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It is therefore my opinion that a police officer may arrest a truck operator who does not have the appropriate identification as to gross weight affixed to the vehicle he is operating and such operator is guilty of a misdemeanor subject to a fine of not more than \$500.00 or imprisonment of not more than six months, or both.

OFFICIAL OPINION NO. 33

May 19, 1950.

Mr. Orville P. Bray,
Administrator,
World War II Bonus Fund,
431 North Meridian Street,
Indianapolis 4, Indiana.

Dear Sir:

I have your letter requesting an opinion from this office, which reads as follows:

“ In order to complete the adjudication of certain next of kin bonus claims, this department finds it necessary to seek legal opinions from your office. Your interpretation of the following listed sections of the Indiana Veterans' Bonus Law of 1949 is respectfully requested.

“1. Section 2 (c) reads as follows: ‘The term ‘next of kin’ means the widow or widower, who has not remarried, children, mother, father and persons standing in *loco parentis* of any member of the armed forces of the United States, in the order named and none other.’

“QUESTION: If the decedent was a legally adopted child, is the adopting mother or adopting father entitled to receive a next of kin bonus payment even though the natural mother and/or father of the decedent may still be living?

“2. Section 10 reads in part as follows: ‘In case any compensation is payable under this act to a minor or

mental incompetent, the compensation shall be paid to the person who is legally constituted his guardian. . . .’

“QUESTION: Does this mean that minors eligible under the act must necessarily have a guardian appointed by a court in order to receive a bonus payment?”

You have correctly restated Section 2 (c) of the Bonus Act which defines the meaning of the term “next of kin”. Before discussing this Section, I would like to point out that by Section 3 (d) and 3 (e) it is directed that a Bonus shall be paid to the next of kin of a member of the Armed Forces eligible under this Act, if such member dies before making an application or receiving any Bonus payment. The amount of this payment would be based upon the service period of the member as specified in other sections of the Act. Also a Bonus of \$600.00 shall be paid to the next of kin of every member of the Armed Forces eligible under the Act, who dies while on Active Duty within a specified time. These payments are directed by the Legislature to be made directly to the “next of kin”, and are as much of a direct grant from the Legislature as any Bonus payment directed to be paid to any member of the Armed Forces under the Act.

I also call attention to the fact that by Section 3 (c) no member of the Armed Forces nor any next of kin has any vested right to any bonus granted under this Act, until the effective date of the order by the Commission authorizing the payment of the claims.

It is my interpretation that any payment received by any “next of kin” under this Act is received directly by that person as a grant from the Legislature and not in any way through or from the Actual member of the Armed Forces who would be eligible to receive a grant if he were living. In other words, I do not construe the above provisions of the Bonus Act to mean that the next of kin “inherit” any Bonus payment.

Your first question involves an interpretation of the words “mother” and “father” as used in the definition of the term “next of kin”. The question being whether the Legislature intended by the use of these terms to denote “natural” parents or whether these words were used to denote a “legal status.”

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In this regard, I call your attention to Section 8, Chapter 146 (Replacement 1941, Burns, Section 3-122) pertaining to the effects of any adoption, which reads as follows:

“The natural parents of such adopted person, if living, shall after such adoption be relieved of all legal duties and obligations due from them to such person and shall be divested of all rights with respect to such person: Provided, That when the adoptive parent of the child shall be married to a natural parent of the child the parental relationship of such natural parent will be in no way affected by such adoption. *After such adoption such adopting father or mother or both shall occupy the same position toward such child that he, she or they would occupy if the natural father or mother or both, and shall be jointly and severally liable for the maintenance and education of such person.*”
(Our emphasis.)

As a result of the above quoted adoption statute, assuming that there was a legal adoption, the adopting mother and father are, in the eyes of the law occupying the same position as the natural parents and are the “legal” mother and father.

In the definition of the term “next of kin” in Section 2 (c) it is apparent that the Legislature had in mind something other than “blood relationships” and did not intend by the use of the term “next of kin” to indicate the descent or inheritance of Bonus payments. The purpose of the Bonus Act as declared in Section 1, is to give a token of appreciation from the people of Indiana to those men and women who so ably served their State and Nation in the war. If those individuals are not present, the grant and the State’s acknowledgement of service is to go to the widow or widower, children, mother, father, and persons standing in *loco parentis* of any such person. Obviously, the grant to the parents is not with any thought of dependency but is a recognition of the loss to themselves and to the State of their sons and daughters upon whom they have bestowed time, care, affection, and money to rear them to be citizens with such high sense of service. In the case of adoptions, the adopting mother and father are the “legal parents” and the ones whom under the law were charged with the care and support of the adopted child. It is

my opinion that it is this status which the Legislature intended to reward and honor.

Certainly the Legislature had knowledge of the above quoted adoption statute when it passed the Bonus Act. It could easily have restricted the "mother and father" to the "natural parents" if that had been their intention. It is indicative that the Legislature specifically defined "next of kin" instead of leaving them to be determined by the laws of descent. In the absence of any such restriction and by virtue of the adoption statute and the declared purpose of the Bonus Act, it is my opinion in answer to your first question that the adopting mother or father is entitled to receive the "next of kin" Bonus payment even though the natural mother or father may still be living.

In regard to your second question, you have correctly stated a provision of Section 10, of the Act, and I particularly wish to emphasize the following words from your quotation: "*The compensation shall be paid to the person who is legally constituted his guardian. . . .*"

There is a proviso in Section 10, but this clearly pertains only to minors in certain State or Federal Institutions.

In 1947 the Legislature passed two Acts (Chapter 142 and Chapter 356) which provided a method for the payment of not to exceed \$300.00 to the Clerk of the Circuit Court of the County wherein a minor is a resident and for the paying out of this amount upon a Court order directly to said minor. These Acts were passed for the express purpose of providing a method by which anyone might be relieved of an obligation of that amount to a minor without using the cumbersome method of having a guardian appointed. Unquestionably, the Legislature had knowledge of these previous Acts and this particular procedure. It could have very easily used this method of payment in the Bonus procedure. However, due to the plain mandatory words used in the statute (as above emphasized), it is my opinion that the method outlined in the 1947 Act is not available for your purpose. The plain direct words of the bonus Act are clear and leave no room for doubt or construction as to what was intended by them.

Therefore, it is further my opinion that any payment to minors eligible under the Bonus Act must be paid to a legally constituted guardian.