



1962

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Recommended Citation

Cannon, Hugh L. (1962) "The Veteran's Bonus--Payment for Patriotism?," *Kentucky Law Journal*: Vol. 50 : Iss. 4 , Article 4.
Available at: <https://uknowledge.uky.edu/klj/vol50/iss4/4>

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THE VETERANS' BONUS—Payment for Patriotism?

The muffled drum's sad roll has beat
 The soldier's last tattoo;
 No more on Life's parade shall meet
 The brave and fallen few.
 On Fame's eternal camping-ground
 Their silent tents are spread,
 And Glory guards, with solemn round,
 The bivouac of the dead.

Theodore O'Hara, *The Bivouac of the Dead*.

When war was a profit-seeking enterprise the mercenary fought for plunder, however, as social attitudes toward war changed, the motive of the soldier varied. Modern soldiers fight because of patriotism—*i.e.*, “to defend their homes, their property, their way of living or social group of which they are a part: that is, their nation.”¹ Yet, some veterans apparently felt they fought under compulsion for an outside interest (*i.e.*, the federal government), thus in part giving rise to the veterans' bonus problem. This paper shall deal strictly with the “bonus problem,” rather than the myriad of veterans' benefits.

VETERANS' BONUS VIA FEDERAL GOVERNMENT

The “bonus” problem arose during America's first conflict as a nation—the Revolutionary War. American forces were faring poorly and the colonial soldier was not the avid volunteer or patriot that one might imagine.

At that time, however, the concept of soldiers as adventurers expecting good remuneration was in the ascendancy. At the very beginning of the war, in 1778, the Continental Congress promised that all commissioned officers ‘shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they live so long, one-half of the present pay of such officers.’ Non-commissioned officers were promised \$80 flat bonus. A year later ‘a gratuity of \$100 each’ was promised to all those who had previously enlisted.²

The Civil War occasioned the second bonus payment by the government, paid immediately after the war; years later, political pressures necessitated a second bonus.³ Throughout the South a bonus was promised to negroes during the Civil War—forty acres and a mule—which was never paid. But, the source of the promise is doubtful.

The World War I bonus was the federal government's last bonus.

¹ Durham, *Billions For Veterans* 9 (1932).

² *Id.* at 21-22. See also *United States v. Hall*, 98 U.S. 343, 346-47 (1879); *In re Opinion of The Justices*, 175 Mass. 599, 57 N.E. 675, 676 (1900).

³ Durham, *op. cit. supra* note 1, 22-23.

This bonus was labeled "adjusted compensation."⁴ In 1932, demands for immediate payment led to the ill-fated "Bonus Expeditionary Force." A great political struggle ensued before the bonus was fully paid in 1936,⁵ even though it was not to have been paid until 1945.

The federal government through various "measures" has attempted to facilitate the veterans' transition from military to civilian life, especially after World War II. These "measures" were based upon a different principle from that of a bonus. They were not rewards for military service but rather an attempt to furnish the veterans an equal opportunity to succeed with those who retained civilian status during hostilities. Some of the benefits extended to the veterans were: mustering-out pay, government insurance, re-employment, apprentice and vocational training, education, hospital care, legal protection, and burial.⁶ Considering the unpleasant effects of the "Bonus Army" incident of 1932, another federal government bonus seems unlikely.

STATES VETERANS' BONUS BASED ON USE OF PUBLIC PROPERTY

Although the federal government undertook to make adjustments in servicemen's military pay during this country's first war, the several states did not pay cash bonuses until the Civil War. Because Congress was given the power to raise and support armies,⁷ the states may have felt inhibited. Another possible explanation is that until the Civil War, there had been no major conflict at the insistence of the federal government in which the states were involved.

Two types of state bonuses arose during the Civil War. First, a sum of money was paid to procure volunteers or substitutes to fill the federal draft quotas.⁸ This type of bonus clearly appears to infringe upon the congressional power to raise and support armies. From an ideological standpoint, the payment of money to procure "volunteers" violated the traditional bonus justification—that a bonus was to foster patriotism. A pre-veterans' bonus had the stigma of purchased patriotism much like that of the soldier of fortune. The second type of Civil War bonus was the payment by the state of a lump

⁴ The Adjusted Compensation Act, 43 Stat. §§121-31 (1924). The payment of the world war adjusted service certificates was authorized by the 74th Congress in 1936, 49 Stat. 1099-1102 (1936).

⁵ See Waller, *Veteran Comes Back* 240 (1944) for a description of the Bonus Army of 1932.

⁶ Cranston, *From Military To Civilian Status*, 50 Com. L.J. 67 (1945). See generally *Federal Laws Pertaining to Veterans 1914-1950*, H.R. Doc. No. 78, 82d Cong., 1st Sess. (1951); CCH, *Veterans Law Manual* (1945).

⁷ U.S. Const. art. I, §8 (12).

⁸ *E.g.* *Ferguson v. Landram*, 64 Ky. (1 Bush) 548 (1866), *aff'd on re-hearing*, 68 Ky. (5 Bush) 230 (1868); *In re Opinion of the Justices*, 190 Mass. 611, 77 N.E. 820 (1906); *In re Bounties to Veterans*, 186 Mass. 603, 72 N.E. 95 (1904).

sum as adjusted compensation, usually on a per diem basis, to veterans who had served honorably.⁹ This bonus also appears to infringe upon congressional power; a necessary corollary to the power to support armies is the power to compensate. If the payments were to ameliorate the economic deprivations wrought upon the Civil War soldier by his military service, the states did not accomplish their purpose. Also, a veterans bonus based on an economic theory of adjusted compensation is out of tune with the political-economic-laissez-faire attitude which was prevalent during the Civil War period.

The states' power to pay a gratuity for past military service in recognition of a patriotic sacrifice cannot be conveniently categorized. For example, the New York legislature, immediately after World War I, enacted a veterans' bonus which was declared unconstitutional.¹⁰ However, it was later made possible by a constitutional amendment.¹¹ Pennsylvania has paid bonuses to the veterans of the Spanish American War, World War I,¹² World War II,¹³ and the Korean Conflict¹⁴ without a judicial ruling on the validity of such legislative grants. On the other hand, several states have never felt the necessity of granting a gratuity for past military service.¹⁵ Only Vermont, of the states which have paid bonuses to servicemen of World War II and Korea, limited the payment to enlisted personnel.¹⁶ Wyoming's bonus, a property tax exemption, was granted to war veterans since 1860, but required residency before the veteran could claim the exemption.¹⁷ The reasons for upholding a bonus in a particular case are almost as numerous as the variations of bonuses.

In 26 R.C.L. §44 (1920) it was stated that "it is well settled that the public money cannot be used to pay a gratuity to an individual, when he has no legal and [*sic*] moral claim to the money, and when it cannot fairly be said that the public good will be served by such payment." Therefore, in order for a state to pay a veterans' bonus, the power would depend upon whether the soldier had a moral claim, or whether the payment was for a public purpose. One argument

⁹ *E.g.*, *Franklin v. State Bd. of Examiners*, 23 Cal. 173 (1863); *Leonard v. Wiseman*, 31 Md. 201 (1869).

¹⁰ *People v. Westchester County Nat'l Bank*, 231 N.Y. 465, 132 N.E. 241 (1921).

¹¹ N.Y. Const. art. VII, §18; *In re Craig*, 210 App. Div. 732, 206 N.Y.S. 403 (1924).

¹² Pa. Stat. Ann. tit. 51, §443 (Purdon's 1954).

¹³ Pa. Stat. Ann. tit. 51, §455 (Purdon's 1954).

¹⁴ Pa. Stat. Ann. tit. 51, §458 (Purdon's 1954).

¹⁵ *E.g.*, Alabama, Arizona, Arkansas, Florida, Georgia, Hawaii, Idaho, Louisiana, Mississippi, Nebraska, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia.

¹⁶ Vt. Stat. Ann. tit. 20, §§1542, 1541(a) (1959 Revision).

¹⁷ Wyo. Stat. Ann. §39-7 (Fifth) (1957).

is that the moral claim, if any, to extra compensation exists primarily against the federal government, which called the soldier into service and compensated him therefor. The contrary argument was aptly stated by Justice Cardozo:

The service that preserved the life and safety of the nation preserved at the same time the life and safety of the states. [Cases cited.] If something is still due beyond the letter of the bond . . . state, as well as nation, will not rest till justice has been done. Neither can silence conscience by referring the claimant to the other.¹⁸

That the moral obligation owed by the state was that of amelioration, not remuneration, was the position taken by the Court of Appeals of Kentucky.¹⁹

Whether a public purpose is served when the state has undertaken to pay a veterans' bonus furnishes abundant ground for debate. However, in such a case, the legislature should be the judge, "unless the use is palpably without reasonable foundation."²⁰

Some may think the service so far beyond requital that the attempt should be surrendered for mere futility. Others may think that high and unselfish sacrifice is cheapened when repaid in money. Others again may think that for the sake of the economic or financial stability of the commonwealth losses already suffered should be left to lie where they have fallen. These are questions of political or legislative expediency.²¹

When the appropriation of public monies is for the purpose of preservation of historic battle lines and erection of memorials to those who gave their lives, as at Gettysburg²² or at Chickamauga, the public purpose is more enduring and can be more readily seen than when an appropriation is made for bounties for past military service, which appears to be for a private purpose with no enduring qualities.²³ But, whether the veterans' requital should have permanency or have a temporary beneficial quality, perhaps even illusory, is also a legislative question.

Although there are no definite answers to the ideological and ethical questions which arise concerning payments of bonuses, one

¹⁸ *People v. Westchester County Nat'l Bank*, 231 N.Y. 465, 132 N.E. 241, 248 (1921) (dissent).

¹⁹ *Grise v. Combs*, 342 S.W.2d 680, 682 (Ky. 1961).

²⁰ *Id.* at 683, citing *Bosworth v. Harp*, 154 Ky. 559, 562, 157 S.W. 1084, 1085 (1913).

²¹ *People v. Westchester County Nat'l Bank*, 231 N.Y. 465, 132 N.E. 241, 250 (1921) (dissent).

²² *United States v. Gettysburg Elec. Ry. Co.*, 160 U.S. 668 (1896).

²³ "The state may show that the republic is not ungrateful to these men not only by erecting monuments to them when dead or placing flowers on their graves, but it may with equal propriety gladden their hearts while living and in their infirmity give them bread." *Bosworth v. Harp*, 154 Ky. 559, 157 S.W. 1084, 1088 (1913).

can look to the numerous states²⁴ which have paid bonuses and observe their legislatures and courts in making an evaluation of the bonus-payment process. The ideological explanation is that payment of a bonus is a promotion of patriotism or an honorarium for services rendered to the state, as well as the nation. The practical explanation for veterans' bonuses, at least in part, is politics and political pressure.

²⁴ This footnote is not intended to be exhaustive, but rather to serve as an example of the magnitude of veterans' bonuses. The following statutes, constitutional authorizations, and cases are those, ascertainable March 15, 1962, which either provide for the payment of a bonus, direct the payment thereof, authorize such payment, or uphold the payment of a veterans' bonus in the states for the wars as indicated.

Franklin v. State Bd. of Examiners, 23 Cal. 173 (1863) (Civil War); Lyman v. Adorno, 133 Conn. 511, 52 A.2d 702 (1947) (WWII); Booth v. Woodbury, 32 Conn. 148 (1864); Routt v. Barrett, 396 Ill. 332, 71 N.E.2d 660 (1947) (WWII); Taylor v. Thompson, 42 Ill. 9 (1866); Coffman v. Keightley, 24 Ind. 509 (1865); Faber v. Loveless, 88 N.E.2d 112 (Iowa 1958) (Korean Conflict); Knorr v. Beardsley, 240 Iowa 828, 38 N.W.2d 236 (1949) (WWII); Grant v. Kendall, 195 Iowa 467, 192 N.W. 529 (1923) (WWI); Grise v. Combs, 342 S.W.2d 680 (Ky. 1961) (Spanish-American War, WWI, WWII, Korean Conflict); Watkins State Property & Bldg. Comm'n, 342 S.W.2d 511 (Ky. 1960); Stovall v. Gartell, 332 S.W.2d 256 (Ky. 1960); Leonard v. Wiseman, 31 Md. 201 (1869) (Civil War); *In re* Opinion of the Justices, 114 Atl. 865 (Me. 1921) (WWI); Winchester v. Corrinna, 55 Me. 9 (1866); Opinion of Justices, 211 Mass. 608, 98 N.E. 338 (1912); Fowlee v. Selectman, 8 Allen (Mass.) 80 (1864); Gustafson v. Rhinow, 144 Minn. 415, 175 N.W. 903 (1920) (WWI); *State ex rel.* Graham v. Board of Examiners, 239 P.2d 283 (Mont. 1952) (WWII); Fahey v. Hackmann, 291 Mo. 351, 237 S.W. 752 (1922) (WWI); Kohn v. Bates, 275 App. Div. 431, 90 N.Y.S.2d 391 *aff'd* 300 N.Y. 722, 92 N.E.2d 60 (1950) (WWII); *In re* Craig, 210 App. Div. 732, 206 N.Y.S. 403 (1924) (WWI); *State ex rel.* Howison v. Fraser, 58 N.D. 909, 208 N.W. 397 (1926) (WWI); *State ex rel.* Bates v. Trustees of Richland Twp., 20 Ohio St. 362 (1870) (Civil War); *State ex rel.* Bell v. Price, 118 Ore. 533, 274 Pac. 812 (1926) (WWI); Crane v. Olcott, 105 Ore. 458, 209 Pac. 608 (1922); Ahl v. Gleim, 52 Pa. 432 (1866); Bannister v. Soldiers' Bonus Bd., 43 R.I. 356, 112 Atl. 422 (1921) (WWI); Bandy v. Mickelson, 44 N.W.2d 341 (S.D. 1950) (WWII); *State ex rel.* Morris v. Handlin, 38 S.D. 550, 162 N.W. 379 (1917) (WWI); Butter v. Putney, 43 Vt. 431 (1870) (Civil War); *State ex rel.* Hart v. Clausen, 117 Wash. 1, 200 Pac. 563 (1921) (WWI); Flesher v. Board of Review, 77 S.E.2d 890 (W.Va. 1953) (WWII); *State ex rel.* Atwood v. Johnson, 170 Wis. 218, 175 N.W. 589 (1919) (WWI); Miller v. Board of County Comm'rs, 337 P.2d 262 (Wyo. 1959) (Korean Conflict); *State v.* Snyder, 29 Wyo. 199, 211 Pac. 771 (1923) (WWI).

Del. Code Ann. tit. 29 §7302 (1960 Supp) (Korean Conflict); Ill. Ann. Stat. ch. 126½ §§1-7 (Smith-Hurd 1953) (WWI); Ill. Ann. Stat. ch. 126½ §§47, 48 (Smith-Hurd 1953) (WWII); Ill. Ann. Stat. ch. 126½ §57.15 (Smith-Hurd 1961 Supp) (Korean Conflict); Ind. Stat. Ann. §§59-1403 (WWII), 59-1420 (Korean Conflict) (Burn's 1961 Replacement); Iowa Code c. 35A (WWII), c. 35B (Korean Conflict) (1958); Kan. Gen. Stat. Ann. §73-101 (1949) (WWI); Ky. Rev. Stat. c. 40 (1960) (Spanish-American War, WWI, WWII, Korean Conflict); Md. Const. art. III, §34 (1960) (All wars); Mich. Compiled Laws §35.921 (1948) (WWII); Mich. Compiled Laws §35.971 (Mason's 1956 Supp) (Korean Conflict); Minn. Stat. Ann. §197.31 (1945) (WWI); Minn. Stat. Ann. §197.30 (WWII), 197.81 (Korean Conflict) (1961 Supp); Mo. Stat. Ann. ch. 41, App. §1 (Vernon's 1949) (WWI); Mo. Const. art. 4, §44b (1875) (WWI); Mo. Const. art. 3, §38(a) (1945) (all servicement); N.Y. Const. art. VII, §13 (1933) (WWII); N.D. Const. art. 59 (WWII), art. 65 (Korean Conflict) (1889); N.D. Century Code §§37-21 (WWII), 37-23 (Korean Conflict) (1960); Ore. Rev. Stat. §§407.510 (WWI), 407.310 (WWII) (1959); Ore. Const. art. XI-F(2),

(Continued on next page)

THE LEGISLATIVE PROCESS OF KENTUCKY'S VETERANS' BONUS

In 1959, the voters of Kentucky indicated their desire for a constitutional amendment providing for a bonus payable to United States veterans of the *last four wars*. The Court of Appeals held that the "amendment" served no constitutional purpose, but that it was valid as a legislative authorization for payment of a bonus.²⁵

The bonus-sales tax proposal had its genesis in the first legislative session that followed the close of World War II. When the veterans returned from the war, some politicians saw an opportunity to win their favor and their votes by suggesting that the state pay a lump sum to each man as a gratuity. Although the 1948 session of the General Assembly was eager to help veterans, as evidenced by a few proposed bonus bills, little attention was paid to the bonus.

In the extraordinary session of 1949, called by former Governor Earle C. Clements for the purpose of revising tax assessing practices, the veterans bonus emerged as a political issue. At this assembly the Republican minority attempted to force Clements to broaden the special-session to include action on a bonus. Clements mustered Democratic strength which blocked this move and referred the bonus to the 1950 legislature.

The bonus issue posed sharp political and financial problems for both Clements, who was planning to run for the United States Senate, and Lieutenant Governor Lawrence W. Wetherby, the Senate President, who was looking ahead to the gubernatorial race in 1951. Had not a conflict arisen between the Senate and House as to the method of financing such a program the 1950 session might have passed a bonus bill.

The bonus issue subsided as a legislative dilemma in the sessions of 1952 and 1954, principally because Governor Wetherby told

(Footnote continued from preceding page)

§1 (1859) (WWI, WWII); Pa. Stat. Ann. tit. 51 §443 (Purdon's 1954) (Spanish-American War, WWI); Pa. Stat. Ann. tit. 51 §455 (Purdon's 1954) (WWII); Pa. Stat. Ann. tit. 51 §458 (Purdon's 1960 Supp) (Korean Conflict); Vt. Stat. Ann. tit. 20 §1542 (1959 Revision) (WWII); Vt. Stat. Ann. tit. 20 §1541(a) (1959 Revision) (Korean Conflict); Wash. Rev. Code §§73.32 (WWII), 73.33 (Korean Conflict) (1961 Supp); W.Va. Const. art. XIV, §1 amend. 6 (1872) (WWI, WWII); W.Va. Const. art. XIV, §1 amend. 7 (1872) (Korean Conflict); Wyo. Stat. §39-7 (1957) (Civil War, Indian Wars, Spanish-American War, WWI, WWII, Korean War).

It is recognized, however, that the above citations are incomplete because Cardozo in the *Westchester County Nat'l Bank* case indicated other states which paid a bonus to World War I Veterans, but no citations were available. Legislative Research Comm'n, *Veterans Bonus-Estimated Cost*, Report No. 1 (Ky. 1960), at page 7 indicated that 19 states apart from Kentucky had paid Korean Veterans' Bonuses and again citations were unavailable.

²⁵ *Stoval v. Gartell*, 332 S.W.2d 256 (Ky. 1960).

the legislators in no uncertain terms that he would not tolerate their political jockeying with this and other so-called "turkey" bills.²⁶

The bitter Democratic primary campaign of 1955 changed the veterans' bonus issue from a Republican-Democrat conflict into a factional battle among the Democrats. This primary was between A. B. Chandler and Bert T. Combs. Chandler had been catapulted into the governorship the first time in 1936 on his promise to repeal the sales tax Governor Ruby Laffoon had pushed through the 1934 legislature.²⁷ Kentucky had been without a sales tax almost 20 years when John Y. Brown of Lexington supported Combs in the 1955 primary campaign. Chandler said that this was "proof" that Combs was planning to levy a sales tax because in the previous session Brown had introduced a sales tax bill.

Anti-Chandler forces in the 1956 regular session saw an opportunity to embarrass Chandler by reviving the bonus issue. Chandler forces held a House bonus bill in committee until Republicans and anti-Chandler Democrats forced the committee to report it out. This action came too late, because two days later, the Chandler-dominated House Rules Committee promptly took control of this and all other pending legislation.²⁸

Since World War II, the Kentucky Veterans of Foreign Wars had opposed all veterans' bonus bills, but in the 1958 session they reversed their former positions and supported a bill.²⁹ There was a general feeling that if a bonus were to pass and the prospective recipients realized that actual payment of a bonus was a "pie-in-the-sky" proposition, pressures would mount for succeeding legislatures to find some faster method of paying off.³⁰ But there was still hope that the bonus issue would be dealt the same deft stroke by the legislature as had other bonus proposals of the past decade, especially if the Chandler-dominated Senate and House Rules Committees took over pending legislation before a bonus bill was passed.

In the 1958 session there were eight bonus bills pending in the House and five in the Senate.³¹ For example, House Bill 158, which never came to a vote, was sponsored by Vernan Cotengim, a Covington Democrat and a stalwart of Governor Chandler's Administration.³² On February 25, 1958, when an effort to speed up the con-

²⁶ The Courier-Journal, Nov. 15, 1959, §4, p. 1, col. 1.

²⁷ *Id.* Nov. 5, 1959, p. 12, col. 6.

²⁸ *Id.*, Nov. 15, 1959, §4, p. 1, col. 1.

²⁹ H.B. 158, Ky. Gen. Assembly 1958.

³⁰ The Courier-Journal, Jan. 23, 1958, p. 8, col. 1; *id.*, Jan. 21, 1958, p. 1, col. 6.

³¹ *Id.*, Mar. 5, 1958, p. 1, col. 6.

³² *Id.*, Jan. 21, 1958, p. 1, col. 6.

sideration of the Dempsey bonus bill failed, several Republicans walked out of the House ostensibly for a caucus.³³

Lieutenant Governor Harry Lee Waterfield was planning to run for governor in 1959 and the rebel-Democrats were confident that their challenger, Bert T. Combs, would run again.³⁴ Chandler's coalition with Republican legislators worked well on most questions, but was completely at odds on the veterans' bonus issue. On March 4, 1958, rebel House Leader Harry King Lowman, co-sponsor of a constitutional amendment bonus bill with ten other Democrats and five Republicans, mustered enough anti-Chandler Democrats and Republicans to pass a bonus bill by a vote of 80 to 5. The passage was timely because the powerful Chandler-dominated House Rules Committee would come into being three days later and it was doubtful that any bonus bill could emerge from this committee.³⁵ Kentucky's House of Representatives had no reason to be proud of its 1958 legislative record. In keeping with the legislature's general evasion of responsibility, the Lowman bill was the only one to emerge from a two-hour session marked by an exhibition by dancing girls in black tights and a visit by a retired prize-fighter. It took less than two minutes of explanation, with no debate, for this bill to pass the House.³⁶

In the Senate there was a "rebel" group as active as the one in the House, plus a Republican minority that for years had been clamoring for a veterans bonus. Waterfield knew that Lowman's bonus bill could not long be held in any Senate committee, and it was too early in the session to hope that the Administration-dominated Rules Committee could kill the measure. Thus, it was apparent that some kind of veterans' bonus bill was going to be passed by the 1958 session. Waterfield, as a prospective candidate for governor in 1959, undoubtedly realized that not being a veteran had hurt him in his unsuccessful race for governor in 1947. Like Combs in 1955, Waterfield realized that if Kentucky were to develop new programs and help education, a sales tax would have to be enacted. But Chandler had spent a political lifetime fighting the sales tax; so successful had he been that few politicians dared mention the words "sales tax." Thus for Waterfield there was an opportunity to take both the bonus and the sales tax out of the political arena in the 1959 campaign by claiming whatever credit would accrue to the person responsible for enactment of a veterans' bonus and, mean-

³³ Albert Dempsey of Inez and 14 other Republicans were the co-sponsors of H.B. 294. *The Courier-Journal*, Feb. 26, 1958, p. 1, col. 4.

³⁴ *The Courier-Journal*, Nov. 15, 1959, §4, p. 1, col. 1.

³⁵ *Id.*, Mar. 5, 1958, p. 1, col. 6.

³⁶ *Ibid.*

while, to avoid the taint of being a non-veteran by embracing the bonus-sales tax amendment during the campaign.³⁷ Chandler permitted Waterfield to slip the bonus amendment referendum through his dominated legislature and thus, perhaps unwittingly, opened the door for the sales tax he had promised to prevent since 1936.³⁸

The same day the House passed Lowman's bill, Senator Jerry Fonce Howell of Floyd County, a longtime Waterfield lieutenant, introduced in the Senate a proposed constitutional amendment to pay a bonus to veterans of World War I, World War II and Korea by authorizing a sale of bonds. This bill and Lowman's were given favorable committee reports and both were posted in the Senate Orders of the Day for passage.

The Senate leaders obtained from the House an agreement for the substitution of the Howell proposal in place of the Lowman Bill. The Senate bill was then amended to allow a bonus to veterans of the last four wars to be financed by selling bonds and levying a sales tax.³⁹ The Senate approved this amended bill by a vote of 27 to 5. The House Rules Committee promptly gave the bill a favorable report and it was given first reading in the House two days before the end of the 1958 session. Senator Cassius Clay charged that the bill was an effort to "by-pass the Governor" and saw no reason why the bonus question should not be submitted to the people in the form of a referendum.⁴⁰

The members of the House, on the last day of the 1958 session, pushed through, 76 to 4, Senate Bill 296, proposing a constitutional amendment providing for a bonus for veterans of all American wars since 1898. Representative Dempsey took less than a minute to explain to the House the Senate-approved amendment. No debate was raised and not once did he or any one else murmur the controversial words—sales tax.⁴¹

A year later, Waterfield was in Murray, Kentucky preparing to open his gubernatorial campaign the following day at a First District rally. In his proposed speech he planned to take credit for the bonus amendment. If this assertion had provoked favorable reaction, Waterfield planned to fully embrace the bonus amendment and thus attract all those who favored it. Apparently, there were at least as many people favoring a sales tax as there were who opposed it. The imponderable was: were there more voters against the bonus than for it? Waterfield conferred with his strategists on the problem and

³⁷ *Id.*, Nov. 15, 1959, §40, p. 1, col. 1.

³⁸ *Id.*, Nov. 13, 1959, p. 1, col. 1.

³⁹ *Id.*, Nov. 15, 1959, §4, p. 1, col. 1.

⁴⁰ *Id.*, Mar. 20, 1958, p. 14, col. 6.

⁴¹ *Id.*, Mar. 22, 1958, p. 1, col. 1.

finally made the decision that possibly cost him the primary victory; he eliminated from his speech any mention of the bonus and never once thereafter referred to it, except to say that it was an issue for the people to decide.

Combs and his organization emphasized Waterfield's non-veteran status and, by so doing, created the image that Combs was pro-bonus.⁴² But, in fact, Combs never committed himself in respect to the bonus throughout the 1959 campaign.⁴³ However, Combs' strategists moved to encourage this pro-bonus feeling in the fall campaign against Republican John M. Robsion, Jr., whose political party was primarily responsible for generating the bonus interest in Kentucky. Robsion should have been able to profit from the long legislative struggle by Republicans for a bonus (and the great fissure in the Democratic party caused by the primary campaign), for it was principally in the Republican areas of Southeastern Kentucky that the pro-bonus forces were centered.

Arguments for and against the bonus-sales tax amendment were loaded and widespread as the campaign neared its close. Few Kentuckians were ignorant of the fact that if the bonus passed they would have to pay a sales tax for a number of years. For Robsion, this widespread knowledge was catastrophic. The chief plank in his platform was that if elected there would be no new taxes enacted by the 1960 legislature. Combs' strategists, meanwhile, were circulating reports in the pro-bonus areas that Robsion's stand meant that he was against the bonus. The effectiveness of this strategy played a role in the Combs-Wyatt landslide victory in 1959. Combs not only swept the Democratic counties, but made deep inroads into the normally Republican areas.⁴⁴

The bonus issue proved to be a help to the Democrats in the voting, rather than a hindrance which the Chandler and Republican forces had expected. As predicted, it brought out a heavy vote throughout the State, especially in the mountains, where continuing unemployment and depression gave the bonus an unusual appeal. But the mountain vote, in a break with traditional voting patterns, went Democratic to an extent not foreseen by even the most optimistic Democrats.⁴⁵ When all the votes were tallied the mountains emerged victorious in the "battle of the bonus."

The controversial amendment contributed to the widening of the

⁴² *Id.*, Nov. 15, 1959, §4, p. 1, col. 1.

⁴³ *Id.*, Nov. 6, 1959, p. 20, col. 5.

⁴⁴ *Id.*, Nov. 15, 1959, §4, p. 1, col. 1.

⁴⁵ *Id.*, Nov. 5, 1959, p. 10, col. 1.

factional rift in the Democratic party.⁴⁶ The pro-bonus arguments were vague, ambiguous generalities. This apparently was due to the inherent nature of a bonus and the fact that there were many depressed areas in Kentucky, especially in Eastern Kentucky. An apparent dole had much appeal to a hungry veteran, particularly when it was given the dignified label of an honorarium. The basic arguments were: prospective recipients were in dire need of economic help; the people of Kentucky should show their gratitude and appreciation to the veteran; most other states had paid veterans' bonuses, therefore Kentucky should conform. Emotion ran high in the pro-bonus minds and was particularly directed against those who opposed the bonus; if against the bonus, one might "sound like Communists who [cared] not for the freedom preserving servicemen of our great country,"⁴⁷ or at least the devil's helper.

The arguments against the bonus were more numerous, based on both ideological and practical grounds. The bonus was attacked as ethically indefensible because military service was a patriotic duty to one's country which should not be abrogated or cheapened by compensating soldiers of fortune or mercenaries.⁴⁸ Anti-bonus groups felt that once the would-be recipients realized that such a bill would impose a catastrophic, unrealistic burden upon a poor state, sorely in need of schools, hospitals and highways, and that a bonus would in turn confer only an illusory benefit, such realization would precipitate enough votes to defeat the proposed amendment.⁴⁹ Apart from the heavy tax burden that the amendment promised to impose, the proposal was obscure as to its scope, inconclusive as to any guiding policy and promised to create a vast administrative bureaucracy costing millions of dollars.

The pro-bonus forces, however, won at the polls and the general attitude for collecting a bonus was quickly reflected in queries received by state agencies within the following week.⁵⁰ The anti-bonus groups, although defeated by the voters quickly prepared to carry the affray into a different arena. A week later, Associated Industries of Kentucky began preparing a suit against the bonus and the Louisville Chamber of Commerce authorized its legal staff to assist in any ensuing legal battle against the bonus. The Executive

⁴⁶ *Id.*, Nov. 1, 1959, §4, p. 3, col. 1.

⁴⁷ *Id.*, Oct. 13, 1959, p. 8, col. 4 (letter to the editor).

⁴⁸ *The Kentucky Kernel*, Oct. 27, 1959, p. 4, col. 1.

⁴⁹ *The Courier-Journal*, Nov. 1, 1959, §4, p. 3, col. 1; *id.*, Oct. 4, 1959, §4, p. 2, col. 1; *id.*, Jan. 23, 1958, p. 8, col. 1; *The Kentucky Kernel*, Oct. 27, 1959, p. 4, col. 1.

⁵⁰ *The Courier-Journal*, Nov. 15, 1959, §4, p. 1, col. 1.

⁵¹ *Id.*, Nov. 13, 1959, p. 1, col. 1.

Vice-President of Associated Industries, Rayburn Watkins,⁵¹ was later to become the plaintiff in *Watkins v. State Property & Bldg. Comm'n.*,⁵² discussed *infra*.

The geographical split of the vote—the mountain and rural areas prevailing over the metropolitan areas—pointed to the probability of legislative strife between urban and rural legislators in 1960 regular session. The rural lawmakers would be fighting for prompt passage of maximum benefits and could possibly look for aid from the mountain Governor-elect, while the urban legislator, hoping that the Court of Appeals would hold the “constitutional amendment” invalid, would be employing diversionary tactics and striving for economy.

When the 1960 General Assembly convened, the bonus amendment had been held unconstitutional by the Franklin Circuit Court and the appeal was pending before the Court of Appeals.⁵³ Instead of avoiding or postponing the bonus issue, Governor Combs, in his State of the Commonwealth Address, reminded the legislators that the voters of Kentucky had spoken on the matter of the bonus. Combs said:

The Assembly [had] . . . a moral obligation to enact legislation providing for the payment of a veterans' bonus, and to provide necessary taxes to finance such payment. . . . If the courts uphold the validity of the approving referendum, your task will be considerably simplified. If, on the other hand, the referendum is ruled invalid, it is my recommendation to you that you consider legislation providing for direct payment of the bonus and taxes sufficient to finance such payments.⁵⁴

Combs made it clear that he wanted the legislature to enact a bonus bill regardless of what the Court of Appeals held in respect to the “bonus amendment.”

Republicans did not delay the introduction of bonus bills; on the third day of the session two bills were introduced—one in the House⁵⁵ and one in the Senate.⁵⁶ However, trouble developed early in the session as to the method of financing the bonus. When the bonus amendment was submitted to the voters it had a sales tax rider. After a five-day recess, the legislators reported that their constituents had variant views in respect to the sales tax question. While most Kentuckians were willing to accept a sales tax, they felt there should be a reduction of income taxes; the mountain people were interested

⁵² 342 S.W.2d 511 (Ky. 1960).

⁵³ *Stovall v. Cartell*, 332 S.W.2d 256 (Ky. 1960).

⁵⁴ Governor Combs' address to the opening joint session of the 1960 Kentucky General Assembly. *The Courier-Journal*, Jan. 6, 1960, §1, p. 10, col. 1.

⁵⁵ H.B. 10, 1960 Ky. Gen. Assembly.

⁵⁶ S.B. 11, 1960 Ky. Gen. Assembly.

only in the bonus; the educators wanted the sales tax proceeds to be used in part for schools; a fourth group was indifferent to the imposition of a sales tax; a fifth group was opposed to any type of sales tax.⁵⁷

On January 19, 1960, a unanimous Court of Appeals ruled that the veterans' bonus proposal approved by Kentucky voters the preceding November was valid.⁵⁸ The court declared that what the voters had approved was not an amendment to the Constitution. Rather, the court said, it was a legislative act which sought a vote of the people on the propriety of exceeding the debt limitation of section 49 of the Constitution, as required by section 50, to pay a bonus.

The Court's decision set the Administration into motion and the following day the Administration's bonus bill was introduced in the House.⁵⁹ The bill was sponsored by eight Democrats among whom were Lowman, Speaker of the House, and Ray, majority floorleader. Combs let it be known that he was "shooting for quick payments."⁶⁰ The bill proposed payments based on a sliding scale geared to the number of months served by the recipient. The bonus payments were to be restricted to "qualified veterans and beneficiaries" who were residents of Kentucky on November 3, 1959. These two provisions had the virtue of keeping the total cost of the bonus down, *i.e.*, furnishing some of the economy the urban legislators desired. These provisions caused a cataclysm among the Republicans and mountain Democrats. The Senate and House Republicans proceeded immediately to draft a substitute bill calling for flat \$300 and \$500 payments.⁶¹ The Republicans' strategy was designed to split the Democrats into rural and urban blocs, with the rural bloc lining up behind the Republican plan.⁶² However, Combs promised the mountain Democrats that the bonus would be paid to permanent residents of Kentucky although they may "temporarily" reside in another state; further, he promised to use his influence with the Adjutant General to promote such payments.⁶³

Former Governor Chandler's Senate majority leader of the 1958 session sought to delay the tax and bonus questions when he proposed by Senate Resolution that Combs call a special session so that the new taxes and biennial State Budget could be considered together. Combs was quick to express his displeasure with this resolution and its clear import.⁶⁴

⁵⁷ The Courier-Journal, Jan. 12, 1960, §1, p. 1, col. 1.

⁵⁸ *Stovall v. Cartell*, 332 S.W.2d 256 (Ky. 1960).

⁵⁹ H.B. 85, 1960 Ky. Gen. Assembly.

⁶⁰ The Courier-Journal, Jan. 21, 1960, §1, p. 1, col. 8.

⁶¹ *Id.*, Jan. 23, 1960, §1, p. 1, col. 1.

⁶² *Id.*, Jan. 24, 1960, §4, p. 1, col. 5.

⁶³ *Id.*, Jan. 23, 1960, §1, p. 1, col. 1.

⁶⁴ *Id.*, Jan. 24, 1960, §4, p. 1, col. 5.

A public bonus-hearing in the House had been set for February 10, but on February 2, the House committee rescheduled the hearing to February 4. This evoked the protest that such a change would be unfair to those seeking an opportunity to appear. Another objection was also registered, *i.e.*, that the bonus bill had been sent to the wrong committee and that it should have gone to the Committee on Military Affairs instead of the Committee on Legislation. Speaker Lowman, who headed the committee which referred all bills to the various House committees, declared that the bonus question was the business of the whole House.⁶⁵ Despite the advance of the hearing date, the veterans' lobbies appeared in full force suggesting their views as to how, and in what amounts, the bonus should be paid.⁶⁶

The Governor's bill was thought so restrictive by some legislators that an impasse, which could have prevented a bonus bill from passing the 1960 session, seemed likely in either the House or the Senate.⁶⁷ However, the Governor and his legislative lieutenants and supporters were determined to pass the bonus bill in substantially the form as introduced. When the House convened on the morning of February 10, the Administration's strategy to block any impasse was brought to bear. At the outset of the period for routine motions, Speaker Lowman recognized Thomas L. Ray, the Administration's majority floorleader. Ray called House Bill 85, the bonus bill, out of the Orders of the Day, without the rules first being suspended, and won quick approval of two minor amendments. Ray then moved the previous question to cut-off amendments and to limit debate.

A chorus of shouts for 'roll call' on the Ray motion went up, but Lowman paid no heed. In one breath and without pause he gaveled through the motion with this chant: "Those in favor will vote aye, opposed no, and the ayes have it." Confusion followed. Because of the din thrown up by those wanting a roll call, some members had not heard Lowman's pronouncement.⁶⁸

Republicans moved for a recess to have a caucus to decide their next move; upon being defeated on this motion, the Republicans in mass walked out of the House, and after they had gone Lowman ordered a recess ostensibly so the Republicans could have a caucus. But when

⁶⁵ Lowman said, "This house can do whatever it desires to do if a member can get 51 members to concur." *The Courier-Journal*, Feb. 3, 1960, §1, p. 1, col. 7.

⁶⁶ One witness, who was a career soldier, advocated the payment of a bonus for *each* war in which the recipient had served. Further stating, "Don't make your veterans ashamed of you for penny-pinching." *Id.*, Feb. 5, 1960, §1, p. 1, col. 6. Are the flying banners beginning to droop and the rose losing its beauty? See Brief for the Appellees, *Watkins v. State Property & Bldg. Comm'n*, p. 32, filed May 18, 1960.

⁶⁷ *The Courier-Journal*, Feb. 7, 1960, §4, p. 1, col. 1.

⁶⁸ *Id.*, Feb. 11, 1960, §1, p. 1, col. 1.

the House reconvened the Republicans did not return. Thus House Bill 85 was passed, with no debate, by a vote of 78-0.

The bill was sent immediately to the Senate, where it was referred to the Administration-controlled Kentucky Statutes Committee No. 1.⁶⁹ The Senate leaders followed the methods used by the House to bring the bonus bill to the floor for a vote. On February 16, a few minutes after the Senate had convened, majority leader James C. Ware moved to suspend the rules so that the bonus could be taken out of the Orders of the Day. When the motion was put to a voice vote by Senate President Wilson W. Wyatt the ayes predominated.⁷⁰

A Republican motion for a caucus recess was carried. The Republicans decided in caucus to resolve postponement of action on the bonus until a public hearing was held and, if this effort failed, to vote solidly against the bonus. However, their floor leader was never recognized to offer the public hearing resolution. Upon reconvening, Ware's motion to bring House Bill 85 to the floor for vote was carried. A "roll call" sustained Ware's motion of the previous question, so debate was limited and amendments to the bill were blocked. The Senate passed the bill by a vote of 24 to 13, with several of the Senators voicing their disapproval of the residency requirement.⁷¹

There were no doubts as to whether Combs would sign the bill, particularly since the Administration had effected its passage. On February 20, 1960, Combs signed House Bill 85 and it became law. Combs promised that he would keep an eye on the administration of the bonus with a view toward promptly correcting any serious inequities; he, however, did not confirm the intimation that a special session might be called prior to the next regular session.⁷²

Several of the legislators voiced their disapproval, and that of their constituents, of the "November 3, 1959" residency requirement. A few petitions bearing signatures of non-resident Kentucky veterans had been received by the legislature during the session assailing the restrictive provisions.⁷³ After the session had ended, petitions seeking extension of payment to non-resident Kentucky veterans began to circulate throughout Kentucky, particularly in Eastern Ken-

⁶⁹ *Ibid.* A Paducah Democrat and ally of former Governor Chandler charged: "The politicians didn't pass a bonus bill for the veterans. It was a case of the veterans passing a bonus bill for the politicians." *The Courier-Journal*, Feb. 11, 1960, §1, p. 18, col. 1.

⁷⁰ When asked how he could tell the requisite 20 votes to suspend the rules had been obtained, Wyatt replied, "It was about unanimous." *The Courier-Journal*, Feb. 17, 1960, §1, p. 1, col. 1.

⁷¹ *Ibid.*

⁷² *The Courier-Journal*, Feb. 21, 1960, §1, p. 17, col. 7.

⁷³ *Id.*, Feb. 13, 1960, §1, p. 3, col. 1.

tucky where many veterans had been forced to leave for economic reasons. Pressure was being put on the politicians to extend the bonus benefits, but an anomaly existed—extension of payments to the non-resident veterans would be of no foreseeable political benefit to anyone.

In the late summer of 1960, a special-session call was made by the Governor pursuant to the power granted him under section 80 of the Kentucky Constitution. The General Assembly convened in an extraordinary session on September 19, 1960, for the purpose of extending payment of the bonus to non-resident veterans. Only thirty-one days before the session the court, in *Watkins v. State Property & Bldg. Comm'n*,⁷⁴ ruled that the Act which excluded out-of-state veterans was valid.

Governor Combs recognized the political overtones of calling a special session during an election year, but felt that political accusations and considerations were of less concern than the "moral and administrative factors that justify" the extending of benefits to out-of-state veterans.⁷⁵ The House took the initial action to extend bonus payments to non-resident veterans.⁷⁶ On the second day of the session the House met long enough to open, give a second reading to the bonus bill and adjourn.⁷⁷ The House passed the measure by a vote of 90 to 4 and then it was sent to the Senate where it was reported favorably and given first reading. Not one word of debate or discussion was said for or against the bonus bill in the House. A closed hearing on the estimated cost of the veterans' bonus was held in the Senate, but those testifying⁷⁸ stated that they did not know how much the bonus would ultimately cost. The Senate passed the measure by a vote of 33 to 4, notwithstanding a flurry of oratory by opponents.⁷⁹ Combs congratulated the legislators on their quick action and the special session entered a sine die adjournment five days after it had convened.

The Veterans' Bonus as finally enacted provided for payments to Kentucky veterans,⁸⁰ or their beneficiaries,⁸¹ without regard to residency,⁸² who had honorably served in the active armed forces of the United States, during the Spanish American War, World War I,

⁷⁴ 342 S.W.2d 511 (Ky. 1960).

⁷⁵ The Courier-Journal, Sept. 20, 1960, §1, p. 16, col. 1.

⁷⁶ H.B. 1, Ky. Acts, c. 1, 1st Extra Sess., 1960.

⁷⁷ The Courier-Journal, Sept. 21, 1960, §1, p. 1, col. 3.

⁷⁸ State Treasurer, Finance Commissioner and Adjutant General. *Id.*, Sept. 22, 1960, §1, p. 1, col. 2.

⁷⁹ *Id.*, Sept. 24, 1960, §1, p. 1, col. 5.

⁸⁰ Ky. Rev. Stat. §40.010(2) & (5)(a) (1960) [hereinafter cited KRS].

⁸¹ KRS 40.010(8).

⁸² Ky. Acts, c. 1, 1st Extra Sess., 1960.

World War II, or the Korean conflict for a minimum period⁸³ and who had not received a bonus therefor from another state.⁸⁴ Payments were geared to a sliding scale based on months of active duty in the continental United States (not to exceed \$300) or outside the continental limits (not to exceed \$500).⁸⁵

ESTIMATED COST

During the 1960 regular session the Senate adopted a resolution directing the Legislative Research Commission to study and report on the total cost of paying a bonus to *all* veterans who entered the military service while residents of *Kentucky*.⁸⁶ Pursuant to this directive the Commission made a report to the legislature entitled *Veterans Bonus—Estimated Cost*.⁸⁷ From this report the following data were taken:

RESIDENCE OF VETERANS & BENEFICIARIES⁸⁸

War	In-State		Out-of-State		Estimated Total Claimants
	Veterans	Beneficiaries	Veterans	Beneficiaries	
Spanish	1,116	372	684	228	2,400
World War I	36,270	9,067	22,230	5,558	73,125
World War II	171,926	9,052	105,374	5,548	291,900
Korean	50,251	1,256	30,799	769	83,075
Total	259,563	19,747	159,087	12,087	450,500

SUMMARY OF ESTIMATED TOTAL PAYMENTS⁸⁹

War	In-State	Out-of-State	Estimated* Total Payments
Spanish	\$ 130,599	\$ 80,044	\$ 210,643
World War I	7,012,064	4,297,716	11,309,781
World War II	61,069,216	37,429,520	98,498,736
Korean	17,000,236	10,419,499	27,419,735
Total	\$85,212,115	\$52,226,780	\$137,438,895

* Average payment per claimant = \$305.

The report estimated that the total cost to retire the bonus bond issue would range from \$183,783,300 for a 20-year issue @ 3% to \$237,247,020 for a 30-year issue @ 4%. Estimates of bond cost were made both as to increases in the years outstanding and as to increases in the interest rate, for each additional five years at the same interest

⁸³ KRS 40.010(2).

⁸⁴ KRS 40.010(5)(c).

⁸⁵ KRS 40.050.

⁸⁶ S.Res. 31, Ky. Gen. Assembly, Regular Sess. (1960).

⁸⁷ Legislative Research Commission, *Veterans Bonus—Estimated Cost*, Research Rept. No. 1, 1960.

⁸⁸ *Id.* at 8 & 10.

⁸⁹ *Id.* at 12.

rate the cost to the taxpayer would increase approximately \$13,000,000 and for each increase of $\frac{1}{4}\%$ in the interest rate the added cost would be approximately \$7,000,000.⁹⁰

The uncertainty of the cost of the bonds was reflected in the 1960 biennial appropriation for the State Budget. The legislature appropriated "amount necessary" for debt administration of the veterans bonus bonds.⁹¹

The cost for administration of the bonus is even more uncertain than cost of the bonds. Although \$630,000 was appropriated for administration of the Act,⁹² this would only cover administration by the Veterans Bonus Division of the Department of Military Affairs. There are no figures available in respect to expenditures of the Departments of Finance and Treasury and the State Property and Buildings Commission, nor as to the cost of the 1960 Extraordinary Session.

"No one can know at this time what the veterans bonus may eventually cost, but it is known with certainty that it will be a larger amount than has ever been discussed as a public undertaking since Kentucky became a State."^{92a} No matter what approach is taken in determining the ultimate cost of the bonus, it cannot be denied that the taxpayer-veteran will have to pay more for the "pie-in-the-sky" than he received.

THE COURT AND THE BONUS

In 1958, the General Assembly of Kentucky proposed an amendment to the Constitution and authorized submission to the electorate of the question as to whether a veterans' bonus should be paid to veterans of the Spanish American War, World War I, World War II and the Korean Conflict.⁹³ At a general election held on November 3, 1959, the resulting vote was 321,462 to 283,902 in favor of payment of such a bonus and the levying of a general retail sales tax sufficient to finance it.⁹⁴ The validity of the "amendment" was attacked in *Stovall v. Gartell*,⁹⁵ the court held that while the Act could not be upheld as a constitutional amendment it was, nevertheless, valid as

⁹⁰ *Id.* at 13.

⁹¹ KRS 47 part one, V 51 B (1960).

⁹² Ky. Acts, 1960, 1st Extra Sess., c. 1, §2.

^{92a} Brief for the Appellees, *Watkins, v. State Property & Bldg. Comm'n*, 342 S.W.2d 511 (Ky. 1960), p. 62, filed May 19, 1960.

The average bonus payment as of September 1960 was \$332. The *Courier-Journal*, Sept. 20, 1960, §1, p. 1, col. 1. The bonus statistics for the week ending April 20, 1962 were: total bonus claims paid—390,555; bonus applications received to date—412,345. The *Lexington Herald*, Apr. 25, 1962, p. 15, col. 3.

⁹³ Ky. Acts, 1958, c. 48.

⁹⁴ *Stovall v. Gartell*, 332 S.W.2d 256 (Ky. 1960); Ky. Legislative Research Comm'n, *Veterans Bonus—Estimated Cost*, Research Rept. # 1, 5 (1960).

⁹⁵ 332 S.W.2d 256 (Ky. 1960).

legislation.⁹⁶ The 1960 General Assembly passed an Act providing for payment of the bonus.⁹⁷ the constitutionality of which was upheld in *Watkins v. State Property & Bldg. Comm'n.*⁹⁸ This Act restricted the bonus to "qualified veterans" and "beneficiaries" living in Kentucky on November 3, 1959.⁹⁹ Section 3(g), which provided for payment of benefits to non-resident veterans "who reside in an incorporated town part of which lies in Kentucky," was held invalid in *Watkins* on the ground that an essential element for qualification of a veteran under the *existing* legislation was *residency*. In September 1960, the General Assembly met in an Extraordinary Session and amended the former act by, *inter alia*, repealing section 3(e)(2) of chapter 15 of the 1960 Kentucky Acts, thus removing the "November 3, 1959" residency requirement of a "qualified veteran."¹⁰⁰ The two subdivisions of the general classification of veterans—(1) those who were resident in Kentucky on November 3, 1959, and (2) those who were non-resident—were held to be compatibly joined, in *Grise v. Combs*,¹⁰¹ to form a proper integral classification. The court felt that military service was a public service for which a grant of separate emoluments could be made under section 3 of the Constitution.¹⁰²

The court in this series of cases¹⁰³ upheld a "giant give-away"¹⁰⁴ of incomparable scope. The imponderable for Judge Williams was:

What authority has the legislature to donate public monies to citizens of other states for which the Commonwealth will realize no possible benefit?¹⁰⁵

In upholding the various measures, the court reasoned that the grant was for a *reasonable* public purpose, stating that it was: (1) a re-

⁹⁶ *Id.* at 262-63.

⁹⁷ H.B. 85, 1960 Gen. Assembly; Ky. Acts, 1960, c. 15; codified in KRS 40.010 (1960).

⁹⁸ 342 S.W.2d 511 (Ky. 1960).

⁹⁹ Section 3(e) of the 1960 Ky. Acts provided:

'qualified veteran' means a person answering the specifications set forth in subsection (b) and (c), and who

(1) was a resident of the Commonwealth at the time of entry into active service in the armed forces and for at least six (6) months prior thereto, and

(2) if living, was a resident of the Commonwealth on November 3, 1959; or if deceased at that time, was survived by a beneficiary who was a resident of the Commonwealth on November 3, 1959. . . .

¹⁰⁰ Ky. Acts, 1960, 1st Extra Sess., c. 1, §(5)(a)(b)(c).

¹⁰¹ 342 S.W.2d 680 (Ky. 1961).

¹⁰² Ky. Const. §3 (1891) provides that "no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services."

¹⁰³ *Grise v. Combs*, 342 S.W.2d 680 (Ky. 1961); *Watkins v. State Property & Bldg. Comm'n.*, 342 S.W.2d 511 (Ky. 1960); *Stovall v. Gartell*, 332 S.W.2d 256 (Ky. 1960).

¹⁰⁴ *Grise v. Combs*, 342 S.W.2d 680, 686 (Ky. 1961) (dissent).

¹⁰⁵ *Ibid.*

imbursement of a moral obligation, not a gift, but rather a "requit,"¹⁰⁶ (2) an adjusted compensation for losses suffered by reason of military service;¹⁰⁷ (3) rehabilitation of *present* citizens of Kentucky.¹⁰⁸

The court on two previous occasions had had an opportunity to consider the validity of measures conferring "requitals" upon the servicemen, but never one as extensive and expensive as the 1960 veterans' bonus. The first occasion was in *Ferguson v. Landram*,¹⁰⁹ where the court held unconstitutional several acts of the legislature passed in 1865, authorizing counties to raise funds by taxation to procure "volunteers" and substitutes to fill quotas for the federal draft. Two counties, pursuant to these statutes, had issued bonds to repay loans which had been used, in one instance to avoid the draft, and in another to pay those drafted a certain sum. The court concluded that since Congress was given the power to raise and support armies the states deprived themselves of *all* right to exercise the same power to any extent whatever.

The second occasion also grew out of the Civil War. The court, in *Bosworth v. Harp*,¹¹⁰ sustained the constitutionality of a statute¹¹¹ granting pensions to *indigent* confederate soldiers. The court stated that "necessarily the matter is one committed to the discretion of the General Assembly, and, when the Legislature has declared the use a public one [within the meaning of section 3 of the Constitution], its judgment will be respected by the courts, unless the use is palpably without reasonable foundation."¹¹² Although almost fifty years had elapsed since the Civil War, and the "house-divided" Kentucky had filled draft quotas for the Union Army, the court said, "they [the confederate soldiers] fought for a principle and were rendering public services to their state."¹¹³

In *Stovall v. Gartell*,¹¹⁴ the court said that there must be strict

¹⁰⁶ *Id.* at 683; *Stovall v. Gartell*, 332 S.W.2d 256, 259 (Ky. 1960). In both of these cases the court used as authority Justice Cardozo's dissent in *People v. Westchester County Nat'l Bank*, 231 N.Y. 465, 132 N.E. 241, 249-50 (1921).

¹⁰⁷ *Stovall v. Gartell*, 332 S.W.2d 256, 259 (Ky. 1960).

¹⁰⁸ *Grise v. Combs*, 342 S.W.2d 680, 682 (Ky. 1961) *citing* *Watkins v. State Property & Bldg. Comm'n*, 342 S.W.2d 511, 513 (Ky. 1960).

¹⁰⁹ 64 Ky. (1 Bush) 548 (1866) *aff'd on rehearing* 68 Ky. (5 Bush) 230 (1868).

¹¹⁰ 154 Ky. 559, 157 S.W. 1084 (1913).

¹¹¹ See KRS 206.020 for Kentucky's present provision in respect to Confederate veterans' pensions.

¹¹² 154 Ky. 559, 157 S.W. 1084, 1085 (1913) *citing* *Ferguson v. Landram*, 64 Ky. (1 Bush) 548, 593 (1866), where the court said that separate emoluments or privileges within Kentucky's Constitution (§3) may be allowed "when the persons shall by heroic deeds, inventive genius, or great mental endowment and a life of public virtue, become in the judgment of the Legislature, a public benefactor."

¹¹³ 157 S.W. at 1087.

¹¹⁴ 332 S.W.2d 256 (Ky. 1960).

compliance with the constitutional requirements (including statutory procedures)¹¹⁵ before a constitutional amendment could be adopted.¹¹⁶ Further, the court stated that what was submitted to the electorate was a legislative enactment, and failure to acquire the governor's approval, as required by sections 56, 88 and 89 of the Constitution, would at most constitute a procedural defect.¹¹⁷ However, the court on prior occasions had said that *all* constitutional requirements are mandatory and powers granted in the Constitution were to be exercised in no other manner.¹¹⁸ While there should be strict compliance with the constitutional requirements relating to amendment, the ease with which the court validated the Act as legislative authorization "appears to cast doubt on its selection of procedural irregularity as the basis for striking down the amendment,"¹¹⁹ particularly since the General Assembly had proposed and the electorate had ratified a "constitutional amendment." The court, in an almost humorous note, said that the legislature's proposal coincided almost exactly with the requirements of section 50 of the Constitution.¹²⁰ But from what source the court derived the metamorphosic power may be questioned.

Unconstrained by its finding that the Act made no "change in our organic law,"¹²¹ the court held invalid so much of the measure as would have permitted exemption of the bonds from the constitutional requirement of retirement within thirty years.¹²²

The court seemed to transcend its judicial role when it answered the objection that the question submitted did not adequately inform the voters of the meaning of "veterans." The court said that it could almost take judicial notice of the definition of "veterans" that the Attorney General would have included in the question.¹²³ But since the Attorney General never framed the question, the court undertook to define the term; certain persons were definitely excluded by

¹¹⁵ KRS 118.430(3) implementing section 256 of the Constitution provides that the question shall be devised by the Attorney General when a vote is to be taken on an amendment. Section 3 of Chapter 48 of the 1958 Ky. Acts provided that the amendment was to be submitted to the voters as provided by section 256 and 257 of the Constitution and KRS 119.170 and 118.430. However, the question submitted to the voters was not framed by the Attorney General. *Id.* at 263.

¹¹⁶ *Id.* at 258.

¹¹⁷ *Ibid.*

¹¹⁸ *E.g.*, *McCreary v. Speer*, 156 Ky. 783, 789, 162 S.W. 99, 102 (1914) citing *Varney v. Justice*, 86 Ky. 596, 600, 6 S.W. 457, 459 (1888).

¹¹⁹ 74 Harv. L. Rev. 609, 610 (1961).

¹²⁰ Ky. Const. §50 provides that in order for the debt limitation imposed by §49 to be exceeded the legislature must submit the question to the voters. Section 50 also provides that where the debt limitation is exceeded such debt must be paid in less than thirty years.

¹²¹ *Stovall v. Gartell*, 332 S.W.2d 256 (Ky. 1960).

¹²² *Id.* at 266.

¹²³ *Id.* at 263.

the court from the category, suggesting that the legislature might properly and reasonably include immediate dependents of deceased veterans within the term, hinting that anything beyond might well be held invalid.¹²⁴

The day following the court's pronouncement in *Gartell*, the bill which was subsequently to become the Veterans' Bonus was introduced in the House.¹²⁵ The constitutionality of the Act¹²⁶ providing the means and manner for payment of a cash bonus was upheld in *Watkins v. State Property & Bldg. Comm'n.*¹²⁷ Although the court reaffirmed the power of the state to pay a veterans bonus, the "moral obligation" theory¹²⁸ was abandoned in part. The opinion of the court indicated that the classification of "qualified veterans" as those who were residents of the state when the electorate approved the payment of a bonus was reasonable since the measure was to rehabilitate present citizens of Kentucky.¹²⁹ Consistent with this pronouncement, the court held invalid a provision which would have allowed payment to non-resident veterans residing in towns partially lying in Kentucky.¹³⁰

The court's test for the reasonableness of the inclusion of four wars was an anomaly—the inclusion of earlier wars was reasonable because they had been listed on the ballot and a veterans bonus had not been paid before.¹³¹ The payment differential between continental and ex-continental service during hostilities was felt to be "obviously fair and reasonable," so the court passed over that distinction without discussion.¹³² If "rehabilitation" was the test, then the distinction may be questioned; if "moral obligation" was the test, how could service within the United States be any less significant than service outside the continental limits?

The court characterized the financing bonds both as a "special obligation" and as a "debt" which may have influenced the bonus bond market;¹³³ in the past the court had held the terms to be mutually exclusive.¹³⁴ Normally the term "special obligation" involves an assessment upon persons benefitted by a service or facility, not involv-

¹²⁴ *Id.* at 265.

¹²⁵ See note 59, *supra*.

¹²⁶ Ky. Acts, 1960, c. 15; KRS 40.010.

¹²⁷ 342 S.W.2d 511 (Ky. 1960).

¹²⁸ See *Stovall v. Gartell*, 332 S.W.2d 256, 259 (Ky. 1960); *People v. Westchester County Nat'l Bank*, 231 N.Y. 465, 132 N.E. 241, 249 (1921). See generally cases cited in note 24, *supra*.

¹²⁹ 342 S.W.2d 511, 513 (Ky. 1960).

¹³⁰ *Ibid.*

¹³¹ *Ibid.* Would the test for reasonableness be: if it has never happened before and the voters ratify it such action is reasonable?

¹³² *Ibid.*

¹³³ *Id.* at 514.

¹³⁴ *Robertson v. Danville*, 291 S.W.2d 816 (Ky. 1956).

ing the general taxing power although it may be compulsory;¹³⁵ presumably the court was saying that the exclusive source for payment of the "debt" was the sales tax.

Judge Palmore, concurring in *Watkins*, expressly rejected "moral obligation" as a basis for expenditure of public funds, stating that the basis for the payment was "an adjustment for a presumed economic disadvantage" suffered by veterans.¹³⁶ He felt that under any theory the effecting of a public purpose was "woefully thin."¹³⁷ The "economic-deprivation justificatoin" for a bonus was threadbare indeed; neither the legislature nor anyone else investigated or researched to find whether the veterans' *economic* status had been changed; for many the role as a veteran resulted in an economic betterment.¹³⁸ If the statute was to be a welfare act, there should have been no denial of payment to certain citizens solely because they were not residents at the time of entry into military service.

The court, in *Grise v. Combs*,¹³⁹ completely rejected the contention that the Act was a welfare measure because only resident veterans could have been eligible. Also, the legislature had amended the bonus after the *Watkins* decision to include *all* Kentucky veterans without regard to present residency.¹⁴⁰ Although the court felt that the measure was "to ameliorate the changed *status* wrought upon [veterans] . . . by their military service," it had to reject the rehabilitation theory and base the holding on a "moral obligation,"¹⁴¹ because to rehabilitate was coincidental with welfare. The court satisfied itself by mere

¹³⁵ *E.g.*, Turnpike Authority v. Wall, 336 S.W.2d 551 (Ky. 1960); Skidmore v. Elizabethtown, 291 S.W.2d 3 (Ky. 1956); Knepfle v. Morehead, 301 Ky. 417, 192 S.W.2d 189 (1946).

¹³⁶ *Watkins* v. State Property & Bldg. Comm'n, 342 S.W.2d 511, 515 (Ky. 1960).

¹³⁷ *Ibid.*

¹³⁸ Granted the salary may have been lower, however, such things as housing, clothing, medical care, food, transportation, etc., must also be taken into consideration. Noteworthy is the fact that per capita income in 1958 amounted to \$1,397 per person in Kentucky. The Courier-Journal, Jan. 17, 1960, §4, p. 1, col. 1. The appellee in *Grise v. Combs* made a novel argument for justification of the bonus. Appellee's theory was that payment could be rationalized as recovery for a tort:

. . . to pay them for the loneliness which they encountered in foreign lands, away from friends and their relatives, and what is more compelling reason, for the payment in a pecuniary nature to these war veterans, for the years of mental strain and anguish which they suffered by the constant and ever-present fear of a sudden and violent death, or the annoying anguish and anxiety of a soldier concerning the impending dangers he must surely be called upon to face in actual combat. All of these mental disturbances and anxieties are in the nature of damages for mental anguish allowed in all tort actions. Brief of Appellee, p. 5, filed Dec. 1, 1960.

Query: would this be a state or federal tort?

¹³⁹ 342 S.W.2d 680, 682 (Ky. 1961).

¹⁴⁰ Ky. Acts, 1960, 1st Extra Sess., c. 1, §(5)(a)(b)(c).

¹⁴¹ 342 S.W.2d at 682.

recapitulation of choice quotations from the *Gartell* and *Watkins* opinions to hold the amendment valid.

Three dissenting judges in *Grise*, tenaciously clung to the rehabilitation theory and felt that constitutional concepts had been stretched to an almost breaking point in sustaining payment to Kentucky citizens¹⁴² and that the extension of payments to non-residents transcended the prohibitions of sections 3 and 171 of the Constitution. Section 3 prohibits payment of separate public emoluments except for *public service* and section 171 provides that "taxes shall be levied and collected for *public purposes only*." There did not appear to be a scintilla of public benefit in aiding citizens of other states.¹⁴³

CONCLUSION

The Court of Appeals of Kentucky relied heavily on Cardozo's dissent in *People v. Westchester County Nat'l Bank*,¹⁴⁴ in upholding the veteran's bonus. Justice Cardozo rejected the argument that reparation, if due to New York residents, was also due to residents of California. However, in Kentucky the legislation undertook to pay residents of other states. Kentucky's position, however, was not unlike that of most states which have paid bonuses.¹⁴⁵ Further, Justice Cardozo felt that it was significant that the New York legislation had limited the bonus to veterans of the lower grades because they would be in most need of aid.¹⁴⁶ In Kentucky the "qualified veteran" was not restricted to any grade, but rather included all veterans of whatever rank.

The court said that the *Bosworth* decision¹⁴⁷ was not grounded on the fact that the payment was a welfare measure. Rather, said the court, it was based upon the ground that a public service had been rendered.¹⁴⁸ That the Confederate pension sustained in *Bosworth* was a welfare measure cannot be denied; significant is the fact that the provision had strict residency and need requirements.¹⁴⁹

While the legislature should be the judge as to what constitutes a public purpose, its action should in some way benefit citizens of the state and promote the general welfare of those taxed.¹⁵⁰ The legislature, however, does not have the exclusive power to determine whether a public purpose existed.¹⁵¹ An accurate definition of what

¹⁴² *Id.* at 684-85.

¹⁴³ *Id.* at 685.

¹⁴⁴ 231 N.Y. 465, 132 N.E. 241, 248 (1921).

¹⁴⁵ See generally note 24, *supra*.

¹⁴⁶ 231 N.Y. 465, 132 N.E. 241, 248 (1921).

¹⁴⁷ 154 Ky. 559, 157 S.W. 1084 (1913).

¹⁴⁸ *Grise v. Combs*, 342 S.W.2d 680, 683 (Ky. 1961).

¹⁴⁹ 154 Ky. 559, 157 S.W. 1084 (1913).

¹⁵⁰ *Carman v. Hickman County*, 185 Ky. 630, 637, 215 S.W. 408, 411 (1919).

¹⁵¹ *Id.* at 638, 215 S.W. at 412.

constitutes a public purpose for which money collected by taxation may be appropriated is often extremely difficult. An appropriation may be made in recognition of moral or equitable obligations. The court had interpreted "debts," within the meaning of the Constitution, to include those debts or claims which rest upon a merely equitable or honorary obligation which would be binding upon conscience or honor.¹⁵² If doubt exists as to whether a public purpose was served by an appropriation, it should be resolved in favor of legislative determination. Although politics may be involved, payment of a veterans bonus may be classified as a public purpose on the ground that a moral obligation on the part of the state existed in favor of the men who offered their lives in its behalf and that the general welfare will be served by promoting the spirit of loyalty and patriotism and of encouraging similar sacrifices in the future.¹⁵³

The Kentucky veterans' bonus was without precedent. There had been no comparable act in other jurisdictions.¹⁵⁴ The scope of the legislation and the magnitude of the appropriation called for careful scrutiny by the court. Throughout the "battles of the bonus" the main attention and sympathy of the court and legislature was focused upon the veteran. Scant attention was paid to the future effects upon the taxpayers. Even though the legislature may have been justified in appropriating monies for payment of the bonus, it should reduce income tax rates, particularly in the lower tax brackets where the impact of the sales tax is greatest.**

*Hugh L. Cannon**

¹⁵² Board of Ed. v. Talbott, 261 Ky. 66, 73-74, 86 S.W.2d 1059, 1063 (1935). The court also said:

The term 'moral obligation' has been defined as 'a duty which would be enforceable at law were it not for some positive rule which the party in that particular instance from legal liability.' It has also been defined as one 'which cannot be enforced by action but which is binding on the party who incurs it in conscience and according to natural justice.' A 'moral obligation' means that some direct benefit was received by the state as a state or some direct injury has been suffered by the claimant under circumstances where in fairness the state might be asked to respond, and there must be something more than a mere gratuity involved. *Id.* at 74, 86 S.W.2d at 1063-64.

¹⁵³ After the public danger is passed the power of the state to express its gratitude to the men who offered their lives in its behalf is not lost, and the public money can be constitutionally expended for the purpose of promoting the spirit of loyalty and patriotism and of encouraging similar sacrifices in the future by bringing home to the minds of all that if a man will risk his life for his country, his country will not hold him to the letter of his contract and deem him fully paid at the meagre wages allowed a soldier by law. 26 R.C.L., Taxation, §47, at 68. See Annots., 7 A.L.R. 1636 (1920); 13 A.L.R. 587 (1921); 15 A.L.R. 1359 (1921); 140 A.L.R. 1525 (1942); 147 A.L.R. 1432 (1943); 156 A.L.R. 1458 (1945).

¹⁵⁴ See generally note 24, *supra*.

* I received the bonus.

** KRS 139.010 is the statute imposing the Sales Tax. The state received \$90,000,000 as proceeds from the tax for the 1961 tax year.