

Opinion No. 237.**Public Welfare—Adjusted Service Certificate, as a Resource.**

HELD: In determining need of an applicant for certification to W. P. A., or for assistance under Chapter 82, Laws of 1937, an adjusted service certificate may not be considered as a resource.

January 31, 1938.

Hon. I. M. Brandjord
State Department of Public Welfare
Helena, Montana

Dear Mr. Brandjord:

You have asked my opinion as to whether or not in determining need in certifying for W. P. A., employment or for general relief, a World War Adjusted Service Compensation Certificate should be considered as a resource.

Under House Joint Resolution No. 361, passed by the 75th Congress on June 29th, 1937, in conjunction with the Emergency Relief Appropriation Act of 1937, it is provided:

“Section 2. * * * PROVIDED FURTHER, that the fact that a person is entitled to or has received either adjusted service bonds or a Treasury check in payment of an adjusted-compensation certificate shall not be considered in determining actual need of such employment.”

I understand that under the rules and regulations promulgated by the State Board of Public Welfare, in determining need of an applicant for certification to W. P. A. employment, all resources of the applicant are taken into consideration, including such Adjusted Service Compensation Certificates, or the proceeds therefrom. I also understand that under rules of the W. P. A., only those who are certified by the department of public welfare as being in need are eligible for W. P. A. employment.

Relief in the form of wages paid out by W. P. A., for employment on work relief projects, is financed mostly if not entirely, by Federal funds. It is therefore within the province of the Congress of the United States to determine who are eligible to receive such funds. This they have done to the extent of providing that in "determining actual need of such employment," possession of such bonus bonds, or a "Treasury check in payment," thereof, shall not be considered.

While it might be argued that in considering need for certification, the state law, rules and regulations of the state department should be followed, yet in this particular instance, an Act of Congress would be controlling over any state statute or rule and regulation made thereunder.

A different question is presented in determining need in granting general relief. Here no federal funds are involved. However, the Adjusted Service Compensation Act specifically exempts the adjusted service certificate, and the proceeds thereof, from levy of attachment, execution, or other judicial process. This provision reads as follows:

"No sum payable under this chapter to a veteran or his dependents, or to his estate, or to any beneficiary named under Part V of this chapter, no adjusted service certificate, and no proceeds 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 chapter." (Sec. 308 of Act as amended by Act July 3, 1926, Sec. 3 (a), USCA, Sec. 618.)

In a case before the Supreme Court of Idaho, reported in 9 Pac. (2) 501, entitled, *In re Irish*, it was held that in a proceeding for contempt for disobedience to an order of the district court ordering defendant to make payment of specific monthly sums for support of his children, in determining the question of the ability of the defendant to comply with the court order, the fact that he had an adjusted service certificate on which he could make a loan sufficient to meet the amount due

under the court order, could not be considered.

The Montana Supreme Court has never had this question before it and therefore there is no decision of our state on the question. However, if the courts would hold that a man having an adjusted service certificate upon which he could realize cash is not required to convert such certificate into cash to support his dependents, it would follow that such certificate should not be required to be cashed before he and his dependents are entitled to relief.

It is therefore my opinion that in determining need of an applicant for W. P. A. certification, or for assistance under Chapter 82, Laws 1937, an Adjusted Service Certificate may not be considered as a resource.