

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

August 6, 1949, no payment could have been made to Somerville Plantation until the final extinguishment of the fire, since it is after the final extinguishment that the informational vouchers are to be prepared, upon the basis of which the payment shall be made. Consequently, since the extinguishment occurred after August 6th, the Plantation should be reimbursed in accordance with the rates and calculation methods prescribed under Chapter 356 of the Public Laws of 1949.

JOHN S. S. FESSENDEN
Deputy Attorney General

September 20, 1949

To Harland A. Ladd, Commissioner of Education
Re: Educational Benefits for War Orphans

In your memorandum of September 14, 1949, you asked five questions in connection with the administration of Sections 119-122 of Chapter 37, R. S. 1944, which sections provide for scholarships for orphans of veterans who were killed in action or who died from service-connected disabilities.

Question 1. "What is the effective date of the termination of World War I as it pertains to War Orphans' benefits?"

Answer. Chapter 360 of the Public Laws of 1945, which is AN ACT Relating to Preference in State Employment for Veterans, prescribes the ending date of World War I for the purposes of that chapter. There being no termination date prescribed in Sections 119-122 of Chapter 37, R. S. 1944, there would appear to be no objection to using the legislatively defined ending date as given in Chapter 360, since both enactments pertain to benefits to be given as a result of war service. Accordingly determination of World War I, as it pertains to war orphans' benefits, is November 12, 1918, except that if the veteran's service was in Russia, the termination date is April 1, 1920.

Question 2. "What is the effective date of the termination of World War II as it pertains to War Orphans' benefits?"

Answer. Chapter 360 of the Public Laws of 1945 states that for the purposes of veterans' preference in State employment the right shall arise if the veteran rendered service between December 7, 1941 and the date of cessation of hostilities as fixed by the United States Government. Again, since Sections 119-122 of Chapter 47, R. S. 1944, do not prescribe the termination date of World War II, and since they pertain to benefits to be given as a result of war service, it appears reasonable to use the same dates as fixed by the legislature in Chapter 360, P. L. 1945, for veterans' preference in State employment. The President of the United States by official proclamation declared the cessation of hostilities effective December 31, 1946. While there is considerable speculation as to whether we are still at war, and while the President's proclamation states that "a state of war still exists," it should be pointed out that the powers with which the United States was at war having surrendered, the war in fact is concluded, even though in diplomatic circles a state of war may be considered to exist. This situation may, as

a matter of diplomacy, continue to exist until such time as a treaty of peace is concluded. However, a treaty of peace does not in fact end a war; it simply negotiates the terms of the peace under which the nations will continue their international intercourse; the surrender ends the war.

Question 3. "Is it reasonable to define 'service-connected disability' as any disability or death incurred during wartime service whether in combat, camp, or on pass, excluding that which may result from the serviceman's own wilful misconduct?"

Answer. The term "service-connected disability" has by common usage and understanding become almost inseparably within the determinative province of the United States Veterans Administration. It is a phrase coined and used in Federal legislation pertaining to veterans and to the administration of veterans' affairs. While Sections 119-122 of Chapter 37, R. S. 1944, do not modify in any place the phrase "service-connected disability" by the words "as determined by the Veterans Administration," I see no objection to the adoption by the Commissioner of Education of a policy to the effect that "service-connected disability" in the administration of Sections 119-122 shall mean such service-connected disability as is recognized by the United States Veterans Administration. It is suggested that arrangements be made with the Veterans Administration so that such information may be available to the Department of Education in connection with an orphan's application for educational benefits.

Question 4. "Does the term 'children of deceased servicemen' apply to female veterans?"

Answer. Yes.

Question 5. "Is there a time limit which a veteran must have served prior to injury or death?"

Answer. If my answer to Question 3 is followed in connection with "service-connected disability," it would be both reasonable and logical to adopt administratively a policy that entitlement to orphans' benefits shall again be subject to the Veterans Administration's recognition as to the length of service which will entitle a veteran to a rating of "service-connected disability."

In connection with an orphan's entitlement to benefits as a result of the veterans's being killed in action, there should be no length of term of service precedent to the entitlement, since "killed in action" would be a matter of fact, regardless of length of service.

JOHN S. S. FESSENDEN
Deputy Attorney General