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1. KOREAN WAR—MEANS UNDECLARED WAR IN KOREA —SECTION 2934 G. C.

2. SOLDIERS' RELIEF LAW—RELIEF TO ALL NEEDY SOLDIERS, SAILORS, MARINES—MUSTERED INTO SERVICE —MILITARY FORCES UNITED STATES — SPANISH AMERICAN WAR—WORLD WAR I—WORLD WAR II—KOREAN WAR—SECTIONS 2934, 2930 THROUGH 2941 G. C.

3. BENEFITS OF SOLDIERS' RELIEF LAW—APPLICATION TO MILITARY SERVICE—DEPENDENTS—OPINION 325, PAGE 346, O. A. G. 1945 OVERRULED.

4. RESIDENCE REQUIREMENTS — PROOF — ADDITIONAL REQUIREMENTS — MILITARY FORCES OF UNITED STATES—MUSTERED INTO SERVICE.

SYLLABUS:

1. The Korean War mentioned in Section 2934, General Code, means the undeclared war now in progress in Korea.

2. The Soldiers' Relief Law, Sections 2930 to 2941, of the General Code, is intended to furnish relief to all needy soldiers, sailors and marines who have been mustered into service and who are serving or who have served in the military forces of the United States, including but not limited to soldiers, sailors and marines of the Spanish-American War, World War 1, World War II, and the Korean War, and to their needy dependents as described in Section 2934, General Code.

3. The benefits of the Soldiers' Relief Law, Sections 2930 to 2941, General Code, are not restricted to those soldiers, sailors and marines who have been separated from military service, but apply equally to such soldiers, sailors and marines while in such service, and to their dependents mentioned in Section 2934, General Code. Opinion No. 325, Opinions of the Attorney General, page 346, 1945, overruled.

4. In order that a soldier, sailor or marine, or any of his dependents mentioned in Section 2934, General Code, may obtain relief under the Soldiers' Relief Law, Sections 2930 to 2941, General Code, proof must be furnished that in addition to the residence requirements set forth in said Section 2934, the soldier, sailor or marine by virtue of whose service relief is claimed, was duly mustered into service in the military forces of the United States.

Columbus, Ohio, August 29, 1951

Hon. Jackson Bosch, Prosecuting Attorney
Butler County, Hamilton, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

> "On 6 April 1951 Governor Lausche signed S. B. 204. This bill amends section 2934 of the General Code relative to persons entitled to relief under the Soldiers Relief provisions, and also declares an emergency which latter made the new law effective as soon as signed by the governor. Prior to amendment, section 2934 in specifying those eligible for Soldiers Relief mentioned only 'soldiers, sailors and marines of the Spanish American War or of the World War'. The section as amended now spells out the eligibility of veterans of World War II. Inasmuch as we had always assumed veterans of World War II were eligible, this change presents no problem. However, the words 'or the Korean War' follow the provision for World War II, so that the section now reads: '...and including the soldiers, sailors and marines of the Spanish American War, World War I, World War II or the Korean War and their wives, widows, needy parents and wards . . .' Section 3 of the bill declares the act to be an emergency measure necessary for the immediate protection

and preservation of the public peace, health and safety. Then follow these words: 'The reason for such necessity lies in the fact that its enactment into law at the earliest possible time will enable the Soldiers Relief Commission to help those dependent families of soldiers, sailors nad marines *serving in the Korean War'* Thus the legislature has created a new class of beneficiaries.

"Inasmuch as the federal government has not recognized the conflict in Korea as a war, the State of Ohio should define 'the Korean War' for the purposes of this act. Therefore, question number 1 is:

"1. What is 'the Korean War?'

"A. Who shall be deemed to be serving in 'the Korean War?'

"(1) Are the soldiers, sailors and marines serving in Japan serving in 'the Korean War?'

"(2) Is Air Force personnel based in Japan, or other islands in the vicinity, and flying regular missions over Korea serving in 'the Korean War?' Assuming the answer to be in the affirmative, are those servicemen who constitute the ground crews for those flying regular missions over Korea, but they themselves never leave their base, also deemed to be serving in 'the Korean War?'

"(3) Who in the navy shall be deemed to be serving in 'the Korean War?'

If the ship on which the serviceman is serving leaves the Korean waters, does that serviceman lose his eligibility unless and until he returns to the Korean waters? It is clear that the dependents of those actually fighting on Korean soil are eligible for Soldiers Relief. Can that eligibility be lost by transfer back to the United States or elsewhere?

"1940 O.A.G. 2422 provides that an applicant for Soldiers Relief must be able to exhibit an honorable discharge to the satisfaction of the Soldiers Relief Commission. 1945 O.A.G. 325 provided that persons on active duty were not eligible for Soldiers Relief. A serviceman serving in the armed forces could not exhibit an honorable discharge unless he had a previous period of service. This obviously barred all but a few who were on active duty. In what is apparently an informal opinion (it

bears no number) given by Attorney General Herbert S. Duffy late in the summer of 1950 in reply to an inquiry from Lewis Smith, Akron, President of the State Association of Soldiers Relief Commissions, it was pointed out that dependents of those persons who had been *recalled* to active duty were eligible for Soldiers Relief inasmuch as they could exhibit an honorable discharge. Under section 2934 G. C., as amended, those dependent families of soldiers, sailors and marines serving in 'the Korean War' are now eligible for Soldiers Relief without regard to any previous period of service. Therefore,, question number 2 is:

"2. What proof should an applicant be required to give when that soldier, sailor or marine on whose service the claim for assistance is predicated is serving in the armed forces for the first time?"

"It is even conceivable that an application for Soldiers Relief might be filed by someone who represents her husband or son to be in the armed forces when, in fact, such husband or son is not, and never was, in the service.

"Another situation that can, and will, come up is that where the serviceman's allotment and allowance to his dependents has been stopped because of his own misconduct or because he has voluntarily discontinued the allotment from his pay with the resultant discontinuance of the 'Q' allowance currently provided, a prerequisite of the 'Q' allowance being that the serviceman make an allotment from his pay for his dependents. If a serviceman refuses to make an allotment for his dependents then the 'Q' allowance cannot be paid. The Soldiers Relief statute, as amended, does not require such application as a condition precedent to eligibility for Soldiers Relief, but it should be borne in mind that the legislature made no provision whatsoever for any additional funds for payment of benefits even though a new class of beneficiaries was created. Such failure could make the amendment meaningless.

"If the new law is to be administered with any degree of uniformity, it is essential that answers to the above questions be given at once."

Prior to its amendment by the present session of the General Assembly, Section 2934, General Code, read 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."

By the enactment of Senate Bill 204, this section is made to read as follows:

"Sec. 2934. Ench 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, *World War I, World War II or the Korean 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."

I have set it out as it appears in the Act, showing the omission and addition. It will be noted that the only change made was the omission of the words, "or of the World War", and the addition of the words "World War I, World War II or the Korean War." The manifest intention of the amendment was to broaden the scope of the law so as to include not only the soldiers, sailors and marines of the several wars theretofore included, but also the soldiers, sailors and marines of World War II and the so-called Korean War.

It is worth while noting that as the Act was originally passed, in 1886, 83 Ohio Laws, 232 Section 1 authorized each county to levy a tax not exceeding one-tenth of one mill, "for the relief of indigent

Union soldiers, sailors and marines, and the indigent wives, widows and minor children of indigent or deceased Union soldiers, sailors or marines, to be disbursed as hereinafter provided."

In 1887, Section 1 of the Act, was amended, 84 Ohio Laws, 38 and the sentence above quoted, was made to read as follows: "for the relief of honorably discharged indigent Union soldiers, sailors and marines, and the indigent wives, widows, and minor children of such indigent or deceased Union soldiers, sailors or marines, to be disbursed as hereinafter provided." By later amendment in the same year the allowable tax was raised to three-tenths of one mill.

In 1900, 94 Ohio Laws, 158, the section in question was amended and instead of "Union soldiers", there was substituted, "soldiers, sailors and marines of the United States."

In the codification of 1910, the entire law relating to soldiers' relief was rearranged, and Section 2934 emerged in substantially its present form, except that no reference was made to any particular war, the scope of the benefits being stated as being for "indigent soldiers, sailors and marines," and their dependents. Here, it will be observed that the words, "honorably discharged" were dropped. In this codification the amount of the tax that might be levied was raised from three-tenths to five-tenths of a mill. Section 2936, General Code.

In 1917, 107 O. L., 26, there was added to the general language of description the words, "and including the soldiers, sailors and marines of the Spanish American War."

At the next session, 108 O. L. 633, the General Assembly added, "and the war with Germany."

In 1929, 113 O. L. 466, still another change was made, dropping the words, "war with Germany" and substituting "the World War."

I do not deem it necessary to devote must attention to the question, "What is the Korean War?" We know, of course, that no formal declaration of war has been promulgated. Yet it is very generally understood that a real war, although undeclared, has been in progress in Korea for many months. Accordingly, we may dismiss this question with the statement that, "by the Korean War", the General Assembly meant the conflict that is now going on in Korea in which tens of thousands of our

soldiers, sailors and marines are engaged, and which is taking the lives of thousands.

I take it, however, that the essence of your question lies in your further inquiry as to whether the soldiers, sailors and marines serving in Japan and ready for transportation to Korea, are to be considered as serving in the Korean War, and whether the air force personnel based in Japan or other islands in the vicinity and flying regular missions over Korea, are serving in the Korean War. In this connection, you also inquire as to the status of the members of the navy who may in some way be involved in the Korean War.

We might logically extend this inquiry to the men who are on transports, headed for the scene of this conflict, or who are awaiting shipment at some of the ports in the United States and elsewhere, or who have been inducted and are in training camps, preparing for possible combat service. I question whether an answer can be given to these questions as a matter of law. It occurs to me that the doubtful status of some of these men, as to their present service, is more properly a military question. For reasons hereafter stated, I do not consider that it is necessary to attempt any precise answer.

It appears to me that the real serious underlying question which your letter raises is whether it is the present legislative intent to extend the benefits of the soldiers relief law to soldiers, sailors and marines who are now in the military service of the United States and to their needy dependents, or to confine these benefits to such soldiers, sailors and marines, after their separation from active service, and to their dependents, as has heretofore been the settled policy of the state.

In this connection, attention is directed to an opinion of one of my predecessors, being No. 325, Opinions of the Attorney General for 1945, page 346. The first branch of the syllabus of that opinion reads as follows:

> "Relief provided under Sections 2390 to 2941 inclusive of the General Code, to soldiers and their named dependents, is not to be extended to soldiers who are in active service or to the dependents of such soldiers."

That opinion was largely based on the fact that the original law which specifically limited its benefits to "Union soldiers" and their dependents,

was passed twenty years after the Civil War had ended, and that the successive amendments mentioning the Spanish War and the several other wars in which our country had been engaged were all enacted after the close of those conflicts. It was said in the course of that opinion:

> "It is not easy from an examination of the statutes governing the organization and administration of soldiers' relief to determine whether soldiers who have been in the military services and are not yet discharged, and their dependents, are within the purview of the act and entitled to relief. We may, however, find some assistance in answering this question by considering the history of the legislation and the obvious purpose that lay behind its enactment."

After referring to the history of the legislation which in all cases could only refer to veterans of wars which had previously ended, the opinion, written in the closing days of the Second World War, proceeds:

> "There has been up to this time no other amendment of the statute which would in express terms include veterans who have been or shall be discharged or dismissed from service in the present war. The question might therefore arise whether they come within the scope of the law without further amendment specifically including them. However, one of my predecessors, in an opinion found in 1931 Opinions, Attorney General, p. 278, after reviewing the course of this legislation as above given, held that the specific reference to the war mentioned in the original enactment and in the successive amendments, did not limit the benefits of the act to soldiers, sailors and marines who had served in the wars mentioned, but that it was intended to include and did include 'all indigent soldiers, sailors and marines' who had served in lesser conflicts in which there may have been no actual declaration of war, such as the Indian Wars, Boxer Rebellion, Mexican Expedition and other like occasions to which we might add the Philippine Insurrection and the Nicaraguan Intervention.
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> "However, the Attorney General in that opinion without expressly so stating evidently had in mind throughout that the act applied not to men who were then serving in the army but rather to those who had served and whose services were concluded, in other words, to ex-soldiers only."

The 1945 opinion may seem to be sound as of the time when it was written, and in view of the history of the legislation up to that time. When, however, we turn to the recent amendment of Section 2934 above set forth, we may inquire whether the General Assembly may not have

had an intention to broaden the scope of the law by making its provisions apply as well to the men in active military service and to their needy dependents, as to veterans who had been separated from service, and their dependents. This view seems plausible, since in the amendment for the first time there was a reference to a pending conflict, to wit, the so-called "Korean War", which threatens to last indefinitely, and as a result of which a great many wives, children and parents of soldiers engaged in that conflict might be in great need of relief, directly due to the fact that the husband, father or son is in military service. And it is no answer to that need to say that the government has made certain provisions, which it may change or suspend at will, for a family allotment. Emergencies of great variety could arise in any family which those governmental provisions might not nearly meet. I feel, therefore, that in view of changed conditions, and to avoid confusion, Opinion No. 325 of 1945, must be overruled.

It is to be borne in mind that no one is to be a beneficiary of the law unless it is established that he is "indigent" or as the law now says, "needy." It is settled that laws relating to poor relief are entitled to have a liberal construction in favor of those for whose benefit they are intended. See 37 Ohio Jurisprudence, p. 737, where 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 employes and to protect their widows and orphans should not be given a narrow, but an 'humanitarian,' construction."

It would seem a natural interpretation of the language used in the recent amendment of Section 2934, General Code, that the General Assembly did not intend to postpone the benefits of the law, especially as they concern the "needy wives, parents, minor children and wards" of the men engaged in the Korean conflict until the indefinite and possibly remote time when these men may be separated from service, but rather intended such benefits to be extended to them at the earliest possible time. So far as the soldiers themselves are concerned, it is somewhat difficult to conceive of them being "needy" so long as they are in the service, but, as already suggested, the needs of their dependents may be very acute.

Furthermore, I cannot conclude that the legislature intended to make favorites of soldiers who are engaged in the Korean conflict, as against those who may be in other fields of military service and at present not engaged in any fighting. The hunger and destitution of their wives, children and parents would be just as acute as the dependents of men who happen to be in the Korean conflict.

I agree with my predecessor who, in Opinion No. 2976, Opinions of the Attorney General for 1931, page 278, held:

> "The provisions of section 2930, et seq. of the General Code, extend the relief therein provided to all indigent soldiers, sailors and marines and their indigent parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried but again have become indigent widows, irrespective of the fact that such soldiers, sailors and marines may not have any war service."

Furthermore, I agree with the idea expressed in that opinion, to the effect that the general words "all indigent soldiers, sailors and marines" as used in the law in its early form, and still retained, were not in any way qualified or limited by the successive acts of the legislature in "including" several specific wars. I quote from the body of that opinion, at page 279:

> "The first legislation of this character was enacted in May, 1886 (83 O. L. 232), and provision was then made with respect to Union soldiers, etc. only. While various amendments occurred thereafter, the act continued to apply only to Union soldiers until April 14, 1900, when the word 'Union' was omitted, and the section then referred to all indigent soldiers, sailors and marines. The purpose of this amendment, following closely after the Spanish-American War, was quite evidently to include the soldiers of that war within the meaning of the section. Again, on May 6, 1917, there was an amendment which 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. On May 10, 1919, the legislature again amended this section so as to include indigent soldiers, etc. who served in the war against Germany, and the 88th General Assembly made the final change in the statute to its present form.
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> "From this history, I am unable to ascribe to the terminology used any different meaning than that which is apparent upon its face. If the words 'all indigent soldiers, sailors and marines' are

of no significance and one must look to the explanatory phrases thereafter for the authority to extend benefits, then quite obviously a very substantial number of persons who have always been entitled to relief would be omitted. I have reference to Civil War Veterans, and those of our military, naval and marine forces who have served in lesser conflicts such as Indian Wars, the Boxer Rebellion, Mexican Expedition and other like occasions. Manifestly, no such restricted meaning may be applied, for surely it was not the intention of the legislature to confine the beneficiaries of relief to soldiers, sailors and marines of the Spanish-American War and the World War only."

Looking to the language of Section 2934 in its latest amendment, we find that it calls for making,

"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 have again become needy widows, who reside in such township or ward, *and including* the soldiers, sailors and marines of the Spanish-American War, World War I, World War II, or the Korean War, and their wives," etc.

This list becomes the basis for the distribution of relief. Can anyone argue that the specific inclusion of the several conflicts named in any way limits the scope of the words, "all needy soldiers, sailors and marines," or excludes other soldiers, etc. who have been or may now or hereafter be stationed in Europe or Alaska or elsewhere, and who may tomorrow find themselves engaged in a conflict of some kind? It is my opinion that the general words which have been in the act since the limiting words "Union soldiers" were stricken out in 1900, are the only words to which we need look in determining the intended scope of the law, and that the successive inclusion of specific wars does not qualify or change that intention, however much they tend to confuse it.

Supporting this broad view as to the scope of the law, I call attention to Opinion No. 1473, Opinions of the Attorney General for 1939, in which it was held:

"Students, who while members of the Student Army Training Corps (S. A. T. C.) were actually mustered into the military service of the United States, are entitled to the benefits of the Soldiers' Relief Act."

This opinion would make the actual mustering of a person into the

military service of the United States a test of his eligibility and that of his dependents to become the beneficiaries of the law under consideration; a test which I consider quite in accord with the legislative intention, as derived from a consideration of the history of the law and its present provisions.

I am also of the opinion that the words, "soldiers, sailors and marines" used in the law from the very beginning, are to be given a liberal construction and should be interpreted as including persons in every branch of the military service of the United States. I think we may safely ascribe to the legislature the intention in its continued use of those words through successive amendments, to make them all-embracing and including without discrimination persons in every branch of the military service of the United States, and regardless of whether they have or have not been engaged in any war or other military conflict. In this connection I note Opinion No. 2805, Opinions of the Attorney General for 1938, page 1529, in which it was held that women who served as nurses in the army or navy are included in the provisions of the soldiers' relief law.

In specific answer to your questions, it is my opinion and you are advised:

1. The Korean War mentioned in Section 2934, General Code, means the undeclared war now in progress in Korea.

2. The Soldiers' Relief Law, Sections 2930 to 2941, of the General Code, is intended to furnish relief to all needy soldiers, sailors and marines who have been mustered into service and who are serving or who have served in the military forces of the United States, including but not limited to soldiers, sailors and marines of the Spanish-American War, World War I, World War II, and the Korean War, and to their needy dependents as described in Section 2934, General Code.

3. The benefits of the Soldiers' Relief Law, Sections 2930 to 2941, General Code, are not restricted to those soldiers, sailors and marines who have been separated from military service, but apply equally to such soldiers, sailors and marines while in such service, and to their dependents mentioned in Section 2934, General Code, Opinion No. 325, page 346, Opinions of the Attorney General for 1945, overruled.

4. In order that a soldier, sailor or marine, or any of his dependents mentioned in Section 2934, General Code, may obtain relief under the

Soldiers' Relief Law, Sections 2930 to 2941, General Code, proof must be furnished that in addition to the residence requirements set forth in said Section 2934, the soldier, sailor or marine by virtue of whose service relief is claimed, was duly mustered into service in the military forces of the United States.

Respectfully,

C. WILLIAM O'NEILL
Attorney General