

greater benefits than could be obtained for them otherwise and to accomplish this end without heavy additional outlay. The policy of the enactments is not to furnish *double* pensions, both State and Federal, as some employees seeking to avoid the offset provisions of the acts apparently consider. The payment of such benefits would be an unjustifiable windfall, fiscally and actuarially ruinous to the State of New Jersey. There has been some avoidance of the offset provisions heretofore on technical legal grounds by employees who had not qualified for Federal Social Security coverage through public employment at the time of retirement. Such avoidance cannot be available in the future, under the present laws, for the vast majority of public employees and teachers.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: LAWRENCE E. STERN
Deputy Attorney General

LES :mtb

SEPTEMBER 18, 1956

MR. WILLIAM J. HARDING, *President*
Middlesex County Board of Taxation
County Record Building
New Brunswick, N. J.

FORMAL OPINION, 1956—No. 16

DEAR SIR:

You have requested our opinion regarding the eligibility for veterans tax exemptions of persons honorably discharged or released under honorable circumstances from active service in the armed forces of the United States since the commencement of the Korean conflict.

Art. VIII, Sec. 1, Par. 3 of the 1947 Constitution of New Jersey provides as follows:

"Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service, in time of war or of other emergency as, from time to time, defined by the Legislature, in any branch of the Armed Forces of the United States shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars (\$500.00), which exemption shall not be altered or repealed. Any person hereinabove described who has been or shall be declared by the United States Veterans Administration, or its successor, to have a service-connected disability, shall be entitled to such further exemption from taxation as from time to time may be provided by law. The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war or of other emergency as so defined in any such service shall be entitled, during her widowhood, and while a resident of this State, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from

time to time may be provided by law. The widow of any citizen and resident of this State who has had or shall hereafter have active service in time of war or of other emergency as so defined in any branch of the Armed Forces of the United States and who died or shall die while on active duty in any branch of the Armed Forces of the United States, or who has been or may hereafter be honorably discharged or released under honorable circumstances from active service in time of war or of other emergency as so defined in any branch of the Armed Forces of the United States shall be entitled, during her widowhood and while a resident of this State, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemptions as from time to time may be provided by law.”
(Italics added)

N.J.S.A. 54:4-3.12j, as amended, L. 1953, c. 436, provides :

“Every person a citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from *active service in time of war* in any branch of the Armed Forces of the United States and a widow as defined herein, during her widowhood and while a resident of this State, shall be entitled, on proper claim being made therefor, to exemption from taxation on real and personal property to an assessed valuation not exceeding five hundred dollars (\$500.00) in the aggregate.”
(Italics supplied)

The definition section of this act, N.J.S.A. 54:4-3.12i, as amended by L. 1952, c. 231 and L. 1953, c. 436, reads as follows :

“As used in this act:

“(a) ‘Active service in time of war’ means active service at sometime during one of the following periods :

“The Korean conflict, June 23, 1950, to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December 16, 1950, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States ;

* * * * *

“(d) ‘Honorably discharged or released under honorable circumstances from active service in time of war,’ means and includes every form of separation from active, full-time duty with military or naval pay and allowances in some branch of the Armed Forces of the United States in time of war, other than those marked ‘dishonorable,’ ‘undesirable,’ ‘bad conduct,’ ‘by sentence of general court martial,’ ‘by sentence of summary court martial’ or similar expression indicating that the discharge or release was not under honorable circumstances. A disenrollment certificate or other form of release terminating temporary service in a military or naval branch of the armed forces rendered on a voluntary and part-time basis without pay, or a release from or deferment of induction into the active military or naval service shall not be deemed to be included in the aforementioned phrase.”

The introducers’ statement appearing on Assembly Bill 2 of the First Special

Session of 1953 which became L. 1953, c. 436, (N.J.S.A. 54:4-3.12j) stated that it was enabling legislation to implement *Art. VIII, Sec. 1, Par. 3* of the Constitution. This statement constitutes relevant evidence as to the legislative purpose, meaning or intent, *Deaney v. Linen Thread Co.*, 19 N.J. 578 at p. 585 (Sup. Ct. 1955).

The preamble of Assembly Bill 394 of the Session of 1951 which became L. 1951, c. 184 (N.J.S.A. 54:4-3.12i), later amended by L. 1952, c. 231, stated that the purpose of the legislature was to prescribe uniform rules and procedure for veterans' exceptions under *Art. VIII, Sec. 1, Par. 3* of the Constitution.

The preamble of an act may be used for the purpose of not only interpreting the act itself but also for the purpose of establishing the constitutional basis for the legislative action. *Sutherland Statutory Construction* (3rd Ed. 1953) § 4808, p. 353; *Blackman v. Iles*, 4 N.J. 82 (Sup. Ct. 1950); *Grobart v. Grobart*, 5 N.J. 161 (Sup. Ct. 1950); *Bass v. Home Improvement Co.*, 8 N.J. 219 (Sup. Ct. 1951); *Jamouneau v. Harner*, 16 N.J. 500 (Sup. Ct. 1954).

The implementing statute, N.J.S.A. 54:4-3.12j, does not re-enact the words, "other emergency" set forth in *Art. VIII, Sec. 1, Par. 3* of the Constitution. Thus, the Legislature was prescribing, within its constitutional grant of authority, that active service during the period of the Korean conflict was active service in time of war. The definition section of the act, N.J.S.A. 54:4-3.12i, states unequivocally that "active service in time of war" includes the Korean conflict which had been proclaimed a National Emergency by President Truman on December 16, 1950 (Proclamation 2914, 64 Stat. A. 454, 50 U.S.C.A. App. p. 6).

The National Emergency has never been terminated by action of the President or Congress. Since the legislature has expressly predicated the termination of the period of "active service in time of war" for the Korean conflict on such action, the eligibility period for such an exemption still continues under the Veterans' Tax Exemption Act.

The legislation that "active service in time of war" includes the Korean conflict is not unconstitutional because the United States never formally declared war. See Attorney General's Formal Opinion - 1953, No. 49.

While neither the New Jersey Constitution nor statutes define the term "active service" the words have been construed by courts of other jurisdictions.

In *U. S. v. Woodworth*, 36 F. Supp. 645 (Dist. Ct. D. Mass. 1941), the court held that a dental student who joined the Medical Enlisted Reserve Corps to complete his dental education was not in active service in the army. The court stated at page 646, "Active service does not necessarily mean actual service, but does mean service performed at the direction of a superior officer or officers while receiving the emoluments to which a soldier is entitled."

State v. Pierce, 118 Ore. 533, 247 p. 812 (Sup. Ct. Ore. 1926), held that persons serving in the Student Army Training Corps established by Congress in World War I were in "active army service."

Mantz v. Mantz, 69 N.E. 2d 637 (not officially reported) (Common Pleas Ct. Ohio, Summit County 1946) used the terms "active service" or "duty" as synonymous.

In *Minnich v. World War II Service Compensation Board*, 244 Iowa 715, 57 N.W. 2d 803, (Sup. Ct. of Iowa 1953), the Court held that a cadet at West Point during World War II qualified for service compensation for those residents "who served on active duty in the armed forces of the United States . . ." The Court held that active duty included active duty at an "armed services school."

A member of the National Guard called into the service of the United States by the President, entered into "active service" of the government within the meaning of the War Risk Insurance Act. *U. S. v. Carlson*, 44 F. 2d 5 (9C.C.A. 1930).

State v. Josephson, 120 La. 433, 45 So. 381 (Sup. Ct. of La. 1908), held that the militia is not necessarily in "active service" because of the fact it is always subject to call.

In *Betty v. State*, 188 Ala. 211, 66 So. 457 (Sup. Ct. Ala. 1914), the court held that a member of the militia staff ordered by the Governor to attend the Presidential Inauguration at Washington, D. C. was not in "active service."

A member of the Civil Air Patrol was not in "active service" in the military forces within the meaning of Sec. 6 (d) (1) of the Current Tax Payment Act of June 9, 1943, 57 Stat. 126, 146, 26 U.S.C.A. § 1622. *U.S. v. Popham*, 198 F. 2d 660 (C.C.A. 8th 1952).

The court found that from the time of its creation as part of the Office of Civilian Defense, the Civil Air Patrol was a strictly civilian activity and not included by Congress in the military or naval forces of the United States

Riave v. Committee of Bar Examiners, 42 C. 2d 835, 271 p. 2d 1, (Sup. Ct. Cal. 1954), which dealt with the exemption of veterans from bar examinations, stated that an applicant who had served "on active duty for training" was not on "active duty in the armed forces during a period of hostilities."

In the case of *Tyrell v. Committee of Bar Examiners*, 42 Cal. 2d 880, 271 p. 2d 4 (Sup. Ct. Cal. 1954), the court held that an applicant who was recalled to active duty for one day for the purpose of taking a physical examination had not entered on "active duty in the armed forces" as required for admission to practice law without examination.

The term "honorably discharged or released under honorable circumstances", as used in the Constitution, is defined with preciseness in N.J.S.A. 54:4-3.12i. See Attorney General's Formal Opinion - 1951, No. 31.

It is our opinion that the National Emergency pertaining to the Korean conflict proclaimed by the President on December 16, 1950 has never been officially terminated. The period of eligibility under the New Jersey statute continues to run. Persons who qualify under *Art. VIII, Sec. 1, Par. 3* of the 1947 Constitution of New Jersey and N.J.S.A. 54:4-3.12i through 54:4-3.12u, inclusive, are eligible for veterans tax exemptions as set forth therein.

Very truly yours,

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