

STATE BONUS ACT: Wife of a deceased veteran not living with him at the time of his death; and not divorced is entitled to bonus under Section 3 of the Bonus Act; she may waive rights and the next person in legal succession may make application.

December 14, 1940

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



Dear Sir:

We are herewith incorporating your letter in this opinion in regard to Raymond J. Downing's claim for a bonus. Your letter is as follows:

"The Bonus Commission, operating under this department, has for consideration, a claim for a bonus on behalf of a deceased veteran, Raymond J. Downing, Army Serial No. 3,268,750.

The veteran, if living, would be entitled to the Missouri bonus, in view of the fact that his record, residence, etc. have fulfilled all requirements for participation in the bonus.

Raymond J. Downing died February 9, 1923 and had not filed claim for the bonus at that time.

The claim before the Commission for consideration is filed by Cornelius J. Downing, father of the deceased veteran. The evidence in this case is as follows:

The veteran, Raymond J. Downing, married Mrs. Dora York, a widow, early in 1919 and lived with her only two months, but,

though separated, no divorce was ever obtained by either the deceased veteran or his estranged wife. All available information in this office is to the effect that the woman has since been married two additional times and is at present married. The mother of the veteran is deceased.

In view of Section 3 of the law authorizing the state bonus, and in which the wording is as follows: 'In case of the death of any person who would, if living, be entitled to the bonus under this act, the same shall be paid to the following persons, in the order named and none other: first, surviving wife or husband; second, surviving child, and if there be more than one child surviving, then equally among such children; third, surviving mother; fourth, surviving father,' the following opinion is desired:

1. In view of the fact that the deceased veteran and his wife had lived together only two months, were separated, but had not obtained a legal separation, can the Bonus Commission consider the claim of the father as a valid claim, and so pay to him the state bonus?

2. In the event the ruling on the above question is in the negative, can the Bonus Commission pay to the father the bonus, provided he secures a complete release from the veteran's widow?"

Under the provisions of Section 3 of the authority, commonly called the Bonus Act, the facts that Downing was married at the time of his death early in 1919; that he had only been married two months and that he was separated

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from his wife would nevertheless in law still constitute her as his legal wife. It is my understanding that we have heretofore ruled that a divorced wife could not obtain the bonus of her former deceased husband. There is no provision in the act which prevents a legal wife upon her remarriage from claiming the bonus of her former husband.

We are therefore of the opinion that Downing's former wife, now Mrs. Dora York, can make application for the bonus and receive the same under the Act as she would be in first class, to-wit, surviving wife or husband.

As to the other question, we assume that there were no children and as the mother of the veteran is deceased, the fourth provision as to descent would prevail providing the one in the first class entitled to the bonus would waive their rights to the same. Therefore, if the surviving wife will execute a form of waiver to her right or claim to the bonus, the father can make application for the same accompanied by the waiver. If service is established and satisfactory proof is furnished to the Bonus Commission, the father can receive the bonus.

Very truly yours

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APPROVED:

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OWN:RT