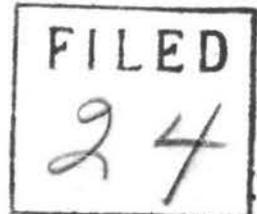


FEDERAL SOLDIERS' HOME
AT ST. JAMES, MISSOURI:

It is not necessary for a soldier
or sailor to have actually served
in a war to be entitled to admission
to the Federal Soldiers' Home at St.
James, Missouri.

September 15, 1942

Honorable Forrest C. Donnell
Governor of Missouri
Capitol Building
Jefferson City, Missouri



Dear Governor Donnell:

This is to acknowledge receipt of your letter of recent date received by this department September 14th, 1942. Your letter is as follows:

"Your opinion is respectfully requested on the following question:

"Is a soldier or sailor entitled to admission into the State Federal Soldiers' Home at St. James, Missouri, who is a citizen of the state of Missouri, who was honorably discharged from the service of the United States, and who is in indigent circumstances, and from a disability, not received in any illegal act, is unable to support himself by manual labor, but who has not served in the United States army, navy or marine corps in any war and been honorably discharged from such service?

"In connection with the question above propounded your attention is respectfully directed to Section 15136 and Section 15140 of the Revised Statutes of Missouri of 1939, and also to Article I, Section 1 of the By-Laws for the Government of the State Federal Soldiers' Home.

"There is enclosed a copy of By-Laws and Rules and Regulations for the Government of the State Federal Soldiers' Home. With your opinion, hereby requested, kindly re-

Sept. 15, 1942

turn said copy of By-Laws and Rules and Regulations for the Government of the State Federal Soldiers' Home."

If we understand your question correctly, it is: if a person possesses all the other qualifications required by law to entitle him to admission into the Federal Soldiers' Home at St. James, Missouri, is it necessary for him to have served in the United States army, navy or marine corps in any war.

You have called our particular attention to Sections 15136 and 15140 of Article 2, Chapter 124, R. S. Mo. 1939, and to certain portions of Section 1, Article I of the By-Laws and Rules and Regulations for the government of the State Federal Soldiers' Home, St. James, Missouri, adopted November 3rd, 1939, by the Board of Managers of said Home.

It will be necessary to trace very briefly the history of the Federal Soldiers Home. We find that this home was created by the act of the General Assembly in 1897 (Acts 1897, page 28), which empowered the Board of Trustees created by the act "to receive for a nominal consideration from the corporation known as the 'Woman's relief corps soldiers' home' a good and sufficient conveyance of the property, comprising fifty-nine acres, more or less, in or near St. James, in the county of Phelps, known as the soldiers' home of said place, vesting the title to said property in the state of Missouri." The home was purchased in accordance with the above law and proceeded to function accordingly.

We call your attention to that part of Section 15136, R. S. Mo. 1939, which may have some bearing on your question, as follows:

"The governor, by and with the advice and consent of the senate, shall appoint a board of trustees of the federal soldiers' home, to be composed of five members. Each of said members shall be a citizen of the state of Missouri, and more than thirty years of age, and it shall be the duty of the members of said board of trustees to maintain the home now established at

St. James in the state of Missouri for disabled and indigent soldiers and sailors and army nurses who enlisted, served and participated in the Mexican war and the war of the rebellion for the preservation of the union of the United States; and also for the aged wives of such soldiers and sailors. * * * * *

It will be noted that this section merely describes the home then established and the people who were maintained or kept at the home at the time it was taken over by the State, and does not undertake to describe those who are now eligible to be admitted therein for the reason that Section 15140, R. S. Mo. 1939, provides what qualifications one must have to be admitted to said home, and Section 15136, supra, in no way sets forth the qualifications for admittance.

Section 5, Session Acts of 1897, the original act, has been amended in several particulars by adding different groups of persons who are entitled to admission since its original enactment.

By the Acts of 1911, page 119, the following words were added: "or widow or such ex-member of the enrolled Missouri militia, who served 90 days or more in the field during the civil war," and, by the Acts of 1939, at page 746, the word "mother" was inserted, referring to the mother of such soldier or sailor who was eligible to be admitted to the home. So that, Section 15140, R. S. Mo. 1939, reads as follows:

"The soldiers and sailors who shall be entitled to admission into said home shall be citizens of the state of Missouri, who were honorably discharged from the service of the United States, and who are in indigent circumstances, and from any disability, not received in any illegal act, are unable to support

themselves by manual labor, and that the aged mother, wife or widow of such soldier or sailor, and army nurses, who served with the armies of the United States or such ex-members of the enrolled Missouri militia, who served ninety days or more in the field during the civil war, shall also be entitled to admission in said home, provided they be in indigent circumstances and unable to support themselves by manual labor."

By the amendment of Section 5, Session Acts of 1897, throughout the years down to the present Section 15140, R. S. Mo. 1939, the legislature has shown an intent to determine who was eligible to be admitted to the home and has not granted that power to the board of trustees to determine who shall be admitted.

Section 1, Article I, of the By-Laws referred to above, provides in part as follows:

"The soldiers and sailors who shall be entitled to admission in the State Federal Soldiers' Home shall be citizens of the State of Missouri, who shall have served in the United States army, navy or marine corps in any war, and have been honorably discharged from such service, * * * * *"

Said section provides certain other qualifications for admission to the home not pertinent to the question here involved and which we therefore deem unnecessary to quote.

The authority for the Board of Trustees of the Home to make the rules and Regulations is found in the latter part of Section 15139, R. S. Mo. 1939, as follows:

"* * * That the said board shall have the power to make all needful rules and regulations for the management and government of said home, to employ the necessary officers and employees, to fix their compensation and to formulate rules for the admission of the state's beneficiaries not inconsistent with the following section."

It will be noted by the By-Laws and Rules and Regulations of the Home that one of the qualifications for the admission of soldiers and sailors to the home is that they shall have served in the United States army, navy or marine corps in any war and have been honorably discharged from such service. Upon a reading of Section 15140, supra, we find no such qualification required for admission to the home by soldiers and sailors. In other words, it is not essential for the soldier or sailor to have actually served in any war to be admitted to the home, because Section 15140 makes no such requirement and the By-Law adopted above making such requirement would be inconsistent with Section 15140, supra.

CONCLUSION

It is, therefore, the opinion of this department that if the soldier or sailor mentioned in your request possesses all the other qualifications for admission to the Home at St. James as provided by Section 15140, supra, it is not necessary for him to have actually served in any war.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General of Missouri

CRH:CP