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Mr. John L. Napier
Revenue Commissioner
Houston County
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Veterans Affairs - Military
Affairs - Education -
Survivor's Benefits

Only children of those killed,
dying in line of duty, listed
as missing in action, perm-
anently, totally disabled or
Vietnam War prisoners of war
are entitled to educational
benefits under Code of Alabama,
1975, § 31-6-4.

Dear Mr. Napier:

We have received your recent request for an opinion
from the Attorney General. Your questions were as
follows:

1. I was a prisoner of War during the Korean Conflict and was listed as Missing in Action for more than 60 days. Are my children entitled to educational benefits as authorized by Code of Alabama 31-6-4 (1)?
2. Why would a child whose father or mother is a prisoner of War while serving as a member of the Armed Forces in the Vietnam War period be entitled to educational benefits when the child

whose father or mother is a Prisoner of War while serving as a member of the Armed Forces in World War II or the Korean Conflict not be entitled to the same benefits?

3. I am a 30 percent disabled veteran of the Korean Conflict and my children are not authorized educational benefits as provided by the Code of Alabama 31-6-6 (C), however, the wife or child of any Veteran of World War II who receives 20 percent disability is entitled to the benefits as provided in referenced section of Code. Is this not discriminatory against Veterans of the Korean Conflict and Vietnam Conflict and unconstitutional?

Your answer to question (1) is negative. Code of Alabama, 1975m § 31-6-4(1) reads as follows:

Any child whose father or mother:
(1) Was killed or died in line of duty or is listed as missing in action or whose death or permanent total disabilities were service-connected while serving as a member of the armed forces; ...

This section refers to death, permanent total disability, or "is listed as missing in action." If the parent meets any of these qualifications, then their children would be entitled to benefits. This section describes situations in which there is either no parent available due to service related death or no parent capable due to service related total, permanent disability to provide such benefits for the child. There is no stipulation in this section regarding the conflict in which these events must have taken place. The use of the present tense -- "is" -- related to missing in action implies that one is still missing and listed as such. It appears that your children would not qualify under this section since you are not presently listed as missing in action and your disability is not total.

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Regarding your question (2), there is no specific conflict named except to include the Vietnam War. The stipulation is that one have met the qualification "while serving as a member of the armed forces." There are requirements spelled out as to when these benefits must be initiated -- prior to the child's twenty-sixth birthday. If one qualified under death or missing in action, then the child would have had to be in existence at the time of death or listing and no doubt all those from World War II or the Korean conflict would be past age 26 now.

In answer to question (3), we would point out that the determining factor in § 31-6-6 (C) is the percentage of disability, rather than the conflict in which it occurred. Additionally, we are not in a position to declare a statute or any section thereof unconstitutional. That is an issue to be determined by a court.

We hope this information will assist you. If we may be of further service, please contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-


PEGGY SCHMITZ
Assistant Attorney General

PS:bd