

"After a divorce the parties are, in legal contemplation, strangers to each other * * *"

And in the case of *Charlton vs. Miller*, 27 O. S. 298, it was held:

"A divorced wife cannot be the testator's widow, and, hence, is not called on to elect between the will and dower."

In *re Ashbaugh*, 4 O. N. P. (n. s.) p. 631, it was held:

"A divorced woman is not a 'widow' within contemplation of the statute allowing homestead exemption to insolvent debtors with families or other dependents."

Bouvier's Law Dictionary has defined the word "widow" in the following language:

"An unmarried woman whose husband is dead."

In view of the foregoing authorities cited the conclusion seems irresistible that a divorced woman is not a "widow" in legal contemplation and that the soldiers' relief commission is without authority to recommend the furnishing of relief to such a person on the grounds that she is a "widow" of a soldier.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1390.

OHIO NATIONAL GUARD—WHEN CERTAIN COMMISSIONED OFFICERS ARE ENTITLED TO INCREASED PAY UNDER PROVISIONS OF ACT OF CONGRESS (No. 210; H. R. 11927)—EXCEPTION.

Commissioned officers of the Ohio National Guard having the rank of colonel, lieutenant colonel, major, captain, first lieutenant, and second lieutenant are, by virtue of sections 5226, 5227, 5228 and 5231 G. C., entitled to increased pay at the rates, and during the period of time, provided in the act of congress approved May 18, 1920 (No. 210; H. R. 11927); subject, however, to the exception that the pay of the assistant adjutant general and of the assistant quartermaster general (both of whom have rank of lieutenant colonel) will continue only until the conclusion of peace, as provided in section 5227 G. C.

COLUMBUS, OHIO, July 1, 1920.

HON. A. V. DONAHEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date inquiring whether commissioned officers of the Ohio National Guard are entitled to receive increased or additional pay at the rates provided for in the act of congress entitled "An act to increase the efficiency of the commissioned and enlisted personnel of the army, navy, marine corps, coast guard, geodetic survey and public health service" (No. 210; H. R. 11927), approved May 18, 1920, was duly received.

Omitting all reference to officers in the navy, marine corps, coast guard, geodetic

survey and public health service of the United States, section 1 of the act provides that, commencing January 1, 1920, commissioned officers of the army shall be paid, in addition to all pay and allowances now allowed by law, increases at rates per annum as follows:

Colonels.....	\$600.00
Lieutenant Colonels.....	600 00
Majors.....	840.00
Captains.....	720.00
First Lieutenants.....	600 00
Second Lieutenants.....	420.00

The act also provides that the provisions of section 1 shall remain effective until the close of the fiscal year ending June 30, 1922, unless sooner amended or repealed, and further that nothing therein contained shall be construed as granting any back pay to any officer whose active service terminated subsequent to December 31, 1919, and prior to the approval of the act, unless such officers shall have been recalled to active service, or shall have been re-enlisted prior to such approval. See sections 9 and 13.

The pay of commissioned officers of the Ohio National Guard is provided for in sections 5226, 5227, 5228 and 5231 G. C. as amended March 21, 1917 (107 O. L. 392, 393), which practically covers all duties of such officers whether on duty all the time or on special duty by general or special orders of the commander in chief. The statutes just cited provide in substance that each commissioned officer shall receive such sum per day for each day's service performed as is allowed commissioned officers of like grade in the army of the United States, thus, in effect, making the federal law on the subject a part thereof by reference. The Ohio statutes, insofar as they are pertinent to the inquiry, are as follows:

"Section 5226. When called upon by the state in aid of the civil authorities each commissioned officer shall receive such sum per day for each day's service performed as is allowed commissioned officers of like grade in the armies of the United States, * * *"

"Section 5227. * * * When the national guard is called into the Federal service the adjutant general, assistant adjutant general and assistant quartermaster shall receive the pay and allowance of their rank according to those at the time prescribed for the armies of the United States, which same pay and allowance shall be in lieu of the salary of each of said officers provided in section two thousand two hundred and forty nine of the General Code, until the conclusion of peace or the repression of the insurrection."

"Section 5228. For duty at encampments ordered by the commander in chief each commissioned officer shall receive such sum per day for each day's service performed as is allowed commissioned officers of like grade in the armies of the United States; * * *"

"Section 5231. For service and attendance upon general courts martial, courts of inquiry, and boards appointed by the commander in chief, as member, judge advocate, recorder or witness, or upon inspection or other duty when ordered by the commander in chief, officers when not engaged upon duty for which pay is provided, shall receive as pay the amount allowed by law for their rank and grade, * * *"

You are therefore advised that commissioned officers of the Ohio National Guard having the rank of colonel, lieutenant colonel, major, captain, first lieutenant, and second lieutenant, are entitled to increase or additional pay at the rates provided for in the act of congress referred to; and, inasmuch as sections 5226, 5227, 5228 and 5231

G. C. were in full force and effect prior to the enactment and approval of the federal act, and are now in force, you are further advised that such officers are entitled to pay from January 1, 1920, until the close of the fiscal year ending June 30, 1922, unless the federal act be sooner amended or repealed, subject to the exceptions that the pay of the assistant adjutant general and of the assistant quartermaster general (both of whom have the rank of lieutenant colonel) will continue only until the conclusion of peace as provided in section 5227 G. C. This is but applying and giving effect to the provisions of the Ohio statutes which for some time have prescribed the rule or method whereby the pay of commissioned officers of the Ohio National Guard shall be determined.

Respectfully,
 JOHN G. PRICE,
Attorney General.

1391.

PROBATE COURT—WITNESS FEES IN JUVENILE CASES UNDER SECTIONS 1680 AND 3011 G. C. ET SEQ. (108 O. L., 1203)—WITNESS FEES IN LUNACY, EPILEPTIC AND FEEBLE-MINDED CASES UNDER SAID LAW—THE WORDS “PROVED INSOLVENT” USED IN SECTION 1982 G. C. CONSTRUED—FEES AND EXPENSES OF OFFICERS REFERRED TO IN SECTION 5348-10 G. C. (108 O. L. 1203) CONSTRUED—PHRASES IN SECTIONS 1602 AND 1982 G. C. AS TO “PERSONS LEGALLY RESPONSIBLE FOR HIS CARE AND SUPPORT” CONSTRUED.

1. *Under sections 1680 and 3011 et seq. as amended in H. B. 294 (108 O. L. Part II, 1203) the payment of witness fees in juvenile cases of \$1.00 and five cents for each mile is authorized, the vouchers for which need not be verified by the oath of the probate judge.*

2. *Witness fees in lunacy, epileptic and feeble-minded cases are costs within the meaning of section 1981, as amended in said H. B. 294, which are taxable against the patient or those lawfully responsible for his care.*

3. *The words “proved insolvent,” used in section 1982 of said act, are construed to mean the determination of that fact by the probate court and the entrance of the finding in this regard on the court’s record of the case under consideration.*

4. *The fees and expenses of the officers referred to in section 5348-10, as amended in H. B. 744, 108 O. L. Part II, when properly fixed and certified are payable from the state’s share of the undivided inheritance taxes in cases where no tax is adjudged to be due from the estate.*

5. *The phrases “persons legally responsible for his care and support” and “those lawfully responsible for his care” as used in sections 1602 and 1982 respectively are held to refer to general liability by sections 12429, 13008, 7995 and 7997 rather than to the special responsibility referred to in section 1815-9.*

COLUMBUS, OHIO, July 1, 1920.

HON. JOHN P. PHILLIPS, JR., *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent letter relative to your request for the opinion of this department as to certain questions arising under house bill 294 (108 O. L., part 2, p. 1203), amending certain fees and costs sections. It is also noted that the source of your question is a communication to you from the probate judge and county auditor of Ross county.