Opinion No. 42-4190

November 23, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Dr. James R. Scott, Director Department of Public Health Santa Fe, New Mexico

*{*281}* We are in receipt of your letter of November 18, 1942, in which you ask the following question:

"Does voluntary enlistment of a woman in the WAAC constitute entering the armed services of the United States within the meaning of Chapter 10, Session Laws of 1941 of New Mexico?"

This statute provides in part that:

*{*282}* "Any person who, since July 1, 1940, has left or leaves a position, other than a temporary position, in the employ of any employer, to enter the armed forces of the United States, * * * and is still qualified to perform the duties of such position and makes application for reemployment within forty days after leaving the armed services of the United States:

"(a) If such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

"(b) If such position was in the employ of the State of New Mexico, any political subdivision thereof, state institution, county or municipality, such person shall be restored to such position or to a position of like seniority, status, and pay."

It is to be noted that the term "armed forces of the United States" is not defined by this statute. Further, to the knowledge of the writer, this term has never been defined by any of the courts in the United States in a similar situation so that this term has no explicit meaning. This being true, the intention of the legislature is to be determined from the "occasion and necessity of the law, from the mischief felt, and the objects and remedy in view; and the intention is to be taken or presumed, according to what is consonant to reason and good discretion." State v. McKinley County Commissioners, 20 N.M. 67 45 p. 1083.

It is apparent from a reading of Chapter 10, supra, that the purpose of the act is to alleviate the hardships accruing to persons who give up their employment to enter the service of the United States in a military capacity. It is also apparent that this act is remedial in nature and equitable in enforcement, so that it should be given a liberal construction under the doctrine of Ford v. Springer Land Association, 8 N.M. 37, 41 P.

541. With this in mind, the question then is whether or not the WAACs are such persons as contemplated by Chapter 10, Laws of 1941 when liberally construed.

Turning now to the act of Congress creating the Women's Army Auxiliary Corps (Chapter 312, Second Session, 77th Congress, Pub. Law 554), it is seen that while by Section 12 of said act, the WAACs shall not be considered a part of the Army, they shall serve with the Army for the purpose, as expressed by Section 1 of the act:

"* * * of making available to the national defense when needed the knowledge, skill, and special training of the women of this Nation."

However, under this statute, members of the WAACs in other respects have the same rights, duties and protections as do the Army, Navy and Marines.

Section 13 of the act provides that the WAACs are to be administered by the Secretary of War through the channels of command of the Army.

By Section 14, its members are made subject to the Articles of War.

By Section 15, the Army provisions for leave are made applicable. Further, by this section, women who leave their positions in the employ of the United States, its territories or possessions, or the District of Columbia, are given the same right with respect to re-employment as are the persons who come within the Selective Service Act of 1940.

Section 125 of the National Defense Act makes it unlawful for persons not officers or enlisted *{*283}* men in the Army, Navy or Marine Corps to wear the uniform of these respective forces. Bv Section 18 of the act creating the Women's Army Auxiliary Corps this act is extended to the WAACs.

By Section 19 of the same act, the Soldiers' and Sailors' Civil Relief Act is made to cover the WAACs so that their members will come within the definition of "persons in the military service of the United States".

Thus, as the WAACs are treated the same as the other branches of the Armed Forces of the United States with respect to their rights, duties and obligations, it appears to the writer that Congress, by Chapter 1312 of the 77th Congress, created a new branch of the Armed Forces of the United States within the contemplation of Chapter 10, Laws of 1941.

Further Mr. Howard F. Houk of this office, by Opinion No. 4104, held that a person who volunteers to enter the Armed Forces of the United States is entitled to the same benefits, under Chapter 10, Laws of 1941, as a person who is drafted.

In view of the foregoing, I am of the opinion that the voluntary enlistment of a woman in the WAACs constitutes entering the armed services of the United States within the meaning of Chapter 10, Laws of 1941.

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

By ROBERT W. WARD,

Asst. Atty. General