INDIANA UNIVERSITY: Eligibility of children whose fathers died while serving in armed forces to free tuition; children of members of Naval Reserve.

February 16, 1940.

Ward G. Biddle, Comptroller,
Indiana University,
Bloomington, Indiana.

Dear Mr. Biddle:

This will acknowledge receipt of your letter of February 13, 1940, in which you ask for an interpretation of Chapter 69, Acts of the General Assembly of 1935, the same to be in addition and supplemental to an opinion rendered Dr. William Lowe Bryan on the same statute on September 9, 1935.

You submit the following questions:

"1. Does the following statement 'and whose father was killed in action or died from wounds or other cause while serving in the armed forces of the United States between April 6, 1917, and July 2, 1921' limit the eligibility of applicants to children whose fathers died while serving in the armed forces between the dates mentioned?

"2. Would, in your opinion, a member of the United States Naval Reserve Force be considered under the qualification of 'serving in the armed forces of the United States'?

In answering your first question, I think it is clear that language quoted in the question limits eligibility to benefits of the statute to those children whose fathers died while serving in the armed forces of the United States between the dates of April 6, 1917, and July 2, 1921. This is substantially the same answer as contained in the answer to the third question in the opinion of September 9, 1935. I quote from that opinion the following language commencing with the last sentence on page 339 of the published opinions of the Attorney General for the year 1935:

"In other words, I think eligibility for free admission under the second class is limited to those whose fathers died between April 6, 1917, and July 2, 1921,
whether killed in action or dying from wounds or other causes while serving in the armed forces of the United States."

This same question was likewise answered in the negative in an opinion of this office to Hon. Elmer F. Straub, Adjutant General. I quote the following from that opinion as found on page 10 of the published opinions of the Attorney General for 1938:

"It will be noted from a reading of the above Act that only those children 'whose father was killed in action or died from wounds or other causes while serving in the armed forces of the United States between April 6, 1917, and July 2, 1921' (are eligible). It is apparent from a reading of the above Act that it was intended to apply to only those children whose father died in active service."

Your second question must, likewise, be answered in the negative. You will note that the benefits of the Act are limited to children of those who died or were killed "while serving in the armed forces of the United States" between the specified dates. The "United States Naval Reserve Force" of which you speak is not a part of the "armed forces" of the United States, but separate and apart from the active armed forces is a reserve force. Sections 751 to 821 of Title 34, United States Code Annotated, are the statutes governing the establishment of Reserve Forces and Naval Militia. Nowhere therein will it be found that any one of the five reserves established becomes a member of the active or armed forces of the United States. Such forces remain reserves until called and mustered into the active or armed forces of the United States. Such being the case, the children of members of the United States Naval Reserve Forces are not entitled to the benefits of the act even though their fathers died between the dates of April 6, 1917, and July 2, 1921, while members of such reserve forces.

Of course, if such members of reserve forces died at a later date, their children would have no claim to the benefits of the statute.