

OPINION 65-71

Syllabus:

1. Under the provision of Section 5901.12, Revised Code, the Soldiers' Relief Commission may

pay benefits to persons or families determined to be needy; there is no provision of law permitting the Soldiers' Relief Commission to make direct payments on a land contract or mortgage.

2. Under the provision of Section 5901.14, Revised Code, the Soldiers' Relief Commission may appoint a person to draw, receipt for and properly expend the allowance provided for by law; such person may expend funds for the payment of land contract or mortgage obligations of the needy person or family if making such payments is consistent with the actual housing need.

To: Rex Larson, Richland County Pros. Atty., Mansfield, Ohio
By: William B. Saxbe, Attorney General, April 30, 1965

I have before me your request for an opinion which reads as follows:

" * * * * *"

" * * * Is it permissive for the Soldiers' Relief Commission to aid veterans by making payments on a land contract or a mortgage on behalf of such aid recipient as differentiated from paying his rent when in the opinion of the commission better housing is provided thereby for less payment?"

The following quotations from the Revised Code relate to the authority of the County Soldiers' Relief Commission.

The following is quoted from Section 5705.05, Revised Code.

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision * * * Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include:

" * * * * *"

"(E) In the case of counties, the amounts necessary * * * for the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines. * * *"

Section 5901.08, Revised Code, concerns itself with the receipt of applications of persons entitled to relief.

Section 5901.08, Revised Code, states:

"Each township and ward soldiers' relief committee shall receive all applications for relief under sections 5901.02 to 5901.15, inclusive, of the Revised Code, from applicants residing in such township or ward. Such committee shall 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, marines, and airmen and of their needy parents, wives, widows, and minor children who reside in such township or ward. The list shall include soldiers, sailors, marines, and airmen * * * who, in the opinion of such committee, require aid and are entitled to relief under such sections. (Emphasis added)

The following is quoted from Section 5901.11, Revised Code:

"On the last Monday in May in each year, the soldiers' relief commission shall meet and determine from the lists provided for in section 5901.08 of the Revised Code the probable amount necessary for the aid and relief of indigent persons for the ensuing year * * * After determining the probable amount necessary for such purpose, the commission shall certify it to the board of county commissioners, which, at its June session, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the required relief."

The following is quoted from Section 5901.12, Revised Code:

"On the fourth Monday of November of each year and at such other times as are necessary, the soldiers' relief commission shall meet * * * and shall examine carefully the lists and statements of those persons reported by the township and ward soldiers' relief committees, * * * If the commission is satisfied that any person so recommended is in need of assistance and is entitled thereto under such sections, 5901.02 to 5901.15/ the commission shall fix the amount to be paid each month to each person or family." (Emphasis added)

The word "needy" is not defined in Chapter 5901, Revised Code. The above statutes indicate that the county soldiers' relief commissions have complete discretionary authority as to which needy applicants require aid and are entitled to relief under such sections. Since the soldiers' relief commissions have the sole authority to determine who needy

applicants are, they must necessarily, therefore, have the sole discretion to determine the meaning of "needy" as used in Chapter 5901, Revised Code.

In the case State, ex rel. Lentz v. De Pue, 71 Ohio App. 83, the court stated at pages 85 and 86:

" * * * * *"

"The securing of the relief provided for in these statutes is not just a matter of asking for it. It is a matter at all times within the discretion and control of the commission."

It is noted that the payment provided for in Section 5901.12, Revised Code, is "to be paid each month to each person or family." I find no authority either express or implied providing that the assistance is to be paid without condition to any other person or organization.

In keeping with human experience, man's basic needs are food, clothing and shelter. Certainly, it is well within the discretion of the soldiers' relief commission to consider these necessities when employing discretion in deciding the amount to be paid. However, I am of the opinion that the commission has no authority to make direct payments on a land contract or a mortgage for the benefit of such "needy" persons. However, this need may be considered in fixing the amount to be paid to the person or family.

Section 5901.14, Revised Code, provides in part:

"To each person certified by the soldiers' relief commission to the county auditor shall issue his warrant upon the county treasurer for the monthly allowance awarded such person. Upon proper cause shown, such commission may appoint a suitable person to draw, receipt for, and properly expend the allowance made to any person under sections 5901.02 to 5901.15, inclusive, of the Revised Code, after the voucher or certificate is indorsed by the person for whom such allowance is intended, for the benefit of such person and the indigent members of his family.* * *"
(Emphasis added)

The legislature has provided another method of dispensing the allowance awarded i.e., through a person appointed. It can handily be inferred that the person so appointed could take into consideration that some portion of the funds may necessarily have to be expended for the purpose of insuring that the needy person or family be housed. I can see no reason why the person appointed under Section 5901.14, supra, under proper circumstances, could not expend money for land contract or mortgage payments, if such payments are compatible with actual need.

Accordingly, it is my opinion and you are advised that:

1. Under the provision of Section 5901.12, Revised Code, the Soldiers' Relief Commission may pay benefits to persons or families determined to be needy; there is no provision of law permitting the Soldiers' Relief Commission to make direct payments on a land contract or mortgage.
2. Under the provision of Section 5901.14, Revised Code, the Soldiers' Relief Commission may appoint a person to draw, receipt for and properly expend the allowance provided for by law; such person may expend funds for the payment of land contract or mortgage obligations of the needy person or family if making such payments is consistent with the actual housing need.