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It was generally observed during the earlier years following the World War that in far too many cases the benefits paid through the hands of conservators for insane veterans or guardians for war orphans were being dissipated, embezzled, applied to improper purposes, or lost through illegal investments. The various state courts would not have permitted such abuse and neglect had they known the facts, but there existed no appropriate machinery through which adequate inquiries could be made by the courts. Pyramiding of the public sentiment against this situation resulted in congressional action during the year 1926 in the form of an amendment to the World War Veterans Act (Section 21), which vested in the Director of the United States Veterans' Bureau, now the Administrator of Veterans' Affairs, authority to inquire into such cases of neglect, to supervise the administration of the estates of beneficiaries under legal disability in cooperation with state courts and to bring to the attention of the proper court all such cases of neglect, embezzlement or mal-administration. From time to time Congress has amended this original statute with a view of extending and broadening the authority of the Administrator of Veterans' Affairs, and very helpful legislation has also been enacted by the various state legislatures. These state and federal statutes have placed certain duties and responsibilities upon the Veterans' Adminsitration which are being performed under the direction of the Solicitor of the Veterans' Administration, whose offices are in Washington, D. C. The present solicitor, Mr. E. E. Odom, is a former Colorado resident and a member of the Colorado bar.

In each state there has been established a field office for the purpose of carrying out this program of estate supervision over all estates into which Veterans' Administration funds are paid for the use of beneficiaries. We now have the estates of 85,000 beneficiaries suffering from legal disability under our program of informal supervision; 1,022 of this number are being administered by courts of the state of Colorado. The total assets of these estates approximate the figure of $200,000,000, of which Colorado estates total approximately $2,000,000.

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In carrying forward this program of supervision it is the primary objective of attorneys in the field offices to solicit and acquire of our probate judges a sympathetic understanding of our program, and their permissive cooperation in allowing us to work between the estate representative and the court, for the purpose of seeing that the personal welfare of the various beneficiaries is first adequately provided for and that there then be conserved such portion of their moneys as may be found reasonable and equitable in the individual case. To accomplish these purposes we ask but one thing—a strict observance of applicable Colorado and protective federal statutes. There is no state in which a greater degree of cooperation has been extended by probate courts than has been extended through the probate judges of the state of Colorado.

To attorneys practicing in this state we also owe a word of thanks since we have to date, had no direct appellate court attack upon any portion of our program of supervision. Numerous appellate court attacks have been made through the courts of sister states. Between the date on which the World War Veterans' Act was first amended, in 1926, granting the Administrator of Veterans' Affairs authority to intervene and the date upon which the Uniform Veterans' Guardianship Act (Art. 5, Chapter 150, C. S. A., '35) was enacted by the various state legislatures, repeated attacks on the theory that the Administrator of Veterans' Affairs had no proper standing and could not be recognized as a party in interest under the various estate statutes so as to permit the entrance of his appearance with a view of bringing about desired corrective action. The courts uniformly rejected this theory on the ground that the donor of a gratuity had such an interest in its use as justifying the recognition of the administrator as a party in interest for the purpose of following the administration of estate assets so derived.

The Uniform Veterans' Guardianship Act is almost identical in the various states. There have been appellate court proceedings in other states effecting practically every important section of the Act, but these attacks have, on the whole, been most unsuccessful. The courts have leaned towards a liberal construction with a view of assisting in the protection of the rights of these disabled veterans and minor orphans.

From a study of this Act it will be readily appreciated the state legislature has most materially assisted the Veterans Administration in carrying out the program of informal supervision, since the statute grants a recognition of the right of the administrator to appear before the state courts, enabling us to follow every phase of the estate administration.

A study of the history of federal pension legislation will disclose an early desire on the part of the Congress to enact protective statutes. The authority of the Congress to enact legislation placing a protective cloak around gratuity benefits was perhaps first considered in the case of *United States vs. Hall,* 98 U. S. 343:

> "The United States, as the donor of pensions, may through the legislative department of the government, annex such conditions to the donations as they see fit, to insure its transmission unimpaired to the beneficiary."

Such a protective statute was incorporated in the World War Veterans Act as relating to the payment of gratuities for World War veterans. This proviso as it appears in Section 22 of the World War Veterans Act and in Section 454, Title 38, U. S. C. A., was originally phrased as follows:

> "That the compensation, insurance and maintenance and support allowance payable under Part II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, and IV; and shall be exempt from all taxation."

The courts, generally speaking, were disposed to construe this statute liberally in favor of disabled soldiers. Kansas, in the case of *State vs. Board of Commissioners of Shawnee County,* 294 Pac. 915, rendered a decision in 1931 containing a very technical construction of the words as employed in the statute. This court held that the word "payable" as employed in the statute could not be construed as extending exemption protection beyond the date of delivery.

The state courts considered the Kansas decision a stumbling block but still leaned toward a construction in favor of the insane veteran or orphan child, as is shown in the case of *Estate of Angelo Ferarazza,* 28 Pac. (2d) 670 (1934). In this case the California court relied upon an old state pension statute, which statute has been enacted in most of our state legislatures with little variation in phraseology. The California statute:

> "* * * all money received by any person, a resident of the state, as a pension from the United States government * * * whether the same shall be in the actual possession of such pensioner, or deposited, loaned, or invested by him."

The court held that, even conceding the strict construction as had been placed on the statute by the Supreme Court of the State of Kansas, this state statute served to fill the gap in protecting pension funds from the claims of creditors following their delivery into the hands of an estate representative.

A similar statute was enacted by the Colorado legislature of 1887 and now appears in Section 17, Chapter 193, C. S. A. '35. Appellate court decisions fail to disclose that this statute has been employed as a matter of defense on a claimed exemption, and in passing it might be of interest to note that this Colorado exemption statute was materially strengthened by the following proviso, enacted in 1915, which now appears in Section 160, Chapter 176, C. S. A. '35, to-wit:

> "Provided, that the real or personal estate of any mental incompetent, which is or may be exempt by law from execution, shall not be sold for the payment of his debts."

The year following the California decision the federal exemption statute was amended by the Congress with a view of meeting objections as had been raised through the decisions of the various state courts and particularly with a view of correcting the defect which resulted in the loss of the Kansas case. The statute as last amended on August 12, 1935, now reads:

> "Payments of benefits due or to become due shall not be assignable, and such payments made to or on account of a beneficiary under any of the laws relating to veterans shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever either before or after receipt by the beneficiary. Such provision shall not attach to the claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments."

Through this enactment the Congress in effect followed the decision of the Supreme Court of the United States in the case of *Trotter vs. Tennessee*, 290 U. S. 354, and incorporated in the amended statute a specific proviso to the effect that the taxation exemption should not extend to any property purchased in part or wholly out of such gratuity payments. This modification, excluding the theory of taxation exemption as to property purchased with the funds following delivery, perhaps had some material effect upon estates administered in a number of other states where investments are authorized in real property.

In 1936 the statute as revised reached the United States Supreme Court in the case of *Lawrence vs. Shaw,* 300 U. S. 245. This case, appealed from the Supreme Court of North Carolina, involved a question of whether the exemption as to taxation extended to bank deposits made by a guardian for the estate of an insane veteran. The United States Supreme Court held that the deposits in question could not be recognized as investments within the meaning of the decision in the case of *Trotter vs. Tennessee* and that the exemption on taxation as provided for in the amended statute would extend so as to protect such estate deposits from taxation.

In the last state legislature a bill was enacted containing the following proviso:

> "It shall be lawful for (C) an executor, administrator, guardian or conservator, trustee, or other fiduciary, to invest the funds in their custody or possession eligible for investment in such securities as may be now or hereafter authorized by law, and it shall be lawful to deposit such funds so eligible for investment in any state or national bank in Colorado which is, at the time the deposit is made, a member of the federal deposit insurance corporation."

This is, no doubt, a needed and useful statute, but, if it is ultimately construed so as to recognize deposits made under its authority as investments, the decision of the United States Supreme Court in the case of *Lawrence vs. Shaw* may have some material bearing upon the future administration of our Colorado statutes. Barring this possible eventuality, and with due consideration being given the investments as are now authorized by statute in this state, it appears possible that the federal exemption statute, as amended, provides ample protection to the assets of the estates which are being administered through Colorado courts.

It might be of interest to invite attention to the holding of the United States Supreme Court in the case of *Pagel vs. Pagel,* 291 U. S. 473 (1934). In this case insurance moneys were paid into the estate of the deceased soldier. A number of creditors claims were filed in the estate and the heirs pleaded this statute as a defense to the allowance of said claims. The court held that:

> "The language of the statute limits the exemption to 'any person to whom an award is made.' It is clear that the

statute does not extend the exemption beyond the insured and beneficiary."

The statute as amended by Congress in 1935 was construed by the Supreme Court of Wisconsin in the case of *Ballow vs. First Wisconsin Trust Company*, 270 N. W. 82, in which the court had before it the identical question as existed in the Pagel case. The Wisconsin court, in a very well written decision, held that the only question to be considered was:

> "Whether the term 'beneficiary under any of the laws relating to veterans' has so broadened the clause 'person to whom an award was made' as to include the estate of an insured * * * we think not * * * we failed to discover in the altered language of the Act an intention to repudiate the doctrine of the Pagel case. It seems likely, aside from a purpose of clarifying the law on the subject of amendments, its principal purpose was to make it clear that payments made under the Act, either to the insured or designated beneficiary, are not subject to the claims of creditors either before or after receipt by either, and thus to set at rest doubts raised by prior judicial determinations."

There apparently is recognized one exception to the rule as laid down in the Pagel case. Although it was provided in the amendatory Act of August 12, 1935, that:

> "Section 4747 of Revised Statutes and Section 22 of the World War Veterans Act, 1924, are hereby repealed, and all other acts inconsistent herewith are hereby modified accordingly,"

it does not appear that the courts are inclined to construe this proviso as modifying the protection as extended Adjusted Compensation benefits, which are commonly referred to as bonus payments. In the Adjusted Compensation Act of May 19, 1924, it was provided that:

> "No sum payable under this Act to a veteran or his dependents, *or to his estate*, or to any beneficiary named under Title V, no Adjusted Service Certificate, and no profits of any loan made on such certificate shall be subject to attachment, levy or seizure under any legal or equitable process, or to national or state taxation, and no deductions on account of any

> indebtedness of the veteran to the United States shall be made from the Adjusted Service credit or from any amounts due under this Act."

In the case of *Williams vs. Hiott*, 193 S. E. 133, decided by the Supreme Court of South Carolina in 1937, the court construed this last quoted protective statute as extending to the heirs of the deceased soldier's estate, into which estate Adjusted Service Certificate benefits had been paid by the Veterans' Administration for distribution to heirs under the laws of descent and distribution of the state of South Carolina.

In the Pagel case there was a designated beneficiary, who had received payment of monthly installments upon the deceased veteran's War Risk Insurance policy up to the date of the designated beneficiary's death, leaving an unpaid balance of insurance moneys. The trial court, in this case, followed the decision of the United States Supreme Court in the case of *Singleton vs. Cheek*, 284 U. S. 493, in which it is held that when the insured dies intestate and the designated beneficiary subsequently dies, the commuted amount of installments not accrued as of the date of the beneficiary's death, is to be paid to the estate of the insured for distribution to his heirs, and that the heirs are to be determined as of the date of the insured's death in accordance with the laws of the state of his last legal residence.

In conclusion it may be reiterated that, in conducting this program of supervision over the administration of estates into which Veterans' Administration benefits are paid for the use of a beneficiary under legal disability, the responsibility of the Veterans' Administration is the personal and financial welfare of the insane veteran or minor child. The monetary interest of the United States government in the administration of these estates, if existent, is very, very remote. There does exist a statute which provides that in the event a beneficiary dies without living heirs whatsoever, leaving money in one of these estates which has been derived exclusively from the payment of Veterans' Administration benefits, that the said moneys will escheat to the United States Treasury rather than to the state of Colorado. To the extent of this very remote contingency on escheat it might be argued that the United States government has a monetary interest in the conservation of estate funds. During the past several years this escheat statute has been applied in only two small Colorado estates.