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SOLDIER, SAILOR OR MARINE — MILITARY FORCES OF UNITED STATES — SERVICE — RECEIVED EITHER AN HONORABLE DISCHARGE OR "CERTIFICATE OF SERVICE" TO SHOW COMPLETION OF REQUIRED PERIOD OF ACTIVE SERVICE OR THAT HE IS HONORABLY RELIEVED FROM ACTIVE FEDERAL SERVICE AND IS TRANSFERRED TO ENLISTED RESERVE CORPS, ELIGIBLE FOR ASSISTANCE PROVIDING FOR SOLDIERS' RELIEF — SECTION 2930 ET SEQ. G. C. — OPINION 2422, OPINIONS ATTORNEY GENERAL, 1940, VOLUME 1, PAGE 595, MODIFIED.

SYLLABUS:

A soldier, sailor or marine who has served in the military forces of the United States, and has received either an honorable discharge or a "certificate of service" showing that he has either completed the required period of active service or is honorably relieved from active Federal service and is transferred to the Enlisted Reserve Corps, is eligible for assistance under Section 2930 et seq. of the General Code, providing for soldiers' relief. Opinion 2422, Opinions Attorney General, 1940, Volume I, page 595, modified.

Columbus, Ohio, May 31, 1944

Hon. Frank T. Cullitan, Prosecuting Attorney
Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

> "The Soldiers' Relief Commission of Cuyahoga County inquired whether persons released from the armed services and transferred to the Enlisted Reserve Corps are eligible for assistance under G. C. 2930 et seq. Such persons are not as yet honorably discharged but do receive a 'Certificate of Service', which is more fully described in the letter of the Soldiers' Relief Commission requesting that an opinion of the Attorney General be had, a copy of such letter being annexed hereto."

Attached to your communication is a letter from the Soldiers' Relief Commission of Cuyahoga County, calling attention to an opinion which I rendered on June 18, 1940, in which it was said:

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

The letter of the Commission reads in part as follows:

> "Since the inception of World War Two, the United States Army has adopted some additional procedures in releasing men from the armed forces. Among these is a new form, No. 280, called: 'Certificate of Service' wherein it is stated that the soldier has 'honorably served in active Federal Service in the Army of the United States' and then, after citing his military record, states: 'Transferred to Enlisted Reserve Corps', and gives date.
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> Army regulations provide:
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> 'W. D., A. G. O. Form No. 280 — Certificate of Service. Form No. 280 'will be issued to each Reserve officer and Reserve nurse; commissioned officer, warrant officer, and enlisted man of the National Guard of the United States; member of the Enlisted Reserve Corps and of the Regular Army Reserve; and trainee inducted under the Selective Training and Service Act of 1940, who satisfactorily completes the required period of active military service in the Army of the United States or who is honorably separated from the military service or honorably relieved from active Federal service prior to the completion of the required period of service, except that in all cases when a W. D., A. G. O. Form No. 55 (Honorable Discharge Certificate) is furnished, a W. D., A. G. O. Form No. 280) will not be prepared. * * *'

> We understand that holders of Certificate of Service Form No. 280 are entitled to certain benefits from the United States Veterans Administration and the American Legion in accordance with the opinion of their Judge Advocate, as reported in the September, 1943, issue of the National Legionnaire, the official organ, states they are eligible for membership along with holders of an honorable discharge certificate.
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> We have had a number of returning soldiers present such a paper and because it is not in its terms an 'honorable discharge' we were required under previous rulings of the At-Atorney General to hold that they and/or their dependents are not eligible for assistance from the Soldiers' Relief Commission.
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> We would, in view of the increasing number of such applicants with otherwise apparent merit to their requests for assistance, appreciate serious consideration of this situation and an opinion as to the eligibility of these applicants for assistance. Accordingly we request that an opinion of the Attorney General be had on this subject matter."

The letter also sets out a portion of an opinion published by the National Judge Advocate of the American Legion, from which I quote the following:

> "It is understood that the Certificate of Service denotes transfer to a reserve status and has the effect of establishing to the satisfaction of defense industries and other prospective employers that the holder thereof has completed a period of service in the armed forces of the country, and is released from such active service, subject, however, to recall without going through the channels of the Selective Service. A holder of a Certificate of Service may eventually receive a discharge certificate; but the holder of the honorable discharge certificate (Form No. 55) will not be furnished a Form No. 280."

The soldiers' relief commission was first established in May, 1886 (83 O. L. 232). The statute as then enacted has been subject to several amendments which however do not appear to have materially changed its original purpose or general provisions. The changes have consisted principally in the clarification of the scope of the act as to the beneficiaries of the relief provided. The act is now codified as Sections 2930 to 2941, General Code. Section 2930 provides for the appointment in each county of a commission composed of three persons known and designated as the "soldiers' relief commission." Section 2934 is the section which specifies the beneficiaries. That section reads as follows:

> "Each township and ward soldiers' relief committee shall receive all applications for relief under these provisions, from applicants residing in such township 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, and of their needy parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried, but again have become needy widows, who reside in such township or ward, and including the soldiers, sailors and marines of the Spanish-American war, or of the world war and their wives, widows, needy parents, minor children and wards, who have been bona fide residents of the state one year, and of the county six months, next prior to such first Monday in May, and who, in the opinion of such relief committee, require aid, and are entitled to relief under these provisions."

As originally enacted, the statute related only to Union soldiers, sailors and marines. In 1900, the word "Union" was omitted and the section then referred to "all indigent soldiers, sailors and marines." This amendment was made shortly after the Spanish American War, and was evidently intended to include the soldiers of that war. In 1917 there was a further amendment which, in addition to its reference to "all indigent soldiers, sailors and marines", contained an express provision to include the indigent soldiers, sailors and marines of the Spanish American War. The significance of this change is not apparent since these veterans were already included in the general language of the section, as amended in 1900. In 1919 the Legislature again amended this section so as to include, specifically, soldiers, etc., who served in the war with Germany and in 1931 this section was given its present form, the last change consisting only in substituting "needy" for "indigent."

It will be noted that as the statute now stands, there is no specific reference to the present World War. However, one of my predecessors, in an opinion found in Opinions of the Attorney General for 1931, page 278, after discussing the history of the law to which I have referred, concluded that the specific mention of these several wars had no significance in view of the general language of the statute which then, as now, included all needy soldiers, sailors and marines. In the course of his opinion, at page 279, he said:

> "The maintenance of a standing army, navy and marine corps is not a new matter and the legislature, at the time of

> the enactment of the varying forms of relief sections, must have been aware of the fact that soldiers, sailors and marines exist as such outside of war time. It would be doing violence to the definition of the term 'soldier' to say that a person in the regular army is not a soldier simply because the country is not in a legal state of war.
>
> It must be further borne in mind that the provisions for the extension of what amounts practically to poor relief are remedial in character and are entitled to a liberal construction. The construction which would exclude a member of the armed forces of the United States from participating in this relief simply because the country has never during his term of employment been technically in a state of war, could scarcely be said to be liberal. Such a construction would also exclude from the benefits of the section those who might have engaged in actual fighting, although the government was not then technically at war. An instance of this would be the present employment of marines in Nicaragua."

The logical conclusion from his reasoning, in which I concur, would make the act applicable to soldiers, sailors and marines of the current World War, even without an amendment of the statutes specifically mentioning them. The use of general words which are all embracing, followed by specific language mentioning certain things which are to be included, does not mean that only those which are specifically mentioned are intended to be covered by the legislation. Ohio Electric Ry. Co. v. Ottawa, 85 O. S. 229; Anderson v. Durr, 100 O. S. 251.

In the case of Anderson v. Durr, supra, the Supreme Court had before it the interpretation of Section 5325 of the General Code, defining the subject of taxation. That section provided that the term "personal property" for the purpose of the tax laws should include various enumerated types of property. The specific question in the case was as to the taxability of a form of property not therein specifically described. The Supreme Court held that the property in question was taxable, saying at page 263 of the opinion:

> "Section 5325, General Code, does not exclude any property or thing from the term personal property, but out of abundant caution provides that the term shall include the things named. It cannot be construed as if it read the term shall *only include.*
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> As pointed out in Ohio Electric Ry. Co. v. Village of Ottawa, 85 Ohio St., 229, 236, the maxim expressio unius ex-

> clusio alterius is to be applied only as an aid to discover intention, and not to defeat clear intention."
>
> (Emphasis by the court.)

In my opinion, the statutes under consideration, being designed for the purpose of affording relief to "*all* needy soldiers, sailors and marines" who have served in the military forces of the nation, are entitled to have a liberal construction, and that has been the trend of the several decisions rendered by myself and by my predecessors. The principle also has abundant support in the decisions of the courts of the state. In 37 Ohio Jurisprudence, p. 737, it is said:

> "Statutes enacted in Ohio for the protection of human life, or statutes of equitable character and beneficent tendency, or statutes granting a valuable right and grounded upon principles of a humane public policy, have been given a liberal construction by the courts. Statutes intended to promote the safety and welfare of employees and to protect their widows and orphans should not be given a narrow, but an 'humanitarian,' construction."

In the long list of cases cited in support of this proposition, I note two which relate to the benefits provided by the state insurance fund. In Industrial Commission v. Pora, 100 O. S. 218, the court called attention to the provisions of Section 1465-91 of the General Code, which provided that the Commission should not be bound by usual common law or statutory rules of evidence or technical procedure, but should make its investigation in such manner as was best calculated to ascertain the substantial rights of the parties, and to carry out the spirit of the act. The court said:

> "The real spirit of this act is to measurably banish technicality and to do away with the nicety of distinction so often observable in the law, and commands a liberal construction in favor of employes."

In Industrial Commission v. Weigandt, 102 O. S. 1, the court speaking generally of the Workmen's Compensation Law, held:

> "The statute was intended to provide a speedy and inexpensive remedy as a substitute for previous unsatisfactory methods, and should be liberally construed in favor of employes."

In Opinions of the Attorney General for 1938, p. 1529, it was held that women who had served in the Spanish American War or the World War, as nurses, were included in the classification of persons entitled to soldiers' relief. In Opinions of the Attorney General for 1939, p. 2167, I held that students who, while members of the student army training corps, (SATC), were actually mustered into the military service of the United States, were entitled to the benefits of the act.

Referring to my 1940 opinion, No. 2422 mentioned in your letter, in which I defined the word soldier as implying one who had been "honorably discharged" from the military service, it will be noted that that opinion dealt with a soldier who had been honorably discharged, had reenlisted, and had become a deserter, and sought relief on the basis of his former honorable discharge. The informal opinion of June 26, 1941 reiterated the definition. At that time the final honorable discharge was the only possible evidence, so far as I was informed, upon which one could find that a soldier, sailor or marine could establish the fact that he had served honorably in the military forces of the United States, and that his active service had terminated. It now appears that by the introduction of the new army form No. 280 called "Certificate of Service" the fact of his honorable service and the termination thereof, is as well established as if he had an honorable discharge; and having in mind the beneficent purpose of the Soldiers' Relief Act, there could be no reason when he has thus completed his service for denying to him or to his dependents the relief provided. For all the purposes of the Act the certificate of service is the equivalent of a discharge. It appears to differ only in that the soldier may later be recalled to active service. If after his release on this certificate he becomes needy and relief is granted to him, and he is subsequently recalled to active service, the need for the relief and the relief itself would, of course, cease.

In the opinion above referred to, I adopted for the purpose of definition, the definition of "soldier" as contained in Section 2949, General Code, which section was not a part of the Soldiers' Relief Act but was a part of the act providing for soldiers burial plot, enacted much later (99 O. L. 443). I there considered that later act as being sufficiently in pari-materia with the Soldiers' Relief Act to justify using

the definition therein contained, which was also the only practical definition at the time my opinion was rendered.

An interpretation of a law which is sound at the time it is reached, may require change or modification due to a change in the legal or factual background, and I have no hesitancy, ih view of the new circumstance entering into the present situation to modify my former opinion to the extent here indicated.

Accordingly, in specific answer to your question, it is my opinion that a soldier, sailor or marine who has served in the military forces of the United States, and has received either an honorable discharge, or a "certificate of service" showing that he has either completed the required period of active service or is honorably relieved from active Federal service and is transferred to the Enlisted Reserve Corps, is eligible for assistance under Section 2930 et seq. of the General Code, providing for soldiers' relief.

Respectfully,

THOMAS J. HERBERT

Attorney General