

SEPTEMBER 20, 1950.

CHESTER A. CHARLES,
Brigadier General, AF, NJNG,
Deputy Chief of Staff,
Department of Defense,
State Armory, Trenton, N. J.

FORMAL OPINION—1950. No. 63

DEAR GENERAL CHARLES:

Receipt is acknowledged of your request for my opinion as to the operation and effect of Section 12 of Chapter 239 of the Laws of 1950 (P. L. 1950, p. 814-15). Section 12 of the Act provides:

"12. Section 38:3-18 of the Revised Statutes is amended to read as follows:

38:3-18. The commission or warrant of an officer shall be vacated only:

- a. Upon the acceptance by the Governor of the resignation of such officer; or
- b. By an order of the Chief of Staff of the State Department of Defense,

- (1) Discharging such officer because of his failure to maintain his qualifications for Federal recognition, or

- (2) Discharging such officer because of his absence from duty without leave for more than three months, or

- (3) Discharging such officer pursuant to the recommendation of a board of examination, approved by the Governor, or

- (4) Dismissing such officer pursuant to the sentence of a court-martial, approved by the Governor."

You submit for my consideration the following state of facts:

"After the termination of hostilities in 1945 following World War II, most of the New Jersey National Guard officers who were ordered to active Federal service in 1940 and 1941 were relieved from active Federal service and reverted to State control. At the time of or subsequent to the date of relief, however, the majority of these officers accepted a commission in the Officers' Reserve Corps. This action by NJNG officers was encouraged by this headquarters to enable the officers to protect the higher ranks attained in Federal service.

The result of the acceptance of an ORC commission was to cause termination of Federal recognition as a NJNG officer. Thereafter they had no commission in the National Guard of the United States and no Federal status as a National Guard officer.

It accordingly became necessary to have their active status in the NJNG terminated. This has been accomplished in good part by acceptance of resignations and retirements under the then existing statutes. In many cases action has not been possible by reason of inability to communicate with the officer, refusal to resign or lack of eligibility for retirement.

It is essential to administration and record keeping that some action be taken to separate these officers from active NJNG status or their commissions in the NJNG."

You seek my advice as to whether the Act of 1950 may be applied to the above cited cases, even though the actual termination of Federal recognition took place prior thereto and that these officers were discharged from their commissions in the NJNG by reason of failure to maintain their qualifications for Federal recognition.

Upon a consideration of the state of facts and a review of the statute, I am of the opinion that Section 12 of the Act of 1950, *supra*, may be applied to the cases referred to in your letter, where Federal recognition was terminated or withdrawn prior to June 26, 1950, the operative date of the act,, provided the effective date of the discharge from commission or warrant is subsequent to June 26, 1950.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: JOSEPH LANIGAN,
Deputy Attorney General.

JL:MB

OCTOBER 3, 1950.

HON. WALTER T. MARGETTS, JR.,
State Treasurer,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 64.

MY DEAR MR. MARGETTS:

Your letter of July 21st requesting opinion as to the effect of the affidavit which is required on forms presented by dealers selling securities to a State agency is acknowledged and the opinion rendered herewith.

STATEMENTS OF FACTS.

There are no actual facts in the presented problems but all are based on hypothetical questions.

QUESTION PRESENTED.

No. 1. Does the word "bonus" on the affidavit required on invoices transmitted by security dealers upon the sale of securities to an agency of the State include the payment of a commission to a second broker-dealer for the latter's assistance in negotiating the transaction with the State agency?

ANSWER.

The answer is no.

REASONS.

The word "bonus" as defined by Webster's Universal Unabridged Dictionary is:

"an extra compensation beyond the amount agreed upon; an extra payment or consideration given as a reward or an inducement, or as a means of avoiding loss, in many contracts and business transactions."