

**Opinion No. 82**

**Deceased War Veterans —  
Veterans' Honorarium — Benefits —  
Next of Kin Statutes —  
Session Laws —  
Statutory Construction**

HELD: All applications of wid-  
ows, orphans and parents which are  
made to the Board of Examiners for

payment of the honorarium or adjusted compensation pursuant to Chapter 125, Session Laws of 1955, must be accepted and paid.

October 27, 1956

Honorable Cecil C. Parker  
Representative  
Pondera County  
Valier, Montana

Dear Mr. Parker:

You have requested my opinion concerning benefits granted to the next of kin of deceased servicemen by Chapter 125, Session Laws of 1955.

In your letter of request you mentioned that one of your constituents, after making application for the benefits granted by Chapter 125, Session Laws of 1955, was denied the benefits on the grounds that she failed to apply for the benefits prior to December 31, 1953. The basis for the Adjusted Compensation Division's refusal to pay the claimants benefits was on the ground that Chapter 125, Session Laws of 1955, although granting additional benefits, failed to extend the application date for the payment of the granted benefits.

Your specific question covering this problem is quoted as follows:

"Does Section 6 of Initiative 54, as amended by Section 1, Chapter 123, Laws of Montana, 1953, which sets a deadline for applicants to apply for the benefits under the act, prevent those persons who are granted benefits under Chapter 125, Session Laws of 1955, from receiving those benefits?"

Section 6 of Initiative 54 as amended by Section 1, Chapter 123, Laws of Montana, 1953, provides in part as follows:

"Section 6. All applications for the payment of the honorarium or adjusted compensation herein provided for shall be filed with the board of examiners before the first day of January, 1954; and the filing of an application with a

county clerk and recorder of any county of this state shall be deemed, for the purposes of this section, to have been filed with said board as of the date of filing with such clerk and recorder. . . ."

Section 1, Chapter 125, Session Laws of 1955, provides:

"Section 1. That section 3 of said initiative No. 54 be, and the same is hereby amended so as to read as follows:

"Section 3. In case of the death, prior to payment under this law, of any such serviceman, the amount to which he or she was entitled shall be paid: (1) To his or her surviving spouse, providing such surviving spouse, if a widow, has not remarried prior to making application for such payment, or (2) if there is no surviving spouse, or if a widow, she is deceased or has remarried prior to making such application, then to the surviving children, or (3) if there is no surviving spouse, or if there was a widow and she has remarried or is deceased, and if there are no surviving children, then such payment shall be made to the parents of the deceased serviceman or to the survivor of such parents.

"Provided, however, that the amount due the surviving spouse, children or parents, as the case may be, of any serviceman who died in the line of duty while in military service during world war II, or who shall have died prior to payment under this section from any cause attributable to his military service in the line of duty, as shown by the records of the armed forces of the United States, or the United States veterans' administration, shall be the amount to which such deceased serviceman would have been entitled had he received payment of said honorarium; or if such amount is less than five hundred dollars (\$500.00), then such surviving spouse, children or parents, as the case may be shall be paid the sum of five hundred dollars (\$500.00) and no more."

(Emphasis Supplied)

Recourse must now be made to the title of Chapter 125, Session Laws of 1955, in order to determine the legislative intent and to ascertain whether the benefits granted by Chapter 125, Session Laws of 1955, should be paid. (State ex rel. Board of Com'rs. of Valley County v. Bruce, 104 Mont. 500, 69 Pac. (2d) 97).

The title of Chapter 125, Laws of 1955, reads as follows:

**"An Act to Amend Section 3 of Initiative No. 54, Adopted by the Vote of the Legal Electors of the State of Montana at the Regular General Election Held in the State of Montana on November 7, 1950, to Guarantee to All Widows, or Orphans, or Parents, as the Case May Be. Whose Fathers, or Husbands, or Sons Died in the Line of Duty While in Military Service During World War II. Payment of an Amount of Not Less Than Five Hundred Dollars (\$500.00) for Said Honorarium."**

By reference to this subsequent act, Chapter 125, Session Laws of 1955, and the title thereto, supra, it is clear that the 1955 Legislative Assembly intended that the Widows, Orphans, or Parents of the deceased War Veterans who died while in Military Service during World War II, should be paid the benefits as provided by said chapter.

In *Fletcher v. Paige*, 124 Mont. 114, 119, 220 Pac. (2d) 484, our Supreme Court, in construing a statute, stated:

"The general rule is that for a subsequent statute to repeal a former statute by implication, the previous statute must be wholly inconsistent and incompatible with it. *United States v. 196 Buffalo Robes*, 1 Mont. 489, approved in *London Guaranty & Accident Co. v. Industrial Accident Board*, 82 Mont. 304, 309, 266 Pac. 1103, 1105. The court in the latter case continued: 'The presumption is that the Legislature passes a law with deliberation and with a full knowledge of all existing ones on the same subject, and does not intend to interfere with or abrogate a former law relating to the same

matter unless the repugnancy between the two is irreconcilable. *State ex rel. Aachen & Munich Fire Ins. Co. v. Rotwitt*, 17 Mont. 41, 41 Pac. 1004; and *Jobb v. County of Meagher*, 20 Mont. 424, 51 Pac. 1034.'"

Here in the instant case we have a subsequent enactment granting benefits to certain enumerated persons. The subsequent enactment, Chapter 125, Session Laws of 1955, is clearly repugnant to and irreconcilable with Section 6, Chapter 123, Session Laws of 1953, which prevents receipt of applications after December 31, 1953. Thus, by implication, Section 6, Chapter 123, Session Laws of 1953, which reads:

"All applications for the payment of the honorarium or adjusted compensaiton herein provided for shall be filed with the board of examiners before the first day of January, 1954: . . ."

is repealed and all applications of widows, orphans, and parents made pursuant to Chapter 125, Session Laws of 1955, must be accepted and paid.

It is therefore my opinion that all applications of widows, orphans and parents which are made to the Board of Examiners for payment of the honorarium or adjusted compensation pursuant to Chapter 125, Session Laws of 1955, must be accepted and paid.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.