

Opinion No. 56-6356

January 17, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District Roswell, New Mexico

Receipt is acknowledged of your letter dated January 4th, in which you request an opinion as to whether or not the soldiers' exemption contained in Section 72-1-11, N.M.S.A., 1953, requires that the military relationship be terminated before the exemption applies, or is the exemption available to a New Mexico resident while he remains on active duty in the Armed Forces.

Section 72-1-11, N.M.S.A., 1953, reads in part as follows:

"Soldier' shall include every honorably discharged member of the armed forces, resident of New Mexico and who served in the armed forces of the United States for ninety (90) days at any time during any period in which the military forces are engaged in armed conflict under the orders of the President of the United States, and shall include persons of either sex as such honorably discharged members of the armed forces . . ."

Section 72-1-12, N.M.S.A., 1953, defines "honorable discharge" in relation to soldiers' exemption, as follows:

"Excepting a dishonorable discharge, or one for misconduct, any discharge, including furloughs to the reserve or order relieving a member of a reserve corps from active duty, shall constitute an honorable discharge for the purpose of this act."

According to the fact situation in your letter, the officer which you have in mind established residence in New Mexico long before the beginning of the Korean War; however, this soldier maintains his residence in your District, is still in active duty in the Armed Forces, and apparently will continue to make a career of the military service.

Nowhere in the fact situation which you have presented does it appear that this officer has been honorably discharged or has had a furlough to the reserve or order showing that he was relieved as a member of the reserve corps from active duty.

It is therefore the opinion of this office that in view of the language of both the above quoted sections, that the officer you have in mind is not entitled to the soldiers' exemption if he has not been honorably discharged from the Armed Forces, or according to Section 72-1-12, has never been furloughed to the reserve or ordered relieved as a member of said reserve corp from active duty. In other words, his military relationship must have been terminated by an honorable discharge for any time

previous to his claim for exemption as a member of the Armed Forces. See *Allen vs. Allen*, 52 N.M. 174, 194 P. 2d 270 and *Wilson vs. Wilson*, 58 N.M. 411, 272 P. 2d 319, for a bearing on the question of residence.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assistant Attorney General