

BONUS - Payable only on basis of actual service.

March 21, 1938



Honorable Lewis M. Means
The Adjutant General
Jefferson City, Missouri

Dear General Means:

We acknowledge your request for an opinion dated March 8th, which reads as follows:

"It is requested that this office be furnished an opinion in the following case:

"John Lawrence O'Leary, Navy Service No. 117-17-10 enlisted in the United States Navy on May 5, 1917. He was at home awaiting orders until August 13, 1917, and classified by the Naval Department as an Apprentice Seaman. He was then sent to the Naval Training Station, Great Lakes, Illinois, from August 13, 1917 to November 6, 1917. He was then transferred on November 6, 1917, to the U. S. Virginia, where he served until his Honorable Discharge, March 9, 1918.

"The Bureau of Navigation has ruled that this man and others under the same conditions were on active duty while they were at home awaiting orders, in this case, from May 5, 1917 to August 13, 1917. Heretofore, this department has never paid these men a state soldiers' bonus for the time which they were at home awaiting further orders from the Naval Department.

"This policy was followed because of the fact that those men who registered for the draft and were at home awaiting orders, do not receive a state bonus for the time spent.

"It is the opinion of this office that those men who enlisted in the Navy, and were at home awaiting orders, should not receive pay for the time so spent. However, we would like an opinion from your office in the matter, defining the word 'active' as used in Section #1 of the Bonus Law."

Section 44b, Article IV of the Missouri Constitution provides for the payment of state bonuses to Missouri residents "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."

Pursuant to this constitutional provision, Laws Mo. 1937, p. 479, Section 9, provides:

"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, 1938, 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."

CONCLUSION.

The purpose of the people of Missouri, in giving a bonus to its soldiers, was intended as a loving gesture for actual military service. The Constitution speaks of those who "served", and makes no mention of those who were on "active duty" awaiting orders for actual service.

Soldiers or sailors awaiting orders for actual service were not intended beneficiaries of the Missouri Soldiers' Bonus, and such is the opinion of this office.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General