

SOLDIERS--BONUS: Administrator or Executor of deceased soldier's Will has no constitutional claim to any soldier's bonus money in Missouri, even when soldier applied for same during his lifetime.

May 28, 1935.

6-10



Mr. Robert J. Callahan
National Judge Advocate
706 Chestnut Street
St. Louis, Missouri

Dear Sir:

We have your request for an opinion, dated May 15, 1935, which reads as follows:

"In behalf of our organization I would appreciate having an interpretation of the so-called Soldiers Bonus Law. My understanding is that the Missouri Bonus Law provides that in case of the death of any person who would if living be entitled to the Bonus under the Act, the same shall be paid to the following persons in the order named and none other:

"First: Surviving wife.

"Second: Surviving child, and if there be more than one child surviving, then equally amount such children.

"Third: Surviving mother.

"Fourth: Surviving father.

"The question which we would appreciate your answering for us is as follows: When a soldier has filed his application for payment of the Bonus and while his application is pending with the Adjutant General awaiting an additional affidavit as to residence of the veteran, said veteran dies leaving a last will and testament, is it not a fact that said amount is payable to his Estate due to the fact that said veteran had

previously made an application and was seeking to recover his Bonus at the time of his death?

"I would appreciate your giving me your interpretation regarding the above as there are some two or three cases similar to this one. It appears to me that in that said soldier had made his application and was entitled to the Bonus at the time of his application, that said amount would be payable to his Administrator."

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

"* * * *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: * * * * 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."

In answering your question we need not look beyond the constitutional provisions above quoted.

CONCLUSION.

We are of the opinion that where an ex-soldier dies, who otherwise would have been personally entitled to a

Mr. Robert J. Callahan

-3-

May 28, 1935.

soldier's bonus from the State of Missouri, then the wife or husband, child, mother or father, in the order named, and none other, shall be paid the sum that the deceased would have received if he had lived.

The fact that an eligible soldier applied for his State bonus and then died leaving a Will does not alter the constitutional succession to the right to receive this State bonus money. The people of Missouri, by their vote, did not intend that State bonus money become a part of any soldier's estate on his death, or that his administrator under his Will should have anything to do with the administration of bonus money claimed, but never received during his lifetime. By their vote in favor of the constitutional provision, supra, the people of Missouri personally identified and qualified the beneficiaries eligible to State bonus money. An administrator, under a Will, is a stranger to the eligible beneficiaries named in the Constitution. Where there is no constitutional beneficiary living to claim and receive this bonus money the benefice fails for want of a beneficiary.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.

WOS:H