charge against such sinking fund for contingent losses for
depreciation on "office building," "furniture and fixtures," or
"equipment" unless and until a loss in depreciation thereon is
actually suffered and such loss to qualify would necessitate a
sale or disposition of the items of property as a condition
precedent to the loss being sustained.

OFFICIAL OPINION NO. 26

June 29, 1960

Hon. Albert A. Steinwedel
Auditor of State
238 State House
Indianapolis 4, Indiana

Dear Mr. Steinwedel:

This is in reply to your recent letter in which you request
my Official Opinion concerning the payment of a claim for a
Korean veteran's bonus. Briefly, you state in your letter that
an applicant who had previously filed for and received a
Korean War Bonus in the amount of $200 had made request
for an additional bonus of $400 as a disabled veteran who had
served during the Korean conflict. You point out that his
application was first filed within the time limitations pre-
scribed by law while the request for the additional bonus was
made subsequent to the statutory time for filing applications.
You further state that the claim for the additional amount
was approved by the Veterans' Affairs Commission.

Your questions relative to the above facts are as follows:

"(a) Is my office permitted to accept Mr. Jackson's
claim and pay the $400.00 additional bonus allow-
ance?

"(b) Does the Veterans' Affairs Commission have
authority to order my office to pay this Veteran's
claim or is their ruling merely a guide for this
office to follow."

The statute providing for a bonus payment to Korean vet-
erans and their next of kin is Acts of 1955, Ch. 249, as
amended, as found in Burns' (1959 Supp.), Sections 59-1420 through 59-1427. Section 2 of the Act, as amended, as found in Burns' (1959 Supp.), Section 59-1421, provides for three classes of recipients of this bonus. The first class contains the next of kin of deceased members of the Armed Forces of the United States who served between June 27, 1950 and January 1, 1955 and whose death was service connected. The second class contains veterans who served between the above dates and who have a service-connected disability of at least ten per cent. The above two classes are entitled to a bonus of $600 under the provisions of the above section. The third class includes all other claimants under the act.

I have examined, in their entirety, all the records in your office pertaining to this veteran's claim. A reference to his application, filed December 8, 1955, reveals that in the form in which it was filed at that time, it clearly fell within the third class. There was no indication on the application, in the space provided therefor, that the veteran had a service-connected disability, nor was it indicated that he might be awaiting adjudication of disability by the proper Federal authorities. Under these circumstances you properly paid this veteran the amount of two hundred dollars, which is the amount provided by Burns 59-1421, supra, to veterans falling within the third classification. The veteran's subsequent request for review based on his disability rating from the V. A. received July 1, 1959, is notification by the veteran that he wishes to be classified within the second group, disabled veterans, which classification would entitle him to four hundred dollars in addition to the two hundred dollars already received. However, this request was filed in September, 1959. There is no other evidence among your records that this veteran, at any other time, filed another application or made a request for an application form.

Section 3 of the Acts of 1955, Ch. 249, as amended, as found in Burns' (1959 Supp.), Section 59-1422, provides for the submission and payment of claims for a bonus. This section reads as follows:

"From and after the effective date of this amendatory act [March 14, 1957], any claim for the payment of a bonus, payable under the provisions of this act
[§§ 59-1420–59-1427], to any veteran of the Korean conflict or campaign shall be filed with and processed by the auditor of state: Provided, That all disputed claims shall be submitted to and reviewed by the veterans' affairs commission, and no disputed claim shall be allowed by the auditor of state unless first approved and allowed by such commission. The auditor of state shall pay out of the remaining balance in the World War II bonus fund any and all claims that have been processed and allowed by the auditor of state: Provided, That all claims under the terms of this act shall be filed with the auditor of state on or before April 1, 1957: Provided, That any written communication, bearing a postmark date of not later than April 1, 1957, forwarded to the auditor of state through the United States mail, which written communication contains therein an application for the payment of any bonus provided herein, or contains a request for an application form, shall be deemed to be a timely application: Provided, further, That all claims under the terms of this act shall be paid on or before June 30, 1958: Provided, further, That any money remaining in the World War II bonus fund of June 30, 1958 after the payment of all bonus claims, with the exception of one hundred thousand dollars [$100,000], shall be transferred to the veterans memorial school construction fund by the auditor of state.” (Our emphasis)

However, inasmuch as your question points out that the disputed claim was approved by the Veterans' Affairs Commission, I deemed it proper to request from such Commission the facts upon which their approval was based. In response to this request I have been furnished with a document, signed by the chairman of the Commission and attested by its secretary, which reveals that the claimant testified before said Commission and stated that at the time of filing his original claim he made a full disclosure of his status to a representative of the bonus division. He stated that he informed such representative that he was a disabled veteran but that his disability was pending adjudication. He was directed at that time by such representative as to how to complete his application, and such direction was complied with. Specifically, he was directed not
to indicate on his application that he was awaiting adjudication of disability. The Veterans' Affairs Commission, in their discretion, accepted the above statement as true.

Under the above facts, it is my opinion that the Veterans' Affairs Commission acted properly in approving the claim in question. This veteran had made a full disclosure of his status to the Veterans' Bonus Division within the time prescribed by law for filing a claim and said veteran had done all within his power to bring himself within the terms of the statute. The fact that this veteran failed to receive the full compensation to which he was entitled was in the nature of an administrative error and it was certainly not contemplated by the Legislature, within the terms of the Veterans' Bonus Law, to deprive a veteran of his proper remuneration under facts such as these. In fact, as I stated in 1958 O. A. G., page 82, No. 18, the Legislature provided in Burns' 59-1422 that the amount of one hundred thousand dollars [$100,000] remained in the World War II Bonus Fund for the payment of Korean veterans, who, having filed for the bonus, might be awaiting adjudication of disability by federal authorities.

Therefore, in answer to your first question, it is my opinion that your office, under the facts in this situation, may pay the $400.00 additional bonus allowance.

Your second question asks whether the Veterans' Affairs Commission has authority to order your office to pay the claim in question or whether their ruling is merely a guide for your office to follow.

As noted above, Burns' 59-1422, supra, provides that all claims for the payment of a Korean Bonus shall be filed and processed by the Auditor of State. This section then states:

"* * * Provided, That all disputed claims shall be submitted to and reviewed by the veterans' affairs commission, and no disputed claim shall be allowed by the auditor of state unless first approved and allowed by such commission. * * *"

The above provisions require, as a condition precedent to the payment of disputed claims, the submission to and approval by the Veterans' Affairs Commission. There is, however, no mandate in the statute that the Auditor of State must make
such payment after such approval. The decision is left with the Auditor of State.

In conclusion, therefore, it is my opinion that the disputed claim of this veteran, having been approved and allowed by the Veterans' Affairs Commission, may now be allowed by you as auditor, but that the action of that Commission does not in any case require you to allow any claim which you determine to be unlawful.

OFFICIAL OPINION NO. 27

June 30, 1960

Mr. Joda G. Newsom
Chairman, State Board of Tax Commissioners
404 State House
Indianapolis 4, Indiana

Dear Mr. Newsom:

This is in response to your letter requesting my Official Opinion upon certain questions concerning the power of the Board of County Commissioners of Marion County and of the Health and Hospital Corporation of said county, the substance of which are as follows:

1. Does the decision in the case of City of Indianapolis et al. v. Buckner et al. (1954), 233 Ind. 32, 116 N. E. (2d) 507, or any other factor, prohibit the Board of County Commissioners of Marion County from voluntarily effecting a legal transfer of the physical plant, real estate, management and operation of the Marion County Home, known as Julietta, to the Health and Hospital Corporation of Marion County, Indiana, for such corporation to operate for the same purposes for which it is now maintained?

2. If said Board of County Commissioners has the power to effect such a transfer, does the Health and Hospital Corporation of Marion County have the power to legally accept such a transfer and operate such home for the same purposes for which it is now maintained?