

BONUS: Only named beneficiaries can claim on death of soldier - soldier under guardianship may claim through guardian.

October 23, 1933

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Hon. H. W. Brown
Adjutant General
Adjutant General's Office
Jefferson City, Mo.

Dear Sir:

On August 26th we received from your office two requests for opinions. The first request was as follows:

"An ex-soldier filed claim for bonus which was approved during his life time. Payment, however, could not be made due to lack of funds. Before the funds became available, the man in question died. He left no heirs of the class designated in the Bonus Law as entitled to receive the bonus of deceased soldier. He did leave other heirs, however.

This office desires to know, in view of the fact that the claim was allowed before the man died, whether or not it can be paid to the heirs of his estate."

The second request was as follows:

"Your opinion is requested as to whether the guardian of an ex-service man who is mentally deficient would be permitted to file and sign a bonus claim for said mentally deficient soldier, and, if the claim was allowed, should the warrant be made payable to the guardian."

Article 4, Section 44B, p. 93 of the Missouri State Constitution provides as follows:

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"The General Assembly shall have power, for the purpose of paying to each bona fide resident of the State of Missouri who served honorably in the military or naval force of the United States of America at any time between the 6th day of April, 1917 and the 11th day of November, 1918, a bonus * * * The Legislature shall enact such laws as shall carry into effect this amendment. The wife or husband, child, mother, or father, in the order named, and none other, of any deceased resident who served honorably in the military or naval forces, as provided in this section, shall be paid the sum or allowance that such deceased resident would be entitled to receive hereunder, if such deceased resident had lived; * * *"

Thus we see that the constitutional amendment above quoted provides for the payment to each bona fide resident of the State of Missouri who served in the World War or, on his death, to his certain named heirs 'and none other'. In the case of Fahy vs. Hackman, 291 Mo. 357 l.c. 379; 237 S.W. 752, the Supreme Court held that this amendment is not self-enforcing and said:

"The Legislature shall enact such laws as may be necessary to carry into effect this amendment.

The Constitution is dotted over with the word "shall" as it is used here. * * * * *

Such Legislature might refuse to act, and the only remedy of the people who framed the amendment would be to (1) elect a different Legislature, or (2) to initiate and adopt the necessary laws. We call attention to this, not to have it inferred that legislatures do not usually follow the suggestion of the Constitution, and enact laws, but to make it plain that the very vital portion of the amendment (contained in the first 16 lines) required a legislative act to put the amendment in force."

We look to the Legislature's act of enforcement and in the Laws of 1931, 2d Extra Session, p. 8 we find that Section 3 provides as follows:

"In case of the death of any person who would, if living, be entitled to the bonus under this act, the same shall be paid to the following persons, in the order named, and none other: First, surviving wife or husband, second, surviving child, and if there be more than one child surviving, then equally among such children, third, surviving mother; fourth, surviving father. Every person making application for a bonus, as hereinafter provided, shall set forth in his application the names and addresses of all persons who would be entitled to receive the same in the event of the death of the applicant, and if such applicant shall die before the payment of such bonus, then such application shall be deemed to inure to the benefit of the person or persons next entitled thereto, and payment shall be made to such person or persons upon proof of identity satisfactory to the commission hereinafter provided for. If all persons designated herein as entitled to the bonus shall die before the payment thereof, the right to the bonus shall cease and determine. Application for bonus made in behalf of minor children shall be made by the duly appointed guardian or curator of such children, or by any person who stands in loco parentis to such minor children."

Section 9 of said law, as amended by the laws of 1931, p. 140 provides as follows:

"It shall be the duty of the adjutant-general to determine as expeditiously as possible the persons who are entitled to the payments under this act and to make such payments in the manner herein prescribed. Applications for such payment shall be filed with the adjutant-general on or before December 31, 1932, and at such place or places as the adjutant-general may designate and upon blanks furnished by the ad-

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adjutant-general: Provided further, the adjutant-general shall have the power to adopt all proper rules and regulations not inconsistent herewith to carry into effect the provisions of this act; and provided further, that all officers of the state or any county and any city or town therein are hereby directed to furnish free of charge, in writing, any information that the records in his office may disclose relative to the identity, place and period of residence and the war service of any soldier claiming a payment under this act, whenever such information is required by the adjutant-general of any person making an application for such bonus or any part thereof; and any application for bonus heretofore filed and rejected may be filed before the adjutant-general and by him again heard; and if it appears that the rejection of the claim was erroneous, the rejection may be set aside, and the claim allowed and paid; and provided further that no department of the state government shall employ any clerks for the purpose of carrying out the provisions of this act, except the adjutant-general shall employ an examiner of soldier bonus claims and one stenographer for the handling of claims."

Thus we see, in answer to your first request, that the Legislature provided the order of payment and to whom payable in case of death. It is our human endeavor to make every reasonable effort to construe the law in favor of a deceased soldier's personal representative or collateral heirs, if it be at all possible, especially since the bonus might lapse for want of a beneficiary. In the light of the constitution with its express limitation and the laws issued pursuant thereto, we cannot conscientiously say that the personal representative or collateral heirs are entitled to the bonus money unless the Legislature so intended. It is our opinion that the Legislature did not so intend, for they limited the payment on death of the soldier to named beneficiaries and none other,

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using the express language of the Constitution itself. They further said, 'If all persons designated herein should die before the payment thereof, the right to the bonus shall cease and determine.' In the face of the language of our Constitution and the law written pursuant thereto, it is subject to no other construction, and the fact that the claim was allowed before the soldier died will not alter the hard, fast rules laid down by the law.

Answering your second request, it is the opinion of this office that the guardian of a soldier who is mentally deficient is permitted to file and sign the bonus claim of said soldier, signing the soldier's name and his name as guardian. There should be proof of guardianship furnished by the guardian, but a certified copy of the order of the Probate Court should be sufficient. The soldier's warrant should be made payable to the soldier, but of course it can be cashed by the guardian endorsing the same as guardian.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
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