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Legislation and Administration: Veteran's Pension Fund -- Reimbursement of State for Care of Incompetent Veterans

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LEGISLATION AND ADMINISTRATION

VETERAN'S PENSION FUND — REIMBURSEMENT OF STATE FOR CARE OF INCOMPETENT VETERANS — Congressional power to enact legislation providing for benefits to military veterans is said to be implied from its express powers to declare and conduct war.[1] Theoretically, such benefits are bounties awarded for prior faithful services in war, and as an incentive for inducing men to fight in future wars.[2] It follows that Congress has the right to condition payment on factors it deems necessary for the fulfillment of the legislative purpose.[3] Basically this is what Congress has done in 38 U.S.C.A. § 3101,[4] providing in part that benefits paid under any law administered by the Veterans Administration[5] are exempt from claims of creditors and are not liable to attachment, levy, or seizure.[6]

Although section 3101 is only a little over a year old, such exemptions have been the law for nearly a century by virtue of a provision of the Civil War Pension Act[7] and former sections 454[8] and 454(a)[9] of Title 38. For this reason, numerous decisions can be found construing measures similar or identical to section 3101. No attempt will be made to analyze the many issues in this mass of cases. Instead, attention will be focused on the current and most frequently litigated problems.

One such issue confronted the Supreme Court of Illinois recently in *Department of Public Welfare v. Sevcik*.[10] There, the Illinois Department of Public Welfare sought payment from the conservator of an incompetent veteran for charges accruing from the care and maintenance of the veteran in a state mental institution. The conservator opposed the department's petition on the ground that the only assets of the conservatorship were funds acquired from the proceeds of the veteran's pension checks; and that these funds were exempted from the claims of creditors by authority of section 3101. The Welfare Department countered this contention with the argument that charges for medical care and subsistence were not meant to be exempted by section 3101. The department maintained that since the state's claim grew out of furnishing the incompetent with the necessities of life, it should be subject to a different classification from the claims of a general creditor. Accepting this argument, the court reversed the decision below with the apparently clairvoyant observation that Congress did not intend to render veteran's benefits exempt from the claim of a state for the support and maintenance of veterans.

A number of state court decisions have dealt with the application of the exemption clause to the claim of a state seeking reimbursement for the care and maintenance of an incompetent V.A. beneficiary in a state institution. The weight of authority is that the state is entitled to reimbursement from exempted funds.[11] The gist of these holdings appear to be that the state is not a creditor within the meaning of the exemption statute.[12] The rationale sustaining this conclusion is that

1 U.S. v. Hall, 98 U.S. 343 (1878).
2 City of Atlanta v. Stokes, 175 Ga. 201, 165 S.E. 270 (1932).
3 *In re* Ballard's Estate, 161 Misc. 785, 293 N.Y. Supp. 31 (1937).
4 72 Stat. 1229 (1958).
5 Hereafter referred to as V.A.
6 More fully this provision reads:
> Payments of benefits due or to become due under any law administered by the Veteran's Administration . . . shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. . . .

7 REV. STAT. § 4747 (1875).
8 43 Stat. 613 (1924).
9 49 Stat. 609 (1935).
10 164 N.E.2d 10 (Ill. 1960).
11 *E.g.*, Matter of Simpson, 270 App. Div. 902, 61 N.Y.S.2d 529 (1946).
12 *E.g.*, Auditor General v. Olezniczak, 302 Mich. 336, 4 N.W.2d 679 (1942).

the purpose behind the granting of pensions and similar veteran's benefits is to provide for the care and support of the beneficiary,[13] therefore the state is seeking in effect to carry out the purpose of the grant.[14]

However, some courts, while permitting payment, disallow any portion of the state's claim accruing prior to the appointment of a guardian.[15] It is said that this seemingly arbitrary distinction is supported by the "fundamental policy of protecting the incompetent against depletion of his estate by claims accruing before the estate is protected by the watchful eye of a guardian."[16]

The *Rothenberg Estate case*,[17] a recent Pennsylvania trial court decision, deserves some mention. The case itself was a restitution action by the state to recover the cost of providing care and maintenance for an incompetent veteran in a state mental institution. The court held that, within the purview of the exemption statute, the state was a creditor for that part of its claim which accrued prior to the appointment of a guardian. While the holding was in line with some of the above mentioned decisions, the case is especially significant because the V.A. intervened in the action and gave its endorsement to the court's decision.

District of Columbia v. Reilly[18] is the only case on point to reach a federal court of appeals. The V.A. and a national veteran's organization considered the case important enough to file briefs as *amici curiae;* but the court disposed of it with a cryptic *per curiam* opinion. It affirmed a lower court's ruling that the District of Columbia was a creditor under the terms of the exemption statute insofar as its claim represented payment for the care and maintenance of an incompetent veteran prior to the time a guardian was appointed for the incompetent. Although professing not to pass on the question, the court also indicated that the District could *not* recover for payments made by it subsequent to the appointment of a guardian:

> With respect to payments made by the District after the committee was appointed, the trial court granted the District's claim. The District's brief concedes that "Manifestly if, under the section quoted above, the funds in the patient's estate are exempt from the claim of the District of Columbia for reimbursement for money expended prior to the appointment of a committee, such funds are exempt from any such claims of the District of Columbia for moneys expended subsequent to the appointment of a committee." This concession is probably correct. However, the question is not before us for decision, because the committee failed to appeal.[19]

Another recurring problem is whether the veteran's benefits can be reached by a divorced wife seeking alimony payments. The majority view is that they can.[20] According to this view, a wife is not a creditor within the meaning of the exemption statute.[21] In other words, alimony is not a debt, "but represents the judgment of the court as to the manner in which the husband shall be required to perform his marital and public duty,"[22] Congress did not intend to relieve the veteran of this duty.[23]

Whether property acquired out of exempt funds is liable to attachment or levy by creditors presents a third troublesome question. For example, a veteran buys

13 *E.g., In re* Todd's Estate, 243 Iowa 930, 54 N.W.2d 679 (1942).
14 *E.g., In re* Lewis' Estate, 287 Mich. 179, 283 N.W. 21 (1938).
15 *E.g., In re* Bemowski's Guardianship, 3 Wis.2d 133, 88 N.W.2d 22 (1958); *In re* Ferarazza's Estate, 219 Cal. 668, 28 P.2d 670 (1934); *In re* Murphy's Committee, 227 App. Div. 839, 237 N.Y. Supp. 448 (1929).
16 *In re* Bayly's Estate, 95 Cal. App. 2d 174, 212 P.2d 587, 591 (1949).
17 17 Pa. D. & C.2d 383 (C.P. 1958).
18 249 F.2d 524 (D.C. Cir. 1957).
19 *Id.* at 525.
20 *E.g.,* Hannah v. Hannah, 191 Ga. 134, 11 S.E.2d 779 (1940). *But cf.* Brewer v. Brewer, 19 Tenn. App. 209, 84 S.W.2d 1022 (1933). See also Riker v. Riker, 160 Misc. 117, 289 N.Y. Supp. 835 (1936).
21 *E.g.,* Stone v. Stone, 188 Ark. 622, 67 S.W.2d 189 (1934).
22 *In re* Flanagan, 31 F. Supp. 402, 403 (D.D.C. 1940).
23 Hollis v. Bryan, 166 Miss. 874, 143 So. 687 (1932).

an automobile out of funds obtained solely from a V.A. pension.[24] Can a creditor reach the automobile? Although there was some uncertainty in early cases,[25] the matter has been clarified by the United States Supreme Court. In *Carrier v. Bryant*,[26] the Court held that the exemption does not apply to property purchased out of moneys received as a V.A. benefit, and that such property is subject to execution upon a judgment against the beneficiary. However, another Supreme Court decision makes it equally clear that the exemption is not waived by the veteran when he deposits the benefit payments in a bank.[27] The exemption remains in effect until the money is either invested or spent.

Conclusion

As the two world wars and the Korean conflict fade further into the past, more and more persons become eligible for V.A. pensions and kindred benefits. It follows that an increasing number of courts will be called upon to construe section 3101 under varying factual situations. Because of the tendency of some state courts to put local interests above congressional policy, there is a danger that the act will become honeycombed with judicially created exceptions. Congress has ignored this problem by re-enacting the measure without change in the face of conflicting and inconsistent state court interpretations. If the situation gets too far out of hand, the Supreme Court of the United States can attempt to establish uniformity through its power of review, but at best this is only a partial solution. If full scope is to be given the legislative policy, Congress must further clarify its position.

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24 Liles v. H. K. Mulford Co., 52 Ga. App. 674, 184 S.E. 396 (1936).
25 See Annot., 109 A.L.R. 433 (1937); KIMBROUGH AND GLEN, AMERICAN LAW OF VETERANS § 46 (2d ed. 1954).
26 306 U.S. 545 (1939); see also 38 C.F.R. § 14.339 (1957).
27 Lawrence v. Shaw, 300 U.S. 245 (1937).