

SOLDIERS' BONUS ACT: Interpretation of Sec. 9012c, of Chapter 51, Article 9, Missouri Statutes Annotated, page 6313

August 12, 1942

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Maj. Kyle T. Graham
State Staff, Hq MoNG
Office of the Adjutant General
Jefferson City, Missouri

Dear Major Graham:

This is to acknowledge receipt of your letter of recent date wherein you request an opinion from this department based on the following statement of facts:

"In the adjudication of a claim for Missouri Soldiers' Bonus of one Florine Dawson, widow of Floyd N. Dawson, deceased, World War veteran, a certain technicality has developed and this office wishes an opinion before proceeding further with the claim.

"A resume of the case, as outlined in the application, is as follows:

"Floyd N. Dawson, Army Serial Number 5-319,792, was inducted into Federal Service on November 5, 1918, and served honorably therein until his discharge, April 18, 1919. At the time of his entrance into service, he was married to one Adeline H. Dawson. To this union was born one (only) child, Velda Dawson, still living, date of birth unknown. During the year 1930, Mr. Dawson's wife, the above mentioned Adeline H. Dawson, died, and subsequent thereto, said Floyd N. Dawson married one Florine McChesney, above referred to as Florine Dawson. On September 7, 1941, said Floyd N. Dawson died, without having made claim for his Missouri Soldiers' Bonus.

"Under the Missouri Soldiers' Bonus Act, which states in part '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.'

"It is not clear to this office which is the legal claimant, the daughter from the first marriage, Velda Dawson, or the present widow, Florine Dawson."

In reviewing the Revised Statutes of Missouri, 1929, we find that Section 9012c of Chapter 51, Article 9, Missouri Statutes Annotated, page 6313, was not carried over into the Revisions of 1939. However, said section was not repealed and is, therefore, in full force and effect. In the case of State ex rel Asotsky v. Hicks, 472 S. W. (2d) 1. c. 473, the court said:

"The above sections are Secs. 101, 102 and 103 of Chapter 51, General Laws of Mo. 1877, supplement to the Wagner statutes of 1872. They do not appear in the revisions of 1879 and succeeding revisions. Even so, the omission from the revisions does not operate to repeal said sections. Meriweather v. Overly, 228 Mo. 218, 129 S. W. 1, Bird v. Sellers, 122 Mo. 23, 26 S. W. 668."

Section 9012c, Mo. Stat. Ann. Chap. 51, Art. 9, p. 6313, 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. (Laws 1921, 2nd Ex. Sess. p. 6, Sec. 3.)"

It will be noted from the reading of the first part of said section that it provides "In case of 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.* * *"

It may be pointed out that the statute under clause (1) supra, used the words "surviving wife or husband" and at no place in the section is there any attempt on the part of the Legislature to distinguish between the wife of the veteran at the time the statute was passed and a future wife of a claimant. Under the section, supra, it is clearly the intent that the veteran shall have the absolute right, to the exclusion of all other named classes of claimants, to receive the benefits of the Missouri Soldier's Bonus.

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We note from the opinion request that the veteran did not see fit to claim any benefits under this act during his lifetime, and now that he is deceased, it is our view that clause (1) of said section is controlling, for the reason that said clause provides "first, surviving wife or husband; * * *". Certainly, the lawful wife of claimant, though she be the second wife of claimant, would be his surviving wife, and absent any wording in said section which would preclude a wife other than the one at the time the act was passed, would in our opinion prevent any other interpretation, and that the woman who survived the veteran would be the lawful claimant. This is further true for the reason that claimant did not seek to receive the benefits of this act during his lifetime.

CONCLUSION

It is the opinion of this department that the lawful living wife of a veteran is entitled to the benefits under the soldiers' bonus act, upon the death of the veteran, who has failed to claim his benefits under said act during his lifetime, even though she not be the wife of said claimant at the time said act was passed.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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