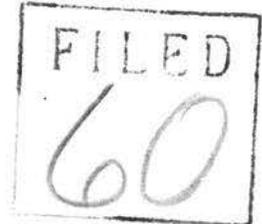


BONUS MONEY: Mother of soldier is entitled to soldiers' bonus, when.

October 26, 1937.

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Honorable Lewis M. Means
The Adjutant General
Jefferson City, Missouri

Dear Sir:

We acknowledge your request for an opinion dated October 22, 1937, which reads as follows:

"The mother of the above deceased veteran has filed a claim for Missouri Soldiers' Bonus. This veteran was married but separated from his wife. When he executed an allotment blank on May 6, 1918, he named his wife but requested exemption from the compulsory allotment to her on the ground of separation. After an investigation exemption was granted as to the wife and no payments of allotment or Government family allowance were made for her benefit.

"There is no record of his wife's death, neither can the veteran's mother show that there was a divorce.

"An opinion is requested as to whether we could pay the mother on the grounds that the Government recognized this separation in 1918, or whether the widow, if living, could come in and claim this Bonus and have a chance of collecting it.

"We would appreciate an early opinion in this matter."

Article IV, Section 44b, of the Missouri Constitution provides for the distribution of soldiers' bonus money, and reads in part:

" * * * * The legislature shall enact such laws as may be necessary to carry into effect this amendment. The wife or husband, child, mother or father, in the order named and none other, of any deceased resident who served honorably in the military or naval forces, as provided in this section, shall be paid the sum or allowance that such deceased resident would be entitled to receive hereunder if such deceased resident had lived: * * *."

Pursuant to this constitutional amendment the Legislature has provided in the Laws of Missouri, 1937, p. 479, Section 9, as follows:

"It shall be the duty of the adjutant-general to determine as expeditiously as possible the persons who are entitled to the payments under this act and to make such payments in the manner herein prescribed. Applications for such payments shall be filed with the adjutant-general on or before December 31, 1938, and at such place or places as the adjutant-general may designate and upon blanks furnished by the adjutant-general: Provided further, the adjutant-general shall have the power to adopt all proper rules and regulations not inconsistent herewith to carry into effect the provisions of this act; and provided further, that all officers of the state or any county and any city or town therein are hereby directed to furnish free of charge, in writing, any information that the records in his office may disclose relative to the identity, place and period of residence and the war service of any soldier claiming a payment under this act, whenever such information is required by the adjutant-general of any person making an application for such bonus or any part thereof; and any application for bonus heretofore filed and rejected may be filed before the

adjutant-general and by him again heard; and if it appears that the rejection of the claim was erroneous, the rejection may be set aside, and the claim allowed and paid; and provided further that no department of the state government shall employ any clerks for the purpose of carrying out the provisions of this act, except the adjutant-general shall employ an examiner of soldier bonus claims and one stenographer for the handling of claims."

Section 1709 R. S. Mo. 1929:

"If any person who shall have resided in this state go from and do not return to this state for seven successive years, he shall be presumed to be dead in any case wherein his death shall come in question, unless proof be made that he was alive within that time."

In the case of Carter v. Life Insurance Company, 158 Mo. App. 368, 373, 138 S. W. 49, the Court construed the above Statutes and said:

"But the presumption of death, which is the one on which the statute operates, only arises when these facts are present: first, residence of the person in this state; second, departure of that person from this state; third, the continued absence of that person from this state for seven successive years, no proof being made that he was alive within that time."

CONCLUSION.

This department is of the opinion that the soldiers' bonus money of Missouri which is available to the wife or husband, child, mother or father of any deceased

resident soldier who served honorably in the military or naval forces, must be paid, but paid only to the persons above specified, and then only in the sequence as above set out, and the payment to a specified person in any other sequence than the order provided in the Constitution is positively prohibited, any act of the Legislature or of an administrative officer to the contrary notwithstanding. The Constitution, supra, provides exclusively for the succession of payees of bonus money.

The Legislature in Section 9, supra, provided that the Adjutant General determine the persons entitled to payment and reject those claims which he believe unconstitutional, and provided further for an appeal on rejected claims. Where the constitutionally qualified soldier be dead, and the soldier died leaving a wife surviving, then the surviving wife, and she only, and during her life time, may make application for the bonus money and receive payment.

When the constitutionally qualified soldier be dead, and his wife, if any, be dead, and the constitutionally qualified soldier left surviving children, then they, and only they, during their life time may make application for the bonus money and receive payment.

When the constitutionally qualified soldier be dead, and his wife and children, if any, be dead, and the constitutionally qualified soldier left surviving a mother, then and only then, during her life time, can she make application for the bonus money of her son and receive payment.

Since the facts submitted show that the deceased soldier had a wife, it is necessary that the soldier's mother prove that the wife and any other known prior eligible claimant be dead before she, as mother, be entitled to claim and receive the bonus money. We are further of the opinion that should the mother claim the death of eligible persons with prior rights under the Constitution, the presumption of death will legally begin from the time that substantial affidavits show them to have been last known to be alive, and after

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seven years has elapsed from that date, then the mother can legally assert in her favor the statutory presumption of death in support of her claim of death entitling her to the Missouri bonus. Until actual death, or statutory presumptive death be shown in the files of the Adjutant General, the mother is not entitled to the bonus money.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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