

Opinion No. 45-4815

November 6, 1945

BY: C. C. McCULLOH, Attorney General

TO: Benjamin D. Luchini Chairman-Executive Director Employment Security
Commission Box 1301 Albuquerque, New Mexico

{*152} In your letter dated November 2, 1945, you refer to Chapter 24, Laws of 1945, being Section 57-701 of the 1945 Pocket Supplement, and state that you are trying to work out a method of paying returning veterans who desire to be restored to their former positions with the Commission. This law provides in Subsection (b) as follows:

"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."

{*153} In order to establish a plan to fix the compensation of such returning employees, you propose to add a regulation of the Commission prescribing as follows:

"Notwithstanding the provisions of any regulation, the beginning compensation of any person upon reinstatement to employment, after military leave as defined in regulation No. 8-D, shall be in an amount substantially equivalent to that he would have been entitled to at the time of reinstatement, had there been no interruption in the employment."

You inquire whether this regulation will be in conformity with the above mentioned law. Section 57-702 of the 1941 Compilation uses this language:

"Any person who is restored to a position in accordance with the provisions hereof shall be considered as having been on furlough or leave of absence during his service in the armed forces of the United States, and shall be restored without loss of seniority, etc. --"

The Legislature uses the word "restored" in connection with this matter and certainly if a person is to be restored to his same position or one of like seniority, status, and pay, his minimum pay would be the same as that which he received at the time he entered the armed forces. However, in using the phrase "like seniority, status, and pay," I am of the opinion that the Legislature contemplated that a returning serviceman should be placed in the same comparative position relative to other employees in the department as that which he held at the time of leaving the employment to enter the armed forces. Thus, if salary reclassifications and increases have been made generally to other employees, the returning veteran would be entitled to proportionate salary increases and other benefits, if any, which would place him on the same relative basis in comparison with the employees who continued in service, provided such procedure is administratively possible.