

Opinion No. 41-3948

November 10, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*126} In your letter of November 7 you have requested our opinion as to whether or not the current draftees who are now discharged from the United States Army are exempt from paying a recording fee of their discharge certificates with the various county clerks.

Section 122-401, New Mexico Statutes Annotated, 1929 Compilation, the same having been enacted in 1921, reads as follows, to-wit:

"The county clerks of the several counties of the state {*127} shall, upon presentation to them, record, free of charge, in the volume known and designated as 'miscellaneous records,' the discharge papers of any soldier, sailor, marine, aviator, army nurse, yeomanette, and all enlisted men and women of the United States either combatants or noncombatants."

The 1941 session of the Legislature, by virtue of Chapter 103, amended the 1921 exemption above quoted by adding thereto the following amendment:

"* * * who was accepted for service and served in the armed forces of the United States for thirty days or more at any time in which the United States was officially engaged in any war."

The 1941 Act further amended the 1921 Act by striking therefrom the phrase "and all enlisted men and women of the United States either combatants or non-combatants."

To my mind, this action on the part of the Legislature shows a manifest intention to only exempt from payment of the recording fee those in the armed forces of the United States who either have or may actually have served for thirty (30) days or more during any time the United States was or is officially engaged in any war.

Therefore, in view of the foregoing legislative action and conclusion on my part, I am of the opinion that current draftees who are now discharged are not exempt from paying the recording fee for the reason that the United States is not now officially engaged in any war.

This opinion is necessarily limited to the present draftees and in no way affects those who actually served for thirty (30) days or more in the last official war engaged in by the United States.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General