tive tusks. English and American breeds of domestic swine are supposed to be derived from the European wild boar ***, but many of them have been crossed with Asiatic breeds of different ancestry. Well-known breeds are the Berkshire, Cheshire, Chester White, Duroc-Jersey, Hampshire, Poland China, Tamworth and Yorkshire.” Webster’s New International Dictionary, Second Edition.

From the foregoing it is clear that a breeder of Poland China hogs or Yorkshire hogs would be breeders of “swine.” If such persons are members of county organizations meeting the qualifications of the above statute, such organizations would in my opinion be “county organizations of breeders of swine.”

I am therefore of the opinion that a county organization of breeders of a certain breed of hogs, such as Poland China hogs, which organization meets the requirements of the above section as to qualifications, is entitled to vote in said district conferences and that the language used in such statute does not disqualify such a county organization merely due to the fact it represents breeders of one breed of hogs.

CHF:TLW:ms

OFFICIAL OPINION NO. 3

January 20, 1949.

Brig. Gen. Robinson Hitchcock,
Adjutant General,
212 State House,
Indianapolis, Indiana.

Dear Sir:

We have your letter under date of January 3, 1949, in which you request an official opinion regarding the following question:

May the State of Indiana pay a pension in the sum of $100.00 monthly to Mary E. Bonner, widow of Phillip E. Bonner, Captain 113th Fighter Squadron
Indiana National Guard, the said Phillip E. Bonner being killed on the 14th day of November, 1948, while executing a lawfully ordered flight at drill of said squadron, and also the sum of $58.00 monthly to Marsha Lyn Bonner, minor daughter of said Phillip E. Bonner, as long as such child shall remain unmarried and shall not have attained the age of twenty-one years?

Section 29 of Chapter 142 of the Acts of 1923, the same being Section 45-801 of Burns' Indiana Statutes Annotated, 1940 Replacement, provides:

“Every member of the militia who shall be wounded or disabled or has been so disabled in the performance of any actual service of this state within ten (10) years preceding the application for a pension under this chapter, in case of riots, tumults, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, or while engaged in any lawfully ordered parade, drill, encampment or inspection, shall, upon proof of the fact, as hereinafter provided, be placed on the roll of invalid pensioners of the state, and shall receive out of any moneys in the treasury of the state, not otherwise appropriated, upon the audit of the adjutant-general of the state and approval of the governor, the like pension or reward that persons under similar circumstances receive from the United States, and in case of any wound, injury or disease causing death, then the widow, minor children or dependent mother of such member of the militia shall receive such pension and reward, from the time of receiving the injuries on account of which such pension or reward is allowed. No officer or enlisted men shall be entitled, while in active service, to make application for or to receive a pension. If any member of the militia shall die in the active service of the state, his reasonable funeral expenses, not exceeding one hundred dollars ($100), shall be paid by the state in such manner as the governor may direct. Nothing in this section contained shall be deemed to make applicable
any of the provisions of the War Risk Insurance Law of the United States, and the pension or reward to be granted hereunder shall be that provided for by the pension laws of the United States, so far as the same may be applicable in substance, without regard to form."

Subparagraph (c), paragraph 1, part 2, Regulation 1A, Chapter 12, Title 38, Veterans Regulations, and amended by Chapter 788, Public Law 868, 2nd Session 80th Congress, and approved July 1, 1948, provides as follows:

“(c) Any veteran or the dependents of any deceased veteran otherwise entitled to compensation under the provisions of part II of this regulation or the general pension law shall be entitled to receive the rate of compensation provided in part I of this regulation, if the disability or death of such veteran resulted from an injury or disease received in line of duty (1) as a direct result of armed conflict, or (2) while engaged in extra-hazardous service, including such service under conditions simulating war, or (3) while the United States is engaged in war.”

Paragraph 3 of part II, Chapter 12, Regulation 1A, Title 38, Veterans Regulations, as amended by Section 3, Chapter 788, Public Law 868, 2nd Session 80th Congress, and approved July 1, 1948, provides:

“The surviving widow, child or children, and dependent mother or father of any deceased person who died as a result of injury or disease incurred in or aggravated by active military or naval service as provided for in part II, paragraph I hereof, shall be entitled to receive compensation at 80 per centum of the rates specified for such dependents in paragraph IV, part I hereof, as now or hereafter amended.”

Paragraph 4 of part I, Chapter 12, Regulation 1A, Title 38, Veterans Regulations, as amended by Chapter 788, Public Law 868, 2nd Session 80th Congress, and approved July 1, 1948, provides:

“The surviving widow, child or children, and dependent mother or father of any deceased person who
died as the result of injury or disease incurred in or aggravated by active military or naval service as provided in part I, paragraph I hereof, shall be entitled to receive compensation at the monthly rates specified next below:

"Widow but no child, $75; widow with one child, $100 (with $15 for each additional child); no widow but one child, $58; no widow but two children, $82 (equally divided); no widow but three children, $106 (equally divided) (with $20 for each additional child; total amount to be equally divided); dependent mother or father, $60 (or both), $35 each."

It is obvious from the facts submitted that on the 14th day of November, 1948, Captain Phillip Bonner was commencing on a lawfully ordered flight drill at Stout Field, Indianapolis, and when approximately 600 feet down the runway he collided with another aircraft, causing his death.

Under the Indiana statute quoted above (Sec. 45-801), it is to be noted that the pension or reward, if granted, shall be similar to those granted by the United States.

Since Captain Bonner was killed in the line of duty and during peacetime, it is our belief that Part II of the Veterans Regulations promulgated pursuant to Chapter 12, Title 38, United States Code Annotated, providing for payment of pension for disability or death incurred during peacetime services, prevails.

Reconciling paragraph 3 of part II, Chapter 788, Public Law 868, 2nd Session 80th Congress, with paragraph 4 of part I of Chapter 788, Public Law 868, 2nd Session 80th Congress, Veterans Regulations, I am of the opinion that Mary E. Bonner, widow of Phillip E. Bonner, deceased, Captain Indiana National Guard, is not entitled to receive a monthly pension in the sum of $100.00, nor is the dependent daughter, Marsha Lyn Bonner, entitled to be paid the sum of $58.00 monthly. However, since Chapter 788 of Public Law 868 (supra) states that said widow and child shall have 80% of the rate provided (supra), and further, since the rate provided for a widow with one child is $100.00, it is my opinion that the said Mary E. Bonner and Marsha Lyn Bonner,
dependents of deceased, Captain Phillip E. Bonner, together are entitled to the monthly sum of $80.00.

In the event that the said Mary E. Bonner remarries, it is suggested that her pension is automatically discontinued. However, such a marriage would not invalidate the pension of Marsha Lyn Bonner.

Paragraph 6, Veterans Regulation Number 10, Chapter 12, Title 38, U.S.C.A., defines a child within the meaning of the pension act as follows:

"The term 'child' shall mean a legitimate child or a child legally adopted, unmarried and under the age of eighteen years, unless prior to reaching the age of eighteen, the child becomes or has become permanently incapable of self-support by reason of mental or physical defect, except that the payment of pension shall be further continued after the age of eighteen years and until completion of education or training (but not after such child reaches the age of twenty-one years), to any child who is or may hereafter be pursuing a course of instruction at a school, college, academy, seminary, technical institute, or university, particularly designated by him and approved by the administrator, which shall have agreed to report to the administrator the termination of attendance of such child, and if any such institution of learning fails to make such report promptly the approval shall be withdrawn."

Therefore, if the widow, Mary E. Bonner, should remarry before the daughter ceases eligibility for said pension, then the amount of said aggregate pension shall be reduced from $80.00 per month to a single monthly benefit in favor of said dependent daughter in the amount of $46.40, contingent upon said daughter remaining within the category of said act, as hereinabove provided.

I am also of the opinion that the allowance of $100.00 to Mary E. Bonner, widow of Captain Phillip E. Bonner, for funeral expenses, is proper, as provided for in Section 29 of Chapter 142 of the Acts of 1923 (supra).