

## **Opinion No. 57-44**

March 8, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilario Rubio, Assistant Attorney General

**TO:** Mr. H. Leslie Williams, Assistant District Attorney, Second Floor Court House, Albuquerque, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. Is a soldier entitled to the veteran's exemption if he lived in New Mexico prior to January 1, 1947, and he entered the Armed Forces of the United States in July, 1949, while still living in Albuquerque, New Mexico? He was discharged on January 9, 1956, as an enlisted man and re-entered the service on January 10, 1956 as a Warrant Officer. This man's discharge was for the purpose of receiving his appointment as a Warrant Officer. He received an honorable discharge but immediately re-enlisted.

2. Is a veteran under the same factual situation as in question 1 entitled to the veteran's exemption, with the exception that the enlisted man was discharged one day and re-enlisted the next day as an enlisted man on a new tour of duty?

#### CONCLUSIONS

1. Yes.

2. Yes.

### **OPINION**

#### ANALYSIS

Both of these veterans served in the Armed Forces of the United States during the Korean conflict and § 72-1-11, N.M.S.A., 1953 Compilation, is the section applicable in this case, and same provides that any soldier who is honorably discharged as a member of the Armed Forces, is a resident of New Mexico, and has served ninety days during any period when the military forces were engaged in armed conflict on orders of the President of the United States, and shall also include resident unmarried widows of such honorably discharged members of the Armed Forces, is entitled to the \$ 2,000.00 exemption.

There was no official declaration of war during the Korean conflict, but North Korea invaded South Korea on June 25, 1950, and our troops moved in on June 27, 1950, so

that the latter date was the beginning of our entry into the Korean conflict. The end of the Korean conflict has been set in our Opinion No. 6150, dated April 26, 1955, as July 27, 1953, at 2200 hours, 10:00 P.M., according to Senate Document No. 74, 83rd Congress, First Session, pages 98 et seq.

In your first question you state that this soldier is claiming the veteran's exemption for property tax and he lived in New Mexico prior to January 1, 1947 and entered the Armed Forces of the United States in July, 1949, so from all this I am assuming that this man was a resident of New Mexico before he entered the service and after he was discharged on January 9, 1956. He was discharged as an enlisted man and he re-entered the service on January 10, 1956, twenty-four hours after his discharge, and re-enlisted as a Warrant Officer. The fact of the matter is that this man was discharged from the rank of enlisted man and re-enlisted under the rank of Warrant Officer.

Section 72-1-11, N.M.S.A., 1953 Compilation, reads 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 orders of the President of the United States, and shall include persons of either sex as such honorably discharged members of the armed forces and shall also include resident unmarried widows of such honorably discharged members of the armed forces, Provided, however, that World War I veterans who become residents of New Mexico after January 1, 1934 and who did not serve in World War II, are excluded from this definition."

Section 72-1-13, N.M.S.A., 1953 Compilation, reads as follows:

"Real and personal property, including the community or joint property of husband and wife, of every soldier shall be exempt from taxation in the sum of two thousand dollars (\$ 2,000.00). Said exemption shall apply to all taxes levied in the year of 1933 and all which may thereafter be levied, but the said exemption shall not apply to any property held in trust by any soldier, except to the extent of the legal beneficial interest of such soldier therein. In addition to the said exemption said soldiers are hereby exempted from the payment of road taxes heretofore or hereafter levied.

Provided, however, that such exemption from taxation shall not be permitted to be claimed by nor allowed to any person who was not either a resident of New Mexico at the time he entered on such duty or who had not acquired residence in the state of New Mexico prior to January 1, 1947."

The veteran in the first instance or case was a resident of New Mexico on January 1, 1947 and in July, 1949 when he enlisted in the Armed Forces of the United States, he served more than ninety days during the Korean conflict while the United States was actually engaged in armed conflict, and was honorably discharged on January 9, 1956, and the fact that he re-enlisted twenty-four hours afterwards for the purpose of a

promotion from enlisted man to Warrant Officer does not change the situation. He has complied with all the requirements of both of the above quoted statutes and is entitled to the \$ 2,000.00 exemption. The fact that these men were discharged and returned to civilian status if only for twenty-four hours makes no difference as to their qualification for exemption. Their certificate of discharge is prima facie evidence of their discharge. Section 1580, U.S.C.A., Title 10 (Army), page 326, reads as follows:

"No enlisted man, lawfully inducted into the military service of the United States, shall be discharged, from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said services before his term of service has expired, except by order of the President, the Secretary of War, the Commanding officer of a department, or by sentence of a general court-martial."

Your second question involves the same factual situation except that the veteran in the latter case was an enlisted man when he was discharged and re-enlisted twenty-four hours afterwards, or the next day, as an enlisted man. This man has also complied with all the requirements of the two statutes hereinabove quoted and is, therefore, entitled to the \$ 2,000.00 exemption.

We trust that this fully answers your inquiries.