

OPINION 11

OFFICIAL OPINION NO. 11

March 2, 1960

Mr. James M. Trimble  
State Service Officer  
Veterans' State Service Department  
431 N. Meridian Street  
Indianapolis, Indiana

Dear Mr. Trimble:

Your letter of February 1, 1960, has been received requesting an Official Opinion concerning the interpretation of the Acts of 1935, Ch. 69, Sec. 1, page 173. Your questions are as follows:

"1. Under the provisions of the above named Act is a child of a disabled veteran entitled to attend one of the State educational institutions named in said Act without payment of matriculation or tuition fees?

"2. Does a State educational institution named in said Act have authority to charge a child of a disabled veteran an amount equivalent to a pecuniary scholarship that such child may have received toward expense of attending such University?"

Acts of 1935, Ch. 69, Sec. 1, as amended by Acts of 1941, Ch. 117, Sec. 1, is found in Burns' (1948 Repl.), Section 28-5732, and was the subject of an Official Opinion of this office, being 1944 O. A. G., page 15, No. 6, where on pages 16 and 17 of the Opinion it is said:

"The statute referred to in your letter is Section 1, Chapter 117, Acts of 1941, same being Section 28-5732, Burns' 1943 Supplement, the pertinent part of which is as follows:

" 'Any person who is a pupil of the Soldiers' and Sailors' Children's Home, or any person who for five (5) years preceding application therefor, shall have had his domicile in the state of Indiana and whose father served in the armed forces of the United States between the sixth day of April, 1917, and the second day of July,

1921, and who was wounded, gassed or disabled as evidenced by the United States War or Navy Department records, or who is suffering from a service-connected disability as evidenced by the veterans' administration records, and who possesses the requisite academic qualifications, shall be entitled to enter, remain and receive instruction in Indiana University, Purdue University, Indiana State Teachers College at Terre Haute and Ball State Teachers College at Muncie, upon the same conditions, qualifications and regulations prescribed for other applicants for admission to, or scholars in, such educational institutions, without the payment of any tuition or matriculation fees, for a period of four (4) years while pursuing any prescribed course of education therein. \* \* \*

"It is an established principle of law that where a statute is free from any ambiguity, there is no room for judicial construction by courts.

"State v. Squibb (1908), 170 Ind. 488, 492;

"State v. Mutual Life Ins. Co. (1910), 175 Ind. 59, 79.

"Applying this well recognized rule of construction, it is apparent that the above section of the statute qualifies for entrance without tuition or matriculation fees (1) any person who was a pupil of the Soldiers' and Sailors' Children's Home, which might include a child of a veteran of the Spanish-American War, or (2) any person whose father served in the armed forces of the United States between the sixth day of April, 1917, and the second day of July, 1921, and who was wounded, gassed or disabled or is suffering from a service-connected disability as defined by the Act.

"In conclusion, I wish to call your attention to Section 1, Chapter 254, Acts of 1943, Section 59-1007a, Burns' 1943 Supplement, which extends to children of persons of the armed forces of World War II similar rights to those held by children of veterans of World War I. This Act provides as follows:

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“All persons who have served, or who are now serving, or who may hereafter serve as a part of the armed forces of the United States in the present war with Germany, Italy or Japan, or any of their allies, and the wives, widows and children of such persons, who are residents of the state of Indiana, shall have and are hereby given all of the rights and privileges now held and enjoyed by soldiers, sailors, nurses and/or other veterans, their wives, widows and children, of the first world war, under existing statutes or under any statute which may hereafter be enacted.’”

The foregoing statutes are still in full force and effect, without amendment, except that Acts of 1943, Ch. 254, Sec. 1, as found in Burns' (1951 Repl.), Section 59-1007a, quoted in the above Official Opinion, was amended by Acts of 1945, Ch. 141, Sec. 1 and by Acts of 1951, Ch. 223, Sec. 1, to read as follows:

“All persons who have served, or are now serving, or who may hereafter serve as a part of the armed forces of the United States in the present war with Germany, Italy, Japan, or any of its allies, and any person who served in the active military or naval service on or after September 16, 1940 and prior to the termination of the present war, and any persons who have served or are serving or who may hereafter serve as a part of the armed forces of the United States during the Korean crisis on or after June 25, 1950, and who have sustained injury or disease received in line of duty either (1) as a direct result of armed conflict, (2) while engaged in extra hazardous service including such service under conditions simulating war or (3) while the United States is engaged in war, and who shall have been discharged or released therefrom under conditions other than dishonorable, and the wives, widows, and children of such persons heretofore mentioned, who are residents of the State of Indiana, shall have and are hereby given all the rights and privileges now held and enjoyed by soldiers, sailors, nurses and/or other veterans, their wives, widows, and

children, of the first world war, under existing statutes or under any statute which may hereafter be enacted.”

This extends the foregoing benefits to include the wives, widows and children of persons who served in the active military or naval service of the United States during World War II, and of a member of the armed forces of the United States during the Korean Crisis if they “sustained injury or disease received in line of duty either (1) as a direct result of armed conflict, (2) while engaged in extra hazardous service including such service under conditions simulating war or (3) while the United States is engaged in war, and who shall have been discharged or released therefrom under conditions other than dishonorable.”

The above Official Opinion is confirmed by later Official Opinions of this office found in 1945 O. A. G., page 47, No. 8, and 1945 O. A. G., page 101, No. 21, as to question No. 1 here presented, although those Opinions were given on said statutes on questions ancillary to the questions here presented.

1. From the foregoing, in answer to your first question, I am of the opinion that under the provisions of the above statutes a person possessing the requisite academic qualifications is entitled to attend and receive instruction in Indiana University, Purdue University, Indiana State Teachers' College and Ball State Teachers' College, without the payment of any tuition or matriculation fees, for a period of four (4) years while pursuing any prescribed course of education therein, providing such person further can qualify under one of the following classifications:

(A) Any person who is a pupil of the Soldiers' and Sailors' Children's Home;

(B) Any person who for five (5) years preceding application therefor shall have had his domicile in the state of Indiana and whose father served in the armed forces of the United States between the sixth day of April, 1917, and the second day of July, 1921, and who was wounded, gassed or disabled as evidenced by the United States War or Navy Department records, or who is suffering from a service-connected disability as evidenced by the Veterans Administration records;

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(C) Any person, a resident of the State of Indiana, who is the son or daughter of a person who has served as a part of the armed forces of the United States in: (a) The war with Germany, Italy, Japan or any of its allies; (b) who served in the active military or naval services of the United States on or after September 16, 1940, and prior to the termination of said war; (c) who served as a part of the armed forces of the United States during the Korean Crisis on or after June 25, 1950; providing such parent in one of such periods of service, aforesaid, shall have sustained injury or disease in line of duty either (1) as a direct result of armed conflict, (2) while engaged in extra hazardous service including such service under conditions simulating war or (3) while the United States is engaged in war; and provided further: any such parent, aforesaid, shall have been discharged or released from such service under conditions other than dishonorable.

2. In answer to your second question, attention is called to the fact that Acts of 1935, Ch. 69, Sec. 1, as amended, *supra*, was only partly copied in the foregoing quoted Official Opinion of 1944, page 15, No. 6. The last part of this Section of the statute is as follows:

“\* \* \* In event any such applicant is permitted to matriculate in such state institutions of learning, and shall qualify under the provisions of this act, and shall have earned or been awarded a cash scholarship which is paid or payable to such institution, from whatsoever source, the amount of such scholarship so paid shall be applied to the credit of such applicant in the payment of incidental expenses of his attendance at such institution, and any balance, if the terms of the scholarship permit, shall be returned to such applicant.”

The last quoted provision of the statute is clear and unambiguous and hardly requires a legal construction. In this connection, attention is called to an Official Opinion of this office found in 1941 O. A. G., page 288, which construed the foregoing language of the statute in answer to the sixth question presented, on pages 292 and 293 of the Opinion, as to whether a person eligible to such benefits could be denied the

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benefits of said statute solely because he had been awarded, or was being considered for an award of funds provided from sources outside of the regular funds of the institution. The answer to such question was in the negative, without discussion or elaboration.

In answer to your second question, I am therefore of the opinion that a state educational institution named in said Act does not have authority to charge a child of a disabled veteran, meeting the requirements of said statute, an amount equal to a cash scholarship awarded such child and paid to such institution as a part of the child's matriculation or tuition fees. In such event, under the provisions of said statute the amount of the scholarship so paid shall be applied to the credit of such child in the payment of incidental expenses of his attendance at such institution, and the balance, if any, shall be paid to such child if the terms of the scholarship so permit.

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OFFICIAL OPINION NO. 12

March 3, 1960

Hon. Robert S. Webb  
Chairman, Public Service Commission of Indiana  
401 State House  
Indianapolis, Indiana

Dear Mr. Webb:

This is in answer to your request for an Official Opinion dated February 9, 1960, concerning wage payment for railroad employees. Your letter indicates that under a new method of payment adopted by one of the rail carriers in this state, wage payments are to be made every other Friday in lieu of semimonthly payments theretofore made. As your letter indicates:

“The question is whether or not the Baltimore & Ohio Railroad Company is complying with the Indiana Statute 40-101, and therefore, the Public Service Commission of Indiana respectfully requests an official opinion thereon.”