

1963

Exemption of Veterans' Benefits

Paul Y. Shapiro

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

Recommended Citation

Paul Y. Shapiro, *Exemption of Veterans' Benefits*, 14 W. Rsrv. L. Rev. 567 (1963)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol14/iss3/30>

This Note is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

1963

Exemption of Veterans' Benefits

Paul Y. Shapiro

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Paul Y. Shapiro, *Exemption of Veterans' Benefits*, 14 W. Rsrv. L. Rev. 567 (1963)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol14/iss3/30>

This Note is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

charity"¹⁰⁵ or if furnishing the residence was necessary to the performance of the owning institution's charitable functions.¹⁰⁶ The meaning of the word "necessary" in this connection has varied somewhat with the particular factual situation. In the case of hospital-owned residences, before they will be considered necessary, the hospital apparently must not be able to carry out its charitable functions without providing them,¹⁰⁷ while in the case of a Y.M.C.A.-type organization, the residence need only be incidental to the charitable functions of the owning institution in order to be declared exempt.¹⁰⁸

ROBERT A. LENGA

Exemption of Veterans' Benefits

Section 3101(a) of the Veterans' Benefits Act provides protection for payments made under any law administered by the Veterans' Administration. The purpose of this legislation is to provide the veteran with at least one source of income upon which he can rely for his support and maintenance.¹ However, this protection is lost should the veteran invest these payments in profit-making enterprises. Further, section 3101(a) will not prevent certain types of claimants from satisfying their claims from the exempt assets. This article studies: (1) the types of investments which will cause the loss of section 3101(a) protection, and (2) the types of claimants who are not barred by section 3101(a). Further, the effect of a recent United States Supreme Court decision, *Porter v. Aetna Cas. & Sur. Co.*,² upon this area of the law will be analyzed.

PROTECTION OF BENEFITS PAID BY THE VETERANS' ADMINISTRATION

Federal Law

Payments of benefits by the Veterans' Administration are not assignable by the veteran, are exempted from taxation, and cannot be levied upon, attached, or seized by creditors.³ Protection extends before and after receipt of payments paid "to, or on account of, a beneficiary."⁴

105. See *Beerman Foundation, Inc. v. Board of Tax Appeals*, 152 Ohio St. 179, 182, 87 N.E.2d 474, 476 (1949); *Cleveland Branch of Guild of St. Barnabas for Nurses v. Board of Tax Appeals*, 150 Ohio St. 484, 486-87, 83 N.E.2d 229, 230-31 (1948).

106. See, e.g., *Western Reserve Academy v. Board of Tax Appeals*, 153 Ohio St. 133, 139-40, 91 N.E.2d 497, 500-01 (1950) (dissenting opinion); *Aultman Hosp. Ass'n v. Evatt*, 140 Ohio St. 114, 117, 42 N.E.2d 646, 647 (1940).

107. See *Doctors Hosp. v. Board of Tax Appeals*, 173 Ohio St. 283, 288, 181 N.E.2d 702, 705 (1962) (concurring opinion); *Aultman Hosp. Ass'n v. Evatt*, 140 Ohio St. 114, 117, 42 N.E.2d 646, 647 (1942).

108. *Goldman v. Friars Club, Inc.*, 158 Ohio St. 185, 199, 107 N.E.2d 518, 524 (1952).

However, this protection ceases when the funds are *permanently invested* or have lost the quality of money.⁵ The exemption provision, then, assures the veteran the use and enjoyment of benefits provided for his support and maintenance.⁶

While the Supreme Court has upheld the exemption of veterans' benefits deposited in a bank, with or without interest,⁷ it has also indicated that benefit funds invested in land, stocks, bonds, and merchandise are not protected.⁸ It has done so in cases dealing with taxation as well as in those concerning other claims barred by section 3101(a).⁹

A rule of thumb appears to be that when the veterans' benefits are diverted from their primary purpose, that of maintenance and support, to a business or profit-making use, the exemption ends. Safekeeping, as opposed to permanent investment, is the only protected use of the benefit funds.

1. 38 U.S.C. § 3101 (1959) [hereinafter cited as § 3101(a)]. (Throughout this article the term "veteran" is used to mean any beneficiary of funds paid by the Veterans' Administration and protected by section 3101(a).)

2. 370 U.S. 159 (1962).

3. Section 3101 is, in pertinent part, as follows: "(a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable . . . and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. . . ." Subsection (c) reserves to the federal government the right to collect taxes due by seizure of these "protected" funds. Subsection (b) deals with the prohibitions against collection by set-off from veterans' benefits.

4. *Ibid.* See *In re Beall's Estate*, 384 Pa. 14, 19-20, 119 A.2d 216, 219 (1956). The Act of August 12, 1935, c. 510, 49 Stat. 607, extended the exemption to cover the payments before and after receipt. This was to counteract the effect of *McIntosh v. Aubrey*, 185 U.S. 122 (1902), which held that only payments "due or to become due" were exempt.

5. *Carrier v. Bryant*, 306 U.S. 545 (1939); *Trotter v. Tennessee*, 290 U.S. 354 (1933). Permanent investment indicates a conversion into property or a launching upon speculative or business ventures. *Trotter v. Tennessee*, *supra*.

6. *Carrier v. Bryant*, 306 U.S. 545 (1939); *Lawrence v. Shaw*, 300 U.S. 245 (1937); *Trotter v. Tennessee*, 290 U.S. 354 (1933).

7. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159 (1962); *Lawrence v. Shaw*, 300 U.S. 245 (1937).

8. *Carrier v. Bryant*, 306 U.S. 545 (1939); *Trotter v. Tennessee*, 290 U.S. 354 (1933). *Accord*, *McCurry v. Peck*, 54 Ga. App. 341, 187 S.E. 854 (1936) (land); *Liles v. H. K. Mulford Co.*, 52 Ga. App. 674, 184 S.E. 396 (1936) (automobile). *But see*, *Elbert Sales Co. v. Granite City Bank*, 55 Ga. App. 836, 192 S.E. 66 (1937) (bank account); *Spicer v. Smith*, 288 U.S. 430 (1933) (no priority given to exempt bank account on bank's insolvency). *Cf.* *Guardianship of Pryor*, 106 N.E.2d 672 (Ohio C.P. 1952) (equity maxim used to permit recovery). See generally SHIPLEY, *AMERICAN LAW OF VETERANS* §§ 41-49 (2d ed. 1954).

9. *Compare* *Trotter v. Tennessee*, 290 U.S. 354 (1933), *with* *Carrier v. Bryant*, 306 U.S. 545 (1939). *Compare* *Lawrence v. Shaw*, 300 U.S. 245 (1937), *with* *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159 (1962).

Additional Protection Under State Law

Many states have general exemption acts protecting, for example, specified personal property and homesteads.¹⁰ Since these assets are free from seizure by creditors, veterans' benefits invested therein thus receive protection supplemental to that afforded by section 3101(a). In addition to general statutes, some states specifically safeguard those assets of the veteran which may no longer be exempted under the federal act.¹¹

Veterans' pensions, for example, often receive state protection over and above that provided by section 3101(a).¹² While the federal exemption ends upon the investment of pension payments, the laws of three states¹³ afford additional protection for the pension funds when they are loaned, deposited, or invested.¹⁴ Other states provide protection for varying periods of time. Illinois and Minnesota exempt benefits from creditors' claims for one year,¹⁵ whereas the period in Kansas¹⁶ is only three months. Nebraska,¹⁷ on the other hand, has no time limitations but does impose a monetary limit of \$2,000, encompassing not only the pension, but also any profits from its use.

The theory behind state exemption statutes is similar to that of section 3101(a). Public policy requires the preservation of at least one source of income upon which the veteran and his family may rely for sustenance and support.¹⁸ However, since the state exemption statutes are so varied and often provide incomplete protection, section 3101(a) remains the basic guarantor of veterans' benefits' protection.

10. 22 AM. JUR. *Exemptions* §§ 33-102 (1939).

11. See, e.g., IOWA CODE ANN. § 627.9 (1950); LAWS OF SOUTH CAROLINA § 19-480 (1952); WASH. REV. CODE § 6.16.040 (1961). See also SHIPLEY, *AMERICAN LAW OF VETERANS* (app., 2d ed. 1954).

12. See, e.g., CAL. CIV. PROC. CODE § 690.22, which is, in pertinent part, as follows: "All money received by any person, a resident of the State, as a pension . . . from the United States Government . . . whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited, loaned or invested by him, is exempt from execution or attachment."

13. CAL. CIV. PROC. CODE § 690.22; IOWA CODE ANN. § 627.8 (1950); N.Y. CIV. PRAC. ACT § 667. Interpretation of the New York act, not its language, renders it similar to the California and Iowa statutes. See, *Yates County Nat'l Bank v. Carpenter*, 119 N.Y. 550, 554, 23 N.E. 1108-09 (1890). The New York act remains the same in the new N.Y. CIV. PRAC. ACT § 5205(f), which becomes effective on September 1, 1963.

14. The following statutes exempt funds in the veteran's possession, loaned, or deposited: COLO. REV. STAT. ANN. § 77-13-2(1) (i) (Supp. 1960); ILL. ANN. STAT. ch. 52, § 13 (Smith-Hurd 1951); WASH. REV. CODE § 6.16.030 (1961); WIS. STAT. ANN. § 272.18 (1958). For general protection, see CONN. GEN. STAT. ANN. § 52-352 (1960); OKLA. STAT. ANN. tit. 31 § 7 (1955); ORB. REV. STAT. § 23.170 (1960).

15. ILL. ANN. STAT. ch. 52, § 13 (Smith-Hurd 1951); MINN. STAT. ANN. § 550.38 (1949). Illinois provides a penalty of double damages for wrongful seizure of exempt funds. ILL. ANN. STAT. ch. 52, § 17 (Smith-Hurd 1951).

16. KAN. GEN. STAT. ANN. § 60-3508 (1949). To gain the benefit of this statute, one must show a need for the funds to support the family receiving them.

17. NEB. REV. STAT. § 25-1559 (1956). See *Dargan v. Williams*, 66 Neb. 1, 4, 91 N.W. 862, 863 (1902).

18. *Andrew v. Colorado Sav. Bank* 205 Iowa 872, 874-75, 219 N.W. 62, 64 (1928).

CLAIMS NOT BARRED BY SECTION 3101(a)

Alimony and Support Obligations

The language of section 3101(a) does not make a distinction between classes of creditors. However, it has been held that those whose claims rest upon the veteran's duty to support and maintain his family may recover from exempt assets.¹⁹

The following grounds are often used by courts to permit these types of claimants to reach protected funds: (1) such claims do not emanate from a business or profit-motivated relationship;²⁰ (2) the veteran's obligation does not arise from a mere debt or reparation for civil injury, but from the fundamental moral, social, and legal duty to support one's spouse and children;²¹ (3) this type of claimant has always been afforded special treatment because of his unique social position;²² and (4) Congress intended not only to support the veteran, but also to "afford some degree of security to the family and dependents of such recipient."²³ Alimony and support claimants are therefore considered beneficiaries of section 3101(a) protection.

Congress prevented any anticipated divestment or depletion of veterans' allowances to assure support for the veteran and those for whom he must provide.²⁴ A dependent, therefore, may reach funds only when a duty or obligation exists on the part of the veteran, aside from any purported assignment of benefits.²⁵ As a result, a judicial award which is merely a determination of the manner in which a spouse shall fulfill his public and marital duty may be satisfied from benefit funds.²⁶ But such

19. See, e.g., *In re Flanagan*, 31 F. Supp. 402 (D.D.C. 1940); *Gaskins v. Security-First Nat'l Bank*, 30 Cal. App. 2d 409, 86 P.2d 681 (Dist. Ct. App. 1939); *In re Bagnall*, 238 Iowa 905, 29 N.W.2d 597 (1947); *Dillard v. Dillard*, 341 S.W.2d 668 (Tex. Civ. App. 1960). See generally SHIPLEY, *AMERICAN LAW OF VETERANS* §§ 48-49 (2d ed. 1954). See also Annot., 54 A.L.R.2d 1422 (1957).

20. See *Wissner v. Wissner*, 338 U.S. 655, 659-60 (1950).

21. See, e.g., *In re Flanagan*, 31 F. Supp. 402 (D.D.C. 1940); *Schlaefel v. Schlaefel*, 112 F.2d 177 (D.C. Cir. 1940); *Gaskins v. Security-First Nat'l Bank*, 30 Cal. App. 2d 409, 86 P.2d 681 (Dist. Ct. App. 1939).

22. Equity courts, for example, have traditionally compelled the satisfaction of alimony and support obligations by imprisonment. *Dillard v. Dillard*, 341 S.W.2d 668, 675 (Tex. Civ. App. 1961). Further, such claimants have been accorded a special position in the field of spendthrift trusts. 2 SCOTT, *TRUSTS* § 157.1 (2d ed. 1956). Analogy to the ability of dependents to reach the beneficiary's interest in a spendthrift trust is used in several exemption cases. See, e.g., *Voelkel v. Tohulka*, 236 Ind. 588, 593, 141 N.E.2d 344, 345 (1957); *In the Matter of Dugan*, 29 Misc. 2d 980, 982, 222 N.Y.S.2d 831, 833 (Surr. Ct. 1961); *Brusbard's Estate*, 34 Pa. D. & C. 107, 112-13 (Pa. C.P. 1938).

23. *In re Flanagan*, 31 F. Supp. 402, 403 (D.D.C. 1940). See Act of August 12, 1935, c. 510, 49 Stat. 607; S. REP. NO. 1072, 74th Cong. 1st sess. (1935).

24. *Yake v. Yake*, 170 Md. 75, 183 Atl. 555 (1936).

25. *Ibid.* See also *Wissner v. Wissner*, 338 U.S. 655 (1950); *Schlaefel v. Schlaefel*, 112 F.2d 177 (D.C. Cir. 1940); *Sehrt v. Sehrt*, 179 Cal. App. 2d 167, (Dist. Ct. App. 1960). Cf. *Stone v. Stone*, 188 Ark. 622, 67 S.W.2d 189 (1934) (dower).

26. *In re Flanagan*, 31 F. Supp. 402, 403 (D.D.C. 1940).

is not the case if the alimony award is a property settlement, for then it is basically an assignment.²⁷ Thus, only the dependent's right to be supported sustains his status as a non-creditor.

Claims for Care in State Institutions

A state welfare department, which furnishes a veteran's necessities, may be compensated for such care from funds protected by section 3101(a).²⁸

Courts have stressed the involuntary nature of this basically non-contractual service — the state's actions being compelled by law.²⁹ If the veteran has a guardian, that fiduciary is required to contract for his ward's support,³⁰ and therefore, some courts have implied a contract by the guardian to reimburse the state for assuming this function.³¹

The state may not reach protected assets if its claim accrued *prior* to the appointment of the veteran's fiduciary.³² This position has been justified as necessary to avoid endangering present support.³³ In addition, the satisfaction of any past debt seems contrary to the language and interpretation of section 3101(a).³⁴ Further, no real inequity arises from this distinction because the state could have petitioned for a fiduciary's appointment.³⁵ Thus, the state's claim for necessities furnished to a

27. *Schlaefel v. Schlaefel*, 112 F.2d 177 (D.C. Cir. 1940); *Sehrt v. Sehrt*, 179 Cal. App. 2d 167 (Dist. Ct. App. 1960); *Yake v. Yake*, 170 Md. 75, 183 Atl. 555 (1936).

28. See, e.g., *Department of Pub. Welfare v. Sevick*, 18 Ill. 2d 449, 164 N.E.2d 10 (1960); *In re Lewis' Estate*, 287 Mich. 179, 283 N.W. 21 (1938); *In re Bemowski's Guardianship*, 3 Wis. 2d 133, 88 N.W.2d 22 (1958). Cf., *State v. Wendt*, 94 Ohio App. 440, 116 N.E.2d 30 (1953); *Chojnacki's Estate*, 397 Pa. 596, 156 A.2d 812 (1959). See generally Opinion of Attorney General of California, No. 47/120 (July 7th, 1947).

29. *Ibid.*

30. *In re Guardianship of Giambastiani*, 1 Cal. App. 2d 639, 37 P.2d 142 (Dist. Ct. App. 1934).

31. *In re Bayly's Estate*, 95 Cal. App. 2d 174, 178, 212 P.2d 587, 590-91 (Dist. Ct. App. 1949); *In re Murphy's Committee*, 134 Misc. 683, 236 N.Y.S. 343, *modified*, 227 App. Div. 839, 237 N.Y.S. 448 (Sup. Ct. 1929); *In the Matter of Dugan*, 29 Misc. 2d 980, 983, 222 N.Y.S.2d 831, 833-34 (Surr. Ct. 1961); *In re Bemowski's Guardianship*, 3 Wis. 2d 133, 147-48, 88 N.W.2d 22, 29-30 (1958).

32. See, e.g., *Savoid v. District of Columbia*, 288 F.2d 851 (D.C. Cir. 1961); *In re Ferarazza's Estate*, 219 Cal. 668, 28 P.2d 670 (1934); *In re Murphy's Committee*, 227 App. Div. 839, 237 N.Y.S. 448 (Sup. Ct. 1929); *Rothenberger Estate*, 17 Pa. D. & C.2d 383 (Pa. C.P. 1958); *In re Bemowski's Guardianship*, 3 Wis. 2d 122, 88 N.W.2d 22 (1958). See also *In re Bayly's Estate*, 95 Cal. App. 2d 174, 212 P.2d 587 (Dist. Ct. App. 1949) (amount of funds does not affect result.).

33. See *In the Matter of Dugan*, 29 Misc. 2d 980, 222 N.Y.S.2d 831 (Surr. Ct. 1961); *In the Matter of Harp*, 25 Misc. 2d 620, 208 N.Y.S.2d 374 (Surr. Ct. 1960).

34. See, e.g., *In re Ferarazza's Estate* 219 Cal. 668, 28 P.2d 670 (1934); *In re Bayly's Estate*, 95 Cal. App. 2d 174, 212 P.2d 587 (Dist. Ct. App. 1949); *In the Matter of Dugan*, 29 Misc. 2d 980, 222 N.Y.S.2d 831 (Surr. Ct. 1961); *Brusbard's Estate*, 34 Pa. D. & C. 107, 112-13 (Pa. C.P. 1938); *Chojnacki's Estate No. 1*, 13 Pa. D. & C.2d 152 (Orphans' Ct. 1958).

35. *In re Bayly's Estate*, 95 Cal. App. 2d 174, 178, 212 P.2d 587, 590 (Dist. Ct. App. 1949); *Chojnacki's Estate No. 1*, 13 Pa. D. & C.2d 152, 157 (Orphans' Ct. 1958). See also *In the Matter of Harp*, 25 Misc. 2d 620, 208 N.Y.S.2d 374 (Surr. Ct. 1960).

veteran is honored only if the obligation accrues *after* the appointment of a guardian.

Claims of Suppliers of Necessities

Veterans' allowances are paid free from existing creditors' claims. Neither debts stemming from credit voluntarily extended nor those arising from civil injury may be satisfied from exempt assets.³⁶ However, some claimants are not considered "creditors" for purposes of the federal act. A dependent whose claims stem from his right to be supported by the veteran is permitted to reach the benefit funds.³⁷ The state, too, can satisfy its involuntary claims for necessities furnished subsequent to the appointment of a fiduciary.³⁸ An incompetent veteran's guardian must contract for his ward's necessities, and claims arising in this manner are honored.³⁹ Further, the competent veteran is permitted to spend his allowance for support and maintenance.⁴⁰ Query: Should a merchant who supplies necessities to a veteran be allowed to satisfy his claims from the statutorily protected payments?

In the day to day supplying of necessities, credit is often extended by the supplier to the competent veteran. Debts of this nature could not be satisfied out of benefit funds to be paid in the future.⁴¹ But what of payments already received? Surely these benefits should be available to the supplier-creditor in spite of the voluntarily incurred creditor-debtor relationship. Here, no one is jeopardizing current support and maintenance.⁴² In fact, the merchant is fulfilling the congressional purpose by providing for the veteran's basic needs. Thus, these present claims should be honored.⁴³ Any other result either compels the veteran to deal on a cash basis or prohibits altogether the use of the benefit funds for support and maintenance.

36. *Schlaefel v. Schlaefel*, 112 F.2d 177 (D.C. Cir. 1940); *Dillard v. Dillard*, 341 S.W.2d 668 (Tex. Civ. App. 1961).

37. See notes 19 & 27 *supra* and accompanying text.

38. See notes 28 & 35 *supra* and accompanying text.

39. See *In re Guardianship of Giambastiani*, 1 Cal. App. 2d 639, 37 P.2d 142 (Dist. Ct. App. 1934); *In the Matter of Dugan*, 29 Misc. 2d 980, 983, 222 N.Y.S.2d 831, 833-34 (Surr. Ct. 1961).

40. *In the Matter of Dugan*, 29 Misc. 2d 980, 983, 222 N.Y.S.2d 831, 833-34 (Surr. Ct. 1961).

41. *In re Bayly's Estate*, 95 Cal. App. 2d 174, 178, 212 P.2d 558, 590-91 (Dist. Ct. App. 1949); *In the Matter of Harp*, 25 Misc. 2d 620, 625, 208 N.Y.S.2d 374, 379 (Surr. Ct. 1960); *Chojnacki's Estate No. 1*, 13 Pa. D. & C.2d 152, 157 (Orphans' Ct. 1958).

42. See notes 39 & 40 *supra* and accompanying text. See also 2 SCOTT, TRUSTS § 157.2 (2d ed. 1956). Cf. *Earl v. Reynolds*, 49 Ga. App. 510, 176 S.E. 91 (1934) (support creditor barred from exempt funds because of past debt); *Dillard v. Dillard*, 241 S.W.2d 668 (Tex. Civ. App. 1961).

43. *In the Matter of Dugan*, 29 Misc. 2d 980, 983, 222 N.Y.S.2d 831, 833-34 (Surr. Ct. 1961); *In re Bemowski's Guardianship*, 3 Wis. 2d 133, 147-48, 88 N.W.2d 22, 29-30 (1958).

Once the current needs of the veteran are satisfied, can any remaining funds be used to pay past claims for necessities furnished? Must an excess over present needs be reserved solely for the future? No court has permitted these past claims to be satisfied from the veteran's allowances.⁴⁴

Congress appears to have exempted the benefits from existing claims to prevent the jeopardization of the veteran's support,⁴⁵ but here present needs have been satisfied. When weighing past claims for necessities furnished to the veteran against his future needs, a court would probably follow the language and existing interpretation of section 3101(a), conserving the veteran's funds for the future.⁴⁶ A need, therefore, exists for congressional clarification as to when the supplier of necessities is a barred creditor under section 3101(a).

PORTER V. AETNA CAS. & SUR. CO.⁴⁷

The Supreme Court in the *Porter* decision was presented with the problem of determining whether veterans' benefits deposited in a building and loan association savings account retained the protection afforded by section 3101(a). The opinion did not, however, affect the question of what type of claimant may reach benefit payments to satisfy his claims against the veteran.

History of the Case

The claim of Aetna Casualty and Surety Company against Porter, a veteran, stems from its defense and settlement of a wrongful death action in which Porter and his employer, the insured, were defendants.⁴⁸ Having reduced its claim for indemnity to a judgment against Porter, who was primarily liable for the death, the insurance company attached two savings accounts and a checking deposit, both funded with exempt disability compensation payments.⁴⁹

The district court granted a motion to quash the attachment on the ground that the federal exemption continued to protect the funds deposited in the two types of institutions. The decision hinged on the court's determination that: (1) the deposits did not constitute permanent

44. See, e.g., *In re Bayly's Estate*, 95 Cal. App. 2d 174, 178, 212 P.2d 587, 591 (Dist. Ct. App. 1949); *Earl v. Reynolds*, 49 Ga. App. 510, 176 S.E. 91, 92 (1934); *In the Matter of Harp*, 25 Misc. 2d 620, 625, 208 N.Y.S.2d 374, 379 (Surr. Ct. 1960); *Chojnacki's Estate No. 1*, 13 Pa. D. & C. 152, 157, (Orphans' Ct. 1958). See also Annot., 109 A.L.R. 433 (1937).

45. *In re Bayly's Estate*, 95 Cal. App. 2d 174, 178, 212 P.2d 587, 590-91 (Dist. Ct. App. 1949); *In the Matter of Dugan*, 29 Misc. 2d 980, 983, 222 N.Y.S.2d 831, 833 (Surr. Ct. 1961); *Brusbard's Estate*, 34 Pa. D. & C. 107, 113 (Pa. C.P. 1938).

46. See notes 36 & 40 *supra* and accompanying text.

47. 370 U.S. 159 (1962).

48. *Aetna Cas. & Sur. Co. v. Porter*, 296 F.2d 389, 390 (D.C. Cir. 1961).

49. *Ibid.*

investments, there being no conversion into property, and (2) the benefits did not lose the quality of money.⁵⁰

The appellate court reversed the district court, holding that the savings accounts were not merely the "uninvested balance of governmental payments in a bank."⁵¹ This result was reached, in part, because the use of the accounts was motivated by a desire to receive the high interest rate of building and loan associations. The court also emphasized that, in law, the owner of the accounts, a voting member in the association, was regarded as a shareholder. In addition, the depositor could be required to give thirty-day notice of any intended withdrawals.⁵² For these reasons the deposits were held to be permanently invested, and hence not exempt from Aetna's claim.

The United States Supreme Court brushed aside the technicalities which obscured the basic nature of the benefit funds.⁵³ Because of the varying practices and procedures of the federal savings and loan institutions, the Court examined the findings of the trial court to ascertain whether the deposits in question were permanent investments.⁵⁴ The following factors were determinative of the issue: (1) building and loan associations are commonly used for safekeeping in the community; (2) the benefits, as deposited, were easily withdrawn, a formal demand being unnecessary; (3) the accounts were safely protected and insured by an agency of the federal government; thus they were not speculative in character; and (4) the assets had been and were being used for Porter's support and maintenance.⁵⁵ The Court reversed the court of appeals and upheld the lower court's judgment that the funds, as used, remained protected under section 3101(a).

Analysis of the Opinion

The *Porter* decision is the latest step in the gradual growth of the law relating to exemption of veterans' benefits. It had formerly been decided that permanently invested veterans' benefits lost their exempt status.⁵⁶ That phrase, "permanent investment," was clearly defined in *Trotter v. Tennessee*, where it was said to describe payments which had been con-

50. *Aetna Cas. & Sur. Co. v. Porter*, 185 F. Supp. 302, 303-05 (D.D.C. 1960).

51. *Aetna Cas. & Sur. Co. v. Porter*, 296 F.2d 389, 391-92 (D.C. Cir. 1961).

52. *Ibid.*

53. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159 (1962).

54. *Id.* at 161-62.

55. *Ibid.*

56. Safekeeping, as opposed to permanently investing the funds, does not deprive veterans' benefits of their immunity. *Lawrence v. Shaw*, 300 U.S. 245 (1937).

verted into property, or which had been used to finance business or speculative ventures.⁵⁷ This criterion was used in *Porter*. Since the accounts were not "time deposits at interest" and "were not of a speculative character," no conversion into property existed.⁵⁸ Further, from the use of the funds, the Court concluded that they amounted "only [to] funds presently available to meet the petitioner's need."⁵⁹

According to the majority decision, protection extends to payments deposited in a normal mode of safekeeping, if the

benefit funds, regardless of technicalities of title and other formalities, are readily available as needed for support and maintenance, actually retain the qualities of moneys, and have not been converted into permanent investments.⁶⁰

The determination of the exemption issue, therefore, requires a close scrutiny of each particular method of safekeeping.

Mr. Justice Douglas, in a separate opinion,⁶¹ advocated a more liberal approach: liquidity. He pointed out that, although stocks and bonds, for example, may be hard to fractionalize, such assets may well be as liquid as checking or savings accounts. He would have section 3101(a) protect transmuted payments if they remain "in a form in which they are usable, if need be, 'for the maintenance and support of the veteran.'"⁶²

Mr. Justice Douglas' view allows the use of funds in a business activity, but without the normal business risk. It disregards the traditional law of safekeeping; it allows the conversion of the benefits into property and ignores the purpose for which the payments are used. However, the assets must remain readily available should the veteran need them for his sustenance and maintenance.

In contrast, the majority rule in *Porter* protects veterans' benefits which are used to provide for a veteran's support, not his speculative enterprises. Further, it does not permit the funds to deviate from their original character as unused benefit payments, either kept on hand or temporarily deposited for safekeeping. The point of difference, then, lies in whether the benefits must closely adhere to their original character as "payments made to, or on account of, a beneficiary."

57. 290 U.S. 354, 356-57 (1933). See also *Carrier v. Bryant*, 306 U.S. 545 (1939) (application of permanent investment rule to non-taxation situation).

58. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962).

59. *Ibid.*

60. *Ibid.*

61. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (separate opinion).

62. *Id.* at 164.

*Effect of the Porter Decision On:**Exempt Investments*

Prior to the *Porter* case, confusion existed in regard to investments. For example, in *In re Bowen*⁶³ the Ohio Supreme Court held that upon investment benefit funds lose their protection. Reliance was placed upon the use of the term "investment"⁶⁴ in *Lawrence v. Shaw*,⁶⁵ a case in which the Supreme Court decided that funds deposited for safekeeping in a checking account were not so invested as to have lost their federal protection.

The language upon which the Ohio court relied had reference to the unprotected permanent investment described in the *Trotter* case,⁶⁶ *i.e.*, the conversion of veterans' allowances into property.⁶⁷ Because of this misinterpretation of federal exemption law, the Ohio Supreme Court held that deposits in a savings account were available to creditors.

By virtue of the *Porter* case, such an interpretation is no longer possible. This decision reiterates the law of the *Trotter* case and sets forth a formula to determine what types of deposits are protected.⁶⁸ Now, investment, *per se*, does not deprive veterans' benefits of protection under section 3101(a).

Exempt Funds Which Earn Interest

The Massachusetts Supreme Judicial Court,⁶⁹ following the Ohio Court in *Bowen*,⁷⁰ recently decided that invested funds are necessarily unprotected by section 3101(a). Further, the Massachusetts case defined investment to mean the "placing of capital or laying out money in a way intended to secure income or profit from its employment."⁷¹ Thus, under this view when benefit funds earn interest, they can no longer be protected by the federal act.

Clearly, the decision in the *Porter* case overrules this theory. A consideration of many other factors besides interest is now required. The degree of protection afforded the funds, the community's methods of safekeeping, and the availability of the transmuted benefits to satisfy the support and maintenance of the veteran all may outweigh the mere accumulation of interest in a determination of whether a given asset is

63. 141 Ohio St. 602, 49 N.E.2d 753 (1943).

64. *In re Bowen*, 141 Ohio St. 602, 607, 49 N.E.2d 753, 755 (1943).

65. 300 U.S. 245 (1937).

66. *Trotter v. Tennessee*, 290 U.S. 354 (1933).

67. *Lawrence v. Shaw*, 300 U.S. 245, 250 (1937).

68. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 161-62 (1962).

69. *Hale v. Gravallesse*, 340 Mass. 722, 166 N.E.2d 557 (1960).

70. *In re Bowen*, 141 Ohio St. 602, 49 N.E.2d 753 (1943).

71. *Hale v. Gravallesse*, 340 Mass. 722, 723, 166 N.E.2d 557, 558 (1960).

protected by section 3101(a).⁷² Interest is only one of many elements showing the true character of an investment.

Characterization Through the Use of Statutes

The Ohio solution of the savings account problem again illustrates a probable effect of *Porter v. Aetna Cas. & Sur. Co.* In *Bowen* the Ohio court bolstered its findings by relying upon what is now Ohio Revised Code section 2109.37, a provision listing permissible investments for fiduciaries.⁷³ Since savings accounts are included in this list as proper "investments," the court concluded that funds deposited in such accounts must be investments. Under the misconception that all investments are unprotected, the Ohio court then ruled that such deposits could be subjected to creditors' claims.⁷⁴

It should be noted that characterization for one purpose is not necessarily proper for another. Further, the Supreme Court, in the *Porter* case, reversed the appellate court which had relied upon a statutory characterization.⁷⁵ Being an owner of a deposit in a federal building and loan association and thus considered a voting member of that institution was not enough, in the *Porter* decision, to support a conclusion that the funds, as used, were permanently invested. The Supreme Court required an investigation which did not stop with technicalities of title or other similar formalities.⁷⁶

Therefore, since an individual assessment of the funds' actual availability and use is required, local or federal statutory characterization is of minor importance in determining whether assets are protected by section 3101(a).

Protected Usage of Veterans' Benefits

Since the practices and procedures of federal savings and loan institutions differ, the Supreme Court considered the funds in their actual setting. The place of employment is now both a proper and a necessary subject of inquiry.⁷⁷ This will change at least the approach of the Massachusetts' court, which, in *Hale v. Gravalles*, held benefit payments deposited in a savings bank to be unprotected by section 3101(a) without discussing the nature of the institution or its policies on withdrawal

72. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 161-62 (1962).

73. *In re Bowen*, 141 Ohio St. 602, 608, 49 N.E.2d 753, 756 (1943).

74. *Ibid.*

75. *Aetna Cas. & Sur. Co.*, 296 F.2d 389, 392 (D.C. Cir. 1961).

76. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 161-62 (1962).

77. *Ibid.*

of funds.⁷⁸ In the future, the technical form of the funds' employment will not necessarily be indicative of the absence of federal protection.⁷⁹

CONCLUSION

Protection of Veterans' Allowances

The Supreme Court in *Porter v. Aetna Cas. & Sur. Co.* has penetrated beyond the technical considerations that so often decided the issue of protection for veterans' benefits. It has upheld the basic purpose and intent of the Congress by holding that permanently invested funds are not protected by section 3101(a). Investments remain protected when the funds are merely kept in a normal place of safekeeping, if they are funds "presently available" to meet the beneficiaries' needs.⁸⁰

This interpretation of existing legal principles seems reasonable in light of the variety of common methods for safekeeping and in light of the protection already afforded to benefit funds. It is a solution half-way between the exemption of veterans' benefits in the form of cash or checking account credits and the vulnerable position of payments which have been converted into property or launched upon speculative or business ventures. The *Porter* decision, then, allows a needed flexibility in the area of veterans' benefits and provides a workable rule which deals equitably with the veteran.

"Creditors" Under Section 3101(a)

No distinction is made by the Veterans' Benefits Act as to "creditors," but state and federal courts have created exceptions for spouses, children, and state welfare departments. Perhaps it may even be asserted that congressional silence in the 1957-1958 revision and recodification of the veterans' laws, as to the claimants who may recover from exempt funds, constitutes a tacit approval of the status quo.⁸¹ Since these claimants derive their rights from a fundamental moral, social, and legal policy, it will probably be only a matter of time before Congress or the Supreme Court recognizes their judicially forged right to satisfy their claims from protected funds.

On the other hand, even though he asserts a bona fide and reasonable claim, the rights of the innocent supplier of necessities, dealing with the competent veteran, are unclear.⁸² His claim for furnishing present sup-

78. *Hale v. Gravalles*, 340 Mass. 722, 723, 166 N.E.2d 557, 558 (1960).

79. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962).

80. *Ibid.*

81. *In re Bemowski's Guardianship*, 3 Wis. 2d 133, 142, 88 N.W.2d 22, 27 (1958). Cf. *Chojnacki's Estate No. 1*, 13 Pa. D. & C.2d 152, 155-57 (Orphans' Ct. 1958).

82. *Earl v. Reynolds*, 49 Ga. App. 510, 176 S.E. 91 (1934), deals only with past support. The cases dealing with the state's right to recover seem to indicate that timely application by

port is one type of debt which is necessary to the veteran's existence. A priority system should be established to allow for payment of even past claims for necessities supplied to the veteran on credit, so long as current support is not jeopardized. A need exists for clarification of the rights of this type of creditor.

Porter v. Aetna Cas. & Sur. Co. clarifies only one of the two problems of exemption law, *i.e.*, when veterans' benefits remain protected by section 3101(a). Still to be resolved is the question of which types of claims may be satisfied from the protected payments.

PAUL Y. SHAPIRO

*Disclosure under the Foreign Agents Registration Act of 1938, as Amended*¹

Recognizing the expanding international involvement of the United States, foreign governments have attempted to influence American domestic and foreign policies. Foreign interests vary from promoting the economic welfare of large industrial nations to seeking aid for newly developing countries. United States' citizens, acting as agents for these foreign principals, may aid these causes by lobbying bills through Congress, for example, or by projecting a desirable foreign interest image to the American public through mass media. Commonly, attempts to influence the foreign policies and national interests of the United States are conducted outside regular diplomatic channels. Thus, foreign governments' agents peddle their influence for undisclosed sponsors.

Only 404 registration statements of these agents of foreign principals currently are filed under the Foreign Agents Registration Act.² It was not until December 1962 that the Justice Department forced the Communist Party of the United States to register as an agent of a foreign principal.³ The Senate Foreign Relations Committee in July 1962 released a study reflecting numerous undetected violations of the Act, evident from the Justice Department's own files.⁴ This increase of undetected activity prompted the Senate to authorize the Senate Foreign Relations Committee:

To conduct a full and complete study of all nondiplomatic activities of representatives of foreign governments, and the extent to which such representatives attempt to influence the policies of the United States and affect the national interest.⁵

the supplier of necessities would result in recovery from exempt funds. See *In re Murphy's Committee*, 227 App. Div. 839, 237 N.Y.S.2d 448-49 (Sup. Ct. 1929); *In the Matter of Harp*, 25 Misc. 2d 620, 625, 208 N.Y.S.2d 374, 379 (Surr. Ct. 1960); *Chojnacki's Estate No. 1*, 13 Pa. D. & C.2d 152, 157 (Orphans' Ct. 1958).