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policemen may elect whether or not they will have pensions increased or decreased with corresponding changes in the compensation of active officers and the pensions of retired firemen will vary automatically with the pay of active firemen.

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### OFFICIAL OPINION NO. 63

August 29, 1952.

Honorable Clinton Green, Director,  
Department of Veterans Affairs,  
431 North Meridian Street,  
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

“The Veterans Bonus Law, as passed by the 1949 Indiana General Assembly and subsequently amended by the 1951 regular and special sessions, contains the following statement as quoted from Section 3 (c) of the original law:

“The Commission hereby is authorized to direct the payment of such claims and fix the date upon which payment of such claims shall begin but no such direction or order shall be made by the Commission until it shall find that the monies in the World War II Bonus Fund are sufficient to pay in full all claims, allowed or to be allowed as herein later provided. Until the effective date of any such order of the Commission so directing the payment of such claims and fixing such date, neither any member of the armed forces of the United States nor the next-of-kin of any such member shall have or acquire any right, vested or accrued, to the bonus provided for under this act nor any such right in or against the State of Indiana, the Commission or the funds appropriated to the World War II Bonus Fund.”

"The above quotation plainly states that no bonus applicant shall have or acquire any right, vested or accrued, to the bonus provided for under the Veterans Bonus Law until the effective date of an order by the Veterans Affairs Commission directing payment to be made and such order will not be issued by the Commission until sufficient funds have been accumulated in the World War II Bonus Fund to pay in full all claims covered by the order.

"The law further states under Section 2 (c) 'next-of-kin' means the widow or widower, who has not remarried, children, persons standing in *loco parentis*, mother, father (however, if the mother or father has abandoned, deserted or failed to exercise parental care to deceased while a minor, she or he will be removed from the line of succession within this definition), of any member of the armed forces of the United States, in the order named and none other.

"On June 9, 1951, the Veterans Affairs Commission met and declared that sufficient funds were available in the World War II Bonus Fund to pay all claims of next-of-kin of veterans who died while in service between the dates of December 7, 1941, and September 2, 1945, and all claims of veterans who were eligible for the additional \$100 payment for disability. Payment of these claims was started on July 1, 1951 and has been continuing as such types of claims are approved for payment and at the present time, approximately 100 such claims are yet to be paid.

"*Question No. 1:* In the absence of the positive statement to that effect, does Section 3 (c) quoted above mean, conversely, that after the date set by the Commission, June 9, 1951, such claimants *do* acquire a vested right to their bonus payment?

"*Question No. 2:* If the answer to question No. 1 is 'yes', are bonus payments to be made to the estate of the deceased applicant if the applicant dies after June 9, 1951?

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*“Question No. 3: If the answer to question No. 1 is ‘yes’, do the provisions of Section 3 (c) quoted above prohibit a bonus payment being made to the original, eligible, next-of-kin applicant who was the unremarried widow of a deceased veteran at the time of application but who subsequently remarried after June 9, 1951?”*

By a majority of jurisdictions “bonus” has been construed to be not a gift or gratuity but a sum paid for services, or upon a consideration in addition to or in excess of that which would ordinarily be given. 5 Words and Phrases 671, 5 Words and Phrases (Cumulative Supplement) 107 and cases cited therein.

Since the bonus is to be construed as compensation for military service which is in excess of what the member of the armed forces was paid at the time of his service, then such bonus or compensation of the applicant is to be considered as the applicant’s property. The Supreme Court of Indiana has stated “Generally the word property in its legal sense means a valuable right or interest in a thing rather than the thing itself.” *Meek v. State of Indiana*, 205 Ind. 102, 185 N. E. 899. However, the statute Section 3 (c) provides that the veteran’s or next-of-kin’s application for such bonus can not be paid until there is sufficient money from the revenue source to pay the applicants. Thus the applicant can acquire no property right to the additional compensation until the Commission fixes the date upon which payment of the various classes of applicants shall begin. Once the Commission fixes a date for payment to begin of the various classifications, then those applicants that come within the classification or classifications so set, acquire a property right. The Commission is prohibited from fixing a date until they are sure that there is sufficient money to pay all applications that come within that classification. Unless the statute thus stated that no eligible person acquired a property right to the bonus until there was sufficient money on hand to pay all applicants in their particular classification, then those persons would acquire such right upon the filing and acceptance of their claim. Evidently, the legislature did not want to confer a vested right to a bonus to the veteran and next-of-kin until there was sufficient money on hand.

In view of the above it is, therefore, my opinion that those applicants for bonus who come within the 1st and 2nd classes as set up by Section 3 (c) of the statute do acquire a vested interest after June 9, 1951, in the claims that they filed within the time limit set for filing such claims.

Since it is established above that applicants in the 1st and 2nd classes do acquire a vested right in the bonus after June 9, 1951, for which they filed claim then it logically follows that the actual payment of the bonus should be made to their estate in the event death preceded actual receipt of the bonus by the claimant. Thus, the answer to your 2nd question must be in the affirmative.

According to Section 5 of the Act which was amended in 1951, the last date for filing applications for bonus was April 30, 1951. If the unremarried widow of a veteran who died while on active duty made application for the bonus as was provided for in Section 3 (e) prior to the deadline and she remained unmarried until June 9, 1951, then she acquired a vested property right in the bonus. There is no specific provision in the Act that nullifies this property right after once becoming vested in the event the marital status of the widow changes. In the absence of any such specific provision, then to say that the remarriage of the widow after the bonus becomes a vested property right, makes the applicant ineligible for the bonus, would be the taking of property without due process of law. Thus, the answer to your 3rd question must be in the negative.