

SOLDIERS' BONUS: Widow of soldier is entitled to Soldiers' Bonus on presumption of soldier's death, and presumption of death is not available until after seven years has elapsed from the date that soldier was last heard of.

September 19, 1935. 9-20



Honorable H. W. Brown  
Adjutant General  
Jefferson City, Missouri

Dear Sir:

Your request for an opinion dated September 5, 1935, is as follows:

"The widow of a veteran has filed claim for Missouri Soldiers' Bonus which has been approved for payment. Payment has not been made due to the fact that, although this veteran disappeared from his home October 8, 1920, and has never been heard of since, a record from the War Department, Washington, D. C. shows that this same veteran enlisted under another name and deserted the service Sept. 30, 1929. The War Department has no record of this man since he deserted in 1929.

"On June 13, 1928, this veteran was declared to be legally dead by the Court in the County where he formerly resided. His widow was appointed administratrix of his estate on June 13, 1928.

"This office desires to know, in view of the above facts, whether this claim can be paid to the widow of this veteran now."

Article IV, Section 44b, Missouri Constitution, provides:

"In addition to the exceptions made and created in sections 44 and 44a, 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 forces of the United States of America at any time between the sixth day of April, nineteen hundred and seventeen, and the eleventh day of November, nineteen hundred and eighteen, a bonus of ten dollars for each and every month or major fraction of a month, that such resident was in active service, to contract or to authorize the contracting of a debt or liability on behalf of the state, and to issue bonds or other evidences of indebtedness thereof not exceeding in the aggregate, fifteen millions of dollars; such bonds or other evidence of indebtedness to bear interest at a rate not exceeding five per cent, per annum, payable semi-annually and maturing not later than twenty years from the date they bear. The said bonds and the interest that will accrue thereon shall be paid out of a fund to be provided by the levy and collection of a direct annual tax upon all taxable property in the state. It shall be the duty of the state auditor, annually, on or before the first day of July, to determine the rate of taxation necessary to raise the amount of money needed for that year to pay the principal and interest maturing in the next succeeding year, taking into consideration available funds, delinquencies and the cost of collection. The auditor shall annually certify the rate of taxation so determined to the clerk of the county court of each county and to the assessor or other officer in the city of St. Louis whose duty it may be to make up and certify the tax books wherein are extended the state taxes. It will be the duty of said clerks and the said assessor or other proper officer in the city of St. Louis to extend upon the tax books the taxes to be collected and certify

the same to the collector of the revenue of their respective counties, and the city of St. Louis who shall collect such taxes at the same time and in the same manner and by the same means as are now or may hereafter be provided by law for the collection of state and county taxes, and pay the same into the state treasury. The legislature shall enact such laws as may be necessary to 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: Provided, that no one person entitled to receive the bonus herein provided shall receive an amount exceeding two hundred and fifty dollars; and, provided, that no person shall be entitled to receive the bonus herein provided who, being in the military or naval service of the United States of America subsequent to the sixth day of April, nineteen hundred and seventeen, refused on conscientious, political or other grounds to subject himself to military discipline or to render unqualified service; and provided further, that no person shall be entitled to receive the bonus herein provided who was not a bona fide resident of the state of Missouri at least during the twelve months prior to the sixth day of April, nineteen hundred and seventeen, or who has received a state bonus from any other state in the Union."

Pursuant to this constitutional amendment the Legislature has provided in Section, 9, Laws of 1935, page 362 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 payments shall be filed with the adjutant-general on or before December 31, 1936, and at such place or places as the adjutant-general may designate and upon blanks furnished by the 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."

Money payable to the wife or husband, child, mother or father, of any deceased resident who served honorably

in the military or naval forces, must be paid in the constitutional order named and none other. In determining this order of payment the constitutional provision requires that the Adjutant General first determine that the bonus money in his hands is the service-right of a constitutionally qualified soldier, and to pay to him only so long as he be alive. But, if he be dead then to pay this service-right, this bonus money, in the constitutional order and to the persons named in the Constitution. The constitutional payee changes on the death of the person prior in order. The Constitution provides for a succession of payees. The question arises in your request: When is the death of a person, prior in order, to be presumed when there is no proof of actual death?

It is true that an administrator can be appointed under the Missouri law, by the Judge having jurisdiction of his estate, to administer the estate of one absent and unheard of for seven years. Section 265 R. S. Mo. 1929 so provides.

The fact that this soldier's estate has been administered upon under the provision of Section 265, R. S. Mo. 1929, gives the administrator no claim to bonus money because by the very provisions of the Constitution this bonus money is payable to constitutional successors, persons in being, and not payable to any estate. To consider bonus money payable into any estate is an affront on the Constitution providing for the soldier's bonus.

Section 1709, R. S. Mo. 1929, provides for the presumption of death applicable in the case in question. This Section provides:

"If any person who shall have resided in this state go from and do not return to this state for seven successive years, he shall be presumed to be dead in any case wherein his death shall come in question, unless proof be made that he was alive within that time."

In the case of Carter v. Life Insurance Company, 158 Mo. App. 368, l. c. 373; 138 S. W. 49, the Appellate Court had under consideration the above statute and they said:

"But the presumption of death, which is the one on which the statute operates, only arises when these facts are present; first, residence

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of the person in this state; second, departure of that person from this state; third, the continued absence of that person from this state for seven successive years, no proof being made that he was alive within that time."

It is the opinion of this office that the widow of the soldier in question is next in succession to receive the Missouri bonus on the death of her soldier husband. It is our opinion that in the case before the Adjutant General, wherein she claims his death, the presumption of death will begin from the time that substantial proof shows him to have last been known to be alive. The facts show that he, in another state, deserted the army on September 30, 1929, showing conclusively that he was alive on that date. It follows, that after seven years from September 30, 1929, which would be after September 30, 1936, the widow can legally assert the statutory presumption of death, in support of her claim of his death, entitling her to the Missouri bonus. Until that time nothing short of his actual death will make her the constitutional successor to his bonus money. The fact that his estate was administered upon has nothing to do with the claim for bonus money, because this bonus money is not a part of his estate.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General.

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