific answer to the various questions propounded, it is deemed advisable to consider what investments of the funds of wards may be made by guardians of estates, under the laws of Ohio.

Under the provisions of Section 10933, General Code, it is the duty of a guardian of a minor to loan or invest the money of his ward in:

- (a) First mortgages on real estate * * * double the value; or
- (b) United States bonds; or
- (c) In state bonds on which no default has occurred; or
- (d) Bonds of a county or city in this state issued in conformity to law.

This also applies to guardians of incompetents, by the provisions of Section 10991, General Code.

Section 11214, General Code, reads as follows:

“When they have funds belonging to the trust which are to be invested, executors, administrators, guardians, including guardians of the estate of minors, and trustees, may invest them in bonds or certificates of indebtedness of this state, of the United States, or in the bonds or certificates of indebtedness of any county, city, village or school district in this state, on which default has never been made in the payment of interest, or in bonds issued by any bank organized under the provisions of the Act of Congress known as the Federal Farm Loan Act, approved July 17, 1916, and amended thereto, or in such other securities as the court having control of the administration of the trust approves.”

It is evident that aside from the specific investments that may be made by a guardian, investments may be made in other securities on approval by the Probate Court having jurisdiction over the guardianship.

The general rule deducible from the decisions of the Courts, is 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 consideration of the foregoing Federal and State statutes and cases herein cited, and the opinion of my predecessor, No. 3007 herein noted, it is my opinion that funds received by guardians for the benefit of their wards under the provisions of the World War Veterans' Act of 1924, held by said guardians, or deposited, or invested by them in the securities named in your various questions, are exempt from taxation by reason of Section 22 of said Act (38 USCA, Section 454).

Respectfully,

GILBERT BETTMAN,
Attorney General.

125.

DISAPPROVAL, LEASE TO OFFICE ROOMS AT 180 EAST LONG STREET,
COLUMBUS, OHIO.

COLUMBUS, OHIO, February 26, 1929.

HON. H. H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a lease in triplicate to be executed by George L. Gugle, leasing and demising to the State of Ohio, through the Director of Public