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Orphan of Female Veteran - Eligibility for Education Aid under Chapter 407, 20 M.R.S.A.

SYLLABUS:

A child who is otherwise eligible for educational aid under Chapter 407, 20 M.R.S.A., but whose veteran parent is female, may be deemed "an orphan of a veteran" within the meaning of that term as used in Chapter 407.

FACTS:

An application for educational assistance under 20 M.R.S.A., Chapter 407, the War Orphans Act, has been submitted by a person whose mother served in the United States Armed Forces in World War II, the mother having entered the service from Maine and is now totally and permanently disabled due to a service-connected disability. The applicant is now 18 years old and has graduated from high school. The department, upon due consideration of the necessary expenses for attending school and the resources available to the applicant for meeting such expenses, deems the applicant in need of financial aid to secure higher education.

QUESTION:

May a child who is otherwise eligible for educational assistance under Chapter 407, 20 M.R.S.A., but whose veteran parent is female, be deemed "an orphan of a veteran" within the meaning of that term as is used in Chapter 407?

ANSWER:

Yes.

REASONS:

20 M.R.S.A. § 3211, provides:

> "For purposes of administering this chapter, an orphan of a veteran shall be defined as a child not under 16 years of age whose father served in the military or naval forces of the United States and was killed in action or died from a service-connected disability as a result of such service or who is living and is determined to have a total disability, permanent in nature, resulting from a service-connected disability as a result of such service.

> Children of a veteran who at time of death was totally and permanently disabled due to service-connected disability, but whose death was not related to service-connected disability, shall be eligible for benefits under this chapter. Orphans, whose fathers entered the service from Maine or who have resided in the State for 5 years immediately preceding application for aid under this chapter and which children have graduated from high school and are not over 21 years of age at the time of first entering a vocational school or an educational institution of collegiate grade, shall be eligible for benefits provided under this chapter; except that an orphan who has been unable to enter before the age of 21 because engaged in service in the Armed Forces of the United States may enter when not over 25 years of age." (Emphasis supplied)

It is apparent that if the above-underlined words "father" and "fathers" are construed literally, the applicant is not an "orphan of a veteran" and, hence, is not eligible for educational aid under Chapter 407. It is equally apparent that if the word "father" is literally construed, that this statute presents a grave question of constitutionality.

Assuming initially that a literal construction is intended, we consider the question of constitutionality. The Fourteenth Amendment, Constitution of the United States, provides that "No state shall . . . deny to any person . . . the equal protection of the laws. . ." The Constitution of Maine, Article I, Section 6-A similarly provides that: "No person shall be . . . denied the equal protection of the laws. . ."

The traditional test applied in determining whether or not a statutory classification violates the Equal Protection clause, is whether the classification ". . . is without any reasonable basis and therefore is purely arbitrary." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78; McGowan v. Maryland, 366 U.S. 420, 426. The Court expressed the rule in this fashion In Re Milo Water Company, 128 Me. 531, 537:

> "There must be some natural and substantial difference germane to the subject and purposes of the legislation between those within the class included and those whom it leaves untouched."

York Harbor Village Corporation v. Libby, et al, 126 Me. 537, stated the test:

> "It must be based upon an actual difference in the classes bearing some substantial relation to the public purpose sought to be accomplished by the discrimination in rights and burdens. . ."

The objective of this statute is to provide educational aid to the child of a veteran who is in need of such aid when such veteran has either died in action or has become totally and permanently disabled as a result of a service-connected disability. What then, is the basis for distinguishing between the child of a female veteran killed in action or totally and permanently disabled from the child of a male veteran so killed or disabled? It could hardly be based upon an assumption that female veterans do not get killed in action nor become permanently and totally disabled from service-connected causes, since such an assumption is patently false. Nor could it be based upon an assumption that it is only in the case of the death or disability of the male veteran parent that the child's educational opportunity is impaired, for that assumption is also patently false. Nor would it seem to be reasonable to conclude that it is only the male veteran's death in action or total and permanent disability from a service connected cause that is deserving of recognition and compensation; that too would seem to be an unreasonable and arbitrary conclusion. In short, there simply does not appear to be any basis for the distinction which bears a rational relation to the statutory objective.

Furthermore, the Supreme Court of the United States in Frontiero v. Richardson, decided May 14, 1973, held that statutory classifications based upon sex "are inherently suspect and must therefore be subjected to close judicial scrutiny." (Slip Opinion, at page 5). Application of this stricter test would surely invalidate this classification, since the statute, if literally construed, clearly commands different treatment between men and women who are similarly situated.

This brings us to a consideration of whether or not the Legislature intended that the word "father" be literally construed. In construing this statute, we must consider the object that the Legislature had in view and the difficulty it intended to remedy. Hanbro, Inc. v. Johnson, 158 Me. 180, 181 A.2d 249; Hamilton v. Littlefield, 149 Me. 48, 98 A.2d 545; Acheson v. Johnson, 147 Me. 275, 86 A.2d 268; Cushing v. Inhabitants of Town of Blue Hill, 148 Me. 243, 92 A.2d 330. The spirit, purpose and policy involved are to be regarded. Middleton's Case, 136 Me. 108, 3 A.2d 434.

It is apparent that the legislative purpose is to provide aid to the children of veterans who have been killed in action or become totally and permanently disabled as a result of a service-connected cause. While the word "father" does appear in the definition of an "orphan of a veteran," it does not seem, in view of the legislative objective, to have been intended to apply in its narrow sense, but, instead, in the general sense of "parent."

The War Orphans Act was first enacted as P.L. 1933, Chapter 194. Section 1 of that statute defines "orphan of a veteran" in essentially the same manner as it now appears in 20 M.R.S.A. § 3211, and such definition has never been altered in any pertinent respect throughout its history of many reenactments and amendments. That definition wass essentially the same as now on September 20, 1949, when this Office rendered an opinion to your Department in response to five questions relating to administration of Sections 119-122 of Chapter 37, R.S. 1944, the War Orphans Act. That opinion affirmatively replied to a question whether or not the Act applied to children of female veterans. See 1949-1950 Attorney General's Report, pages 107, 108. In view of the publication of that opinion and the fact that the Legislature has not materially altered the definition of the term "orphan of a veteran," it would seem that the 1949 interpretation is correct.

It is presumed that the Legislature was acquainted with and had in mind such existing judicial decisions as had a direct bearing upon the construction of a statute. In re John S. Goff Inc., 141 F.Supp. 862; State v. Crommett, 151 Me. 188, 116 A.2d 614. Such presumption would seem to be applicable to an opinion contained in a Report of the Attorney General submitted to the Governor and Council and to the Legislature. In view of the repeated reenactment of this statutory definition subsequent to that opinion, it may be concluded that this construction has been accepted by the Legislature as valid. Compare Opinion of the Justices, 38 A.2d 566; McIntire v. McIntire, 130 Me. 236, 155 A. 731; State v. Boston & M.R. Co., 123 Me. 48, 1211 A. 541; Farrington v. Stoddard, 31 F.Supp. 73, reversed, 115 F.2d 96; State v. Pratt, 151 Me. 236, 116 A.2d 924; Mottram v. State, 232 A.2d 809.

The courts liberally construe a statutory provision for a laudable public object. European & N.A.R. Co. v. Dunn, 60 Me. 453. Finally, it should be noted that this construction validates what would otherwise be an unconstitutional enactment.

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