in said document of incorporation which, of course, should be corrected.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2860.

TAXATION—LANDS PURCHASED BY GUARDIAN WITH FUNDS DERIVED SOLELY FROM UNITED STATES VETERANS' BUREAU—SUCH LAND TAX EXEMPT UNTIL TERMINATION OF GUARDIANSHIP.

SYLLABUS:

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.

COLUMBUS, OHIO, January 26, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion as to whether or not real estate purchased with funds derived solely from the United States Veterans Bureau and paid to guardians of Veterans Bureau beneficiaries under the World War Veterans Act is taxable in this State.

In your communication you suggest that you are presenting this inquiry in pursuance of a communication to you from Mr. W. L. Metzger, Regional Attorney for the United States Veterans Bureau, a copy of which you enclose. Mr. Metzger's letter reads in part:

> "Referring to our conversation of the morning of December 4, 1930. I have the honor of requesting your assistance in deciding a question which concerns taxation of real estate, purchased with funds derived solely from the United States Veterans' Bureau and paid to guardians of Veterans' Bureau beneficiaries under the World War Veterans' Act. The question of taxation of such funds has heretofore received the attention of the Attorney General of the State of Ohio and has been partially decided in his opinion No. 3007 dated December 10, 1928, amplified by an opinion dated February 26, 1929, and No. 1018 dated October 11, 1929. The questions therein decided are based upon the provisions of Section 22 of the World War Veterans' Act as follows:
>
> 'That the compensation, insurance, and maintenance and support allowance payable under Titles 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 Titles II, III, or IV; and shall be exempt from all taxation * * *.' "
>
> In the Attorney General's opinion dated December 10, 1928 he decided in substance as follows:
>
> '(1) The compensation, insurance and support allowance, received by virtue of the World War Veterans' Act of 1924, are exempt from taxation under the provisions of Section 22 of said Act, (38 U. S. C. A., Section 454), as long as said funds are in their original form, in the hands of the beneficiary, or on deposit to his credit.'

'(2) Specific exemptions from taxation granted in the World War Veterans' Act of 1924, apply only to payments made under authority of said Act, and have no application to payments by way of pension or otherwise under other Acts of Congress.'

'(3) There is no authority under Section 4747 U. S. Revised Statute, (Section 54, Title 36 U. S. C. A.) Section 5327 G. C. of Ohio, or elsewhere, for the exemption from taxation of pension money, after the same has been received back by the pensioner and placed on deposit in bank to his credit.'

In his opinion dated February 26, 1929, the foregoing was amplified as will be noted from the following quotation:

'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, number 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 U. S. C. A., Section 454).'

The last opinion of the Attorney General, No. 1018, dated October 11, 1929, simply holds that taxes which have been erroneously collected, contrary to Section 22 of the World War Veterans' Act, within the five years last passed, may be refunded by causing the County Auditor to call the attention of the County Commissioners to the fact.

Notwithstanding the provisions of the federal law and opinions of the Attorney General, supra, there seems to be considerable question as to whether or not taxes may be assessed on real estate purchased by the guardians of a Veterans' Bureau beneficiary out of funds derived solely under the World War Veterans' Act, as amended June 7, 1924. This office is of the opinion that such property is not subject to either state, county or municipal tax, so long as the bounty from the government going to such ward remains in the hands or under control of the government or his guardian. In support of this proposition we need only refer to the authorities cited in the Attorney General's opinion which I have quoted, viz: *Tax Commission of Ohio* v. *Rife, et al.*, 119 O. S. 43, decided June 13, 1928; *United States* v. *Jeremiah Hall*, 98 U. S. 343, 25 Law Ed. 185; *Wilson* v. *Sawyer*, 6 S. W. (2nd) 825.

There have been subsequent decisions by the courts of various states, holding that real estate, like any other form of investment made by the guardian of a Bureau beneficiary, out of funds derived solely under the World War Veterans' Act, was exempt from taxation. This is also established by the opinions of a number of Attorneys General of the several states. I think it was intended in the opinions of the Attorney General of the State of Ohio, above enumerated, to exempt such real estate from taxation, but as this form of investment was not specifically mentioned it seems that the County Auditor might properly evade the exemption from taxation, thereby causing a resultant divergence of opinion."

In view of the importance of the question, which affects many counties throughout the State, it of course is very proper that you submit the inquiry from the Veterans' Bureau.

In view of the former opinions rendered by this office and the extended discussion

in the communication which you enclose, it is believed unnecessary to review in detail the cases and opinions referred to in said communication. It may be stated, however, that the fundamental principle is recognized that the Federal government in pursuance of Article VI of the Constitution of the United States, may make such regulations with reference to the matter under consideration as it chooses. In other words, the Constitution of the United States and the laws made in pursuance thereof are the supreme law of the land, and the judiciary of the states are bound thereby. The inquiry, therefore, resolves itself into a question as to whether or not the Federal government in the language used in the enactment under consideration, has exempted lands purchased by guardians.

It may further be stated that the cases referred to by Mr. Metzger and mentioned in the former opinions, especially the Rife case, do not regard the payments made to guardians under the World War Veterans' Act as payments made directly to the beneficiaries. In other words, a guardian or administrator receiving such funds is the instrumentality through which the Federal government distributes said fund to the proper party, and until it reaches the hands of the beneficiary it is still under the control of the government itself.

In my opinion rendered under date of February 26, 1929, Opinions of the Attorney General for 1929, page 183 referred to in Mr. Metzger's communication, it was held as disclosed by the 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."

Said opinion was based upon the cases mentioned in the communication from the Veterans Bureau. The following specific classes of investments were considered in said opinion:

> "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."

In reaching the conclusion in said opinion, Section 10933, General Code, was noted in connection with the duty of a guardian of a minor to invest the money of his ward. Said opinion points out that said section authorizes investments 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."

It was further pointed out that the same section applies to guardians of incompetents by reason of the provisions of Section 10991 of the General Code. It was not necessary in said opinion to consider, and no mention was made of a further provision

of Section 10933, which authorizes such guardians to invest his ward's funds in real estate. Paragraph (7) of said Section 10933 reads:

> "Within a reasonable time after he receives it, to loan or invest the money of his ward, in notes or bonds, secured by first mortgage on real estate of at least double the value of the money loaned or invested. The buildings thereon, if any, must be well insured against loss by fire and so kept by the mortgagor for the benefit of the mortgagee, until the debt is paid. On failure so to do, the mortgagee shall insure them and the expense to him be repaid by the mortgagor and be a lien on the property concurrent with the mortgage. Or he may invest such money in bonds of the United States, or of a state on which default has never been made in the payment of interest, or bonds of a county or city in this state, issued in conformity to law; or with the approval of the probate court, in productive real estate within this state, the title to which must be taken in the name of the ward. He also shall manage such investments and when deemed proper, change them into other investments of the above classes. No real estate so purchased shall be sold by the guardian, except with the approval of the probate court. If the guardian fails to loan or invest money of his ward within such reasonable time, he must account on settlement for such money and interest thereon, calculated with annual rests;"

Inasmuch as Section 10991, General Code, makes the laws governing guardians for minors applicable to guardians for incompetents, we have the clear and express statutory provision authorizing guardians to invest in real estate for the benefit of their wards. While such investment must be approved by the court, it is believed that this requirement in no wise changes the nature of the power because the administration of such estates is under the supervision of the court in any event. While the cases hereinbefore mentioned have not considered an investment in real estate, it is believed that the principle enunciated by the courts is sufficiently broad so as to include real estate.

In the case of *Henning* v. *Henning* 27 N. P. (N. S.), 350, the conclusion of the court in the case of *Manning* v. *Spry*, 121 Iowa, 191; 96 N. W., 873 was cited with approval, in which opinion it was said:

> "The guardian does not receive the pension as of right, indeed, as we understand it, the government may, and frequently does, withhold pensions from one under guardianship. If a guardian does receive it, he is amenable to the department for its care and disposition. This being true, it has not reached the beneficiary until actually paid to him or expended for his benefit. While in the guardian's hands, he is a mere trustee or depositary for the general government, and the fund, no matter what its form, is not subject to taxation."

While the Iowa case dealt with pensions, as contradistinguished from payments under the World War Veterans' Act, it is believed that the principle announced therein has clear application here. In examining said opinion, it will be observed that the court regarded the funds in the hands of the guardian as being in the hands of the government and irrespective of the form of the investment the court regarded such funds as free from all taxation. In fact the court intimated that if the property was purchased with the funds and was in the hands of the veteran himself under those circumstances the same might not be subject to taxation. It furthermore may be mentioned that in the case of *Payne* v. *Jordan*, 138 S. E., 262, referred to in my opinion under date of February 26, 1929, it was indicated that a house purchased with proceeds of

war risk insurance was not subject to execution, by reason of the terms of the same enactment which is being considered herein.

It may be further mentioned that in the case of *Watkins* vs. *Hall*, 147 S. E., 876, the Supreme Court of Appeals of West Virginia followed the Supreme Court of Ohio in Tax Commission of *Ohio* v. *Rife*, and held that the computed value of a war risk insurance policy turned over by the government to the estate of a deceased soldier was not subject to the State inheritance tax laws. A similar holding was made by the Supreme Court of Pennsylvania in the case of Wanzel's Estate which also followed the Rife case, supra, and quoted extensively from it.

In *Cross* vs. *The State*, 278 Pacific, 414, the Supreme Court of Washington reached the same conclusion as that by the Supreme Courts of Ohio, Pennsylvania and West Virginia. While these cases did not deal with the specific question before us they did establish the principle that the beneficiaries under the World War Veterans' Act do not inherit balances payable after the death of the veteran, but rather take such proceeds because of the fact that they are specially designated by the United States government as proper beneficiaries. In other words, the Federal government in providing for the distribution of the fund in case of the death of beneficiaries named by the veteran adopted the statutes of descent and distribution as a medium of designating beneficiaries of the fund and that such policy on the part of the Federal government did not make such proceeds estates of inheritance.

In this connection it probably should be noted that in some two or three cases in the courts of New York it was held that the balance paid to the estate of a deceased soldier on a war risk insurance policy after his death and the death of the named beneficiaries was subject to the New York transfer tax and not exempt by U. S. C. A., Title 38, Section 454, which exempts war risk insurance from taxation. See 224 N. Y. S., 305; 225 N. Y. S., 543; 228 N. Y. S., 890.

However, the Supreme Court of Pennsylvania in the Wanzel case, hereinbefore mentioned, gave consideration to the holdings of the New York case and refused to follow said rule.

Much authority could be cited sustaining the proposition that the payment of pensions or gratuities in the nature of a pension to a guardian is not payment to the beneficiary. In other words, the guardian is an agent for the government and it follows that the government maintains control of the fund until it eventually reaches the party entitled to receive it.

Therefore, in view of the express provision of the statute which is quoted in the letter submitted with your communication, such funds are free from all taxation while in the hands of the guardian and the form of the investment would seem to have nothing to do with the question.

My opinion issued under date of February 26, 1929, hereinbefore referred to, is dispositive of the inquiry excepting of course specific items were therein passed upon. However, there would seem to be, in my opinion, no valid reason for any distinction, in the event that a guardian has, with the proper approval of the court, invested said funds in real estate. The principle involved is the same, whether it be moneys, bonds or land.

In view of the foregoing, and in specific answer to the question propounded, it is my opinion 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.

Respectfully,
GILBERT BETTMAN,
Attorney General.