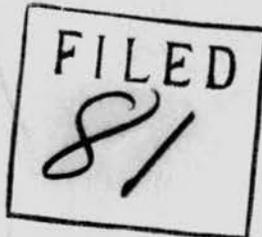


SOLDIERS' BONUS: Claims for soldiers' bonus which have been filed and rejected may be refiled, reconsidered, allowed and paid if previous rejection is erroneous - including claims  
BOARD OF REVIEW: passed on and rejected by Board of Review.

November 21, 1951



11-21-51

Colonel A. D. Sheppard  
Adjutant General of Missouri  
State Office Building  
Jefferson City, Missouri

Attention: Leo B. Crabbs, Jr.

Dear Sir:

Your request for an opinion of this department has been received, which request is as follows:

"It is asked that your office render its opinion on the following question relating to the Missouri Bonus Act of 1921.

"Section 10 of the Bonus Act provides for the manner in which a bonus applicant may appeal from the decision of the Bonus Commission to the Board of Review, and said Section ends in the following words: ' - - provided, the action of the said Board of Review shall be final in either case.'

"Subsequent legislation enacted probably in 1925 provides that 'any application for the bonus heretofore filed and rejected may be filed before the Adjutant General and by him again heard; and if it appears that the rejection

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of the claim was erroneous the rejection may be set aside and the claim allowed and paid.'

"Does the latter provision make it possible to reopen a bonus claim which has been finally rejected by the Board of Review?"

Section 44(b), Article IV of the Constitution of 1875, adopted at a special election held August 2, 1921, provided for the payment of a bonus to residents of Missouri for service in World War I. Legislation enacted to implement the constitutional provision is found in Laws of 1921, Second Extra Session, page 6; Section 9577.1 - 9577.26, Mo. R.S.A. The Soldiers' Bonus Act has been omitted in the Revised Statutes of Missouri, 1949. All references to statutes hereinafter made are therefore to Missouri Statutes Annotated or the Session Acts.

Section 10 of the original act as amended, from which you quoted in the second paragraph of your request, is Section 9577.11, Mo. R.S.A., and is as follows:

"If the commission after due consideration shall finally disallow the claim of any person for the bonus under this act, the reason for such disallowance shall be filed with the application and notice thereof mailed to the applicant at his last known postoffice address. Within sixty days after such notice, the applicant may have his application reconsidered by the governor, attorney general and secretary of state, sitting as a board of review, upon filing with the secretary of the commission an application for such review. Upon the filing of such application, the secretary of the commission shall forthwith deliver to the governor all the papers and files in his office pertaining to

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such claim, and upon receipt of same the governor shall arrange for a meeting of such board of review and shall cause notice thereof to be mailed to the applicant at his said postoffice address. If upon such hearing the act of the commission be approved, a statement to that effect shall be made and signed by the governor and all the files again returned to the commission. If the said board of review shall overrule the act of the commission and allow the claim for the bonus, then such act shall also be by the governor certified to the commission, and the commission shall thereupon allow the claim and provide for its payment in the same manner as if the claim had been allowed by the commission in the first instance; provided, the act of the said board of review shall be final in either case."

(Emphasis ours.)

Section 9 of the original act as amended (Laws of 1921, Second Extra Session), from which you quote in paragraph 3 of your letter, is now Section 9 of the Truly Agreed To and Finally Passed House Bill No. 111 of the 66th General Assembly. This section is now effective, and is 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, 1954, and at such place or places as the Adjutant General may designate

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and upon the blanks furnished by the Adjutant General. 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. 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 their offices may disclose relative to the identity, place and period of residence and the war service record 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. Any application for bonus heretofore filed and rejected may be filed before the Adjutant General and by him heard again; and if it appears that the rejection of the claim was erroneous, the rejection may be set aside, and the claim allowed and paid. 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."

(Emphasis ours.)

The first-quoted section (Section 9577.11) has never been amended and is now the same as the original Section 10, page 11, Laws of 1921, Second Extra Session.

The last quoted section (Section 9, page 11, Laws of 1921, Second Extra Session) has been amended numerous times (See Laws 1925, page 127; Laws 1927, page 121; Laws 1931, page 139; Laws 1933, page 396; Laws 1935, page 362; Laws 1937, page 478; Laws 1939, page 745; Laws 1941, page 648; Laws 1943, page 952, Laws 1945, page 1756; Laws 1951, House Bill No. 111).

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The re-enacting act of 1925 extended the time for filing applications for payment of bonus from December 31, 1922, to December 31, 1925, and added to the end of the original Section 9 the following: "Any application for bonus heretofore filed and rejected may be filed before the Adjutant General and by him heard again; and if it appears that the rejection of the claim was erroneous, the rejection may be set aside, and the claim allowed and paid." This added portion to the end of the original section has remained in the section through all the amendments, down to and including the above-quoted House Bill No. 111 of the 66th General Assembly.

There are no decisions on the question contained in your request. We must, therefore, resort to a construction of the two sections referred to in your request.

We call your attention to certain rules of construction of statutes. In *State v. Day-Brite Lighting, Inc.*, 220 S.W. (2d) 782, 1.c. 786, Judge Hughes, speaking for the St. Louis Court of Appeals, said:

"The primary rule of construction of statutes is to ascertain and give effect to the lawmakers' intent. \* \* \*"

In *Donnelly Garment Co. v. Keitel*, 193 S.W. (2d) 577, 1.c. 581, the Supreme Court of Missouri said:

" \* \* \* And a primary rule of construction of a statute is to ascertain from the language used the intent of the lawmakers if possible, and to put upon the language its plain and rational meaning in order to promote the object and purpose of the statute. *Haynes v. Unemployment Compensation Commission*, supra, 183 S.W. (2d) loc. cit. 81, and cases there cited."

The courts interpret the law as it reads and reconcile its inharmonious provisions, if possible. In discussing this rule of construction the St. Louis Court of Appeals,

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in *Teasdale v. Mayne*, 166 S.W. (2d) 316, l.c. 322, said:

" \* \* \* If these two sections can be construed with a view of accrediting to the Legislature a laudible purpose in enacting both sections and give to both sections life and operative effect, it is our duty to do so. *State ex rel. v. Lemay Ferry Sewer District of St. Louis County*, 338 Mo. 653, 92 S.W. (2d) 704. \* \* \*"

This rule of construction was further discussed by the Supreme Court of Missouri, en Banc, in *State ex rel. Hotchkiss et al. v. Lemay Ferry Sewer Dist. of St. Louis County et al.*, 92 S.W. (2d) 704, l.c. 706, as follows:

" \* \* \* It thus appears that, when these two sections are considered separately, they appear to be in hopeless conflict. However, as they are parts of the same act and relate to the same subject-matter, they should be read and construed together and both be given force and effect, if by so doing we can effectuate the intention of the Legislature, and at the same time not violate any recognized rule of statutory construction."

Section 9 of said House Bill No. 111 has been before the Legislature for consideration nine times after it was first amended by adding thereto the following: "Any application for bonus heretofore filed and rejected may be filed before the Adjutant General and by him heard again." "Any Application" as used in this section is all inclusive and evidently means all applications which have been filed and rejected, regardless of whether they had been brought up for hearing before the Board of Review.

That part of said Section 9577.11 which is as follows: "provided, the act of the said board of review shall be final in either case," if considered alone would appear to be in conflict with the last above-quoted portion of

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said Section 9. However, our courts say: " \* \* \* as they are parts of the same act and relate to the same subject-matter, they should be read and construed together and both be given force and effect, if by so doing we can effectuate the intention of the Legislature, and at the same time not violate any recognized rule of statutory construction."

The Legislature did not intend, by saying "the act of the said board of review shall be final in either case," to forbid an applicant whose application for bonus had been reviewed by the Board of Review from refileing his application with the Adjutant General and have the same come up for rehearing as is provided for in Section 9 of said House Bill No. 111.

If it appears that the rejection of any claim for bonus is erroneous, the rejection should be set aside and the claim allowed and paid.

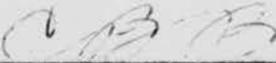
#### CONCLUSION

It is therefore the opinion of this department that all applications for bonus which have been filed and rejected may be filed before the Adjutant General and by him heard again. If it appears that the rejection of the claim was erroneous, the rejection should be set aside and the claim allowed and paid, and this should include claims previously rejected by the Board of Review.

Respectfully submitted,

APPROVED:

GROVER C. HUSTON  
Assistant Attorney General

  
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J. E. TAYLOR  
Attorney General

GCH/FH