JANUARY 24, 1958

HONORABLE AARON K. NEELD
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION 1958—No. 2

DEAR MR. NEELD:

An opinion has been requested whether or not members of the Teachers' Pension and Annuity Fund, who are called to active duty for training pursuant to Chapter 655, 84th Congress, First Session 1955 "Reserve Forces Act of 1955" can be considered veterans in accordance with the provisions of N.J.S.A. 18:13–112.4(r). The Reserve Forces Act of 1955, section 262(a) states that:

"Until August 1, 1959, whenever the President determines that the enlisted strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained at the level at which he determines to be necessary in the interest of national defense, he may authorize the acceptance of enlistments in units of such Ready Reserve pursuant to the provisions of this section under regulations prescribed by the Secretary of Defense. Enlistments under this section may be accepted only within quotas (which quotas shall not exceed a total of 250,000 persons annually) prescribed by the appropriate Secretary with the approval of the Secretary of Defense. No enlistment shall be accepted under this section in the Ready Reserve of any reserve component if such enlistment would cause the strength of such Ready Reserve to exceed the authorized strength of such Ready Reserve."

Section 262(c) states that:

"Each enlistment under this section shall be for a period of eight years. Each person so enlisted shall be required during such enlistment (1) to perform an initial period of active duty for training of not less than three months or more than six months, and (2) thereafter to perform satisfactorily all training duty prescribed by section 208(f) of this act, * * *"

Section 262(d) makes the following provisions:

"Notwithstanding any other provision of law, any person performing the period of active duty for training required by clause (1) of subsection (c) of this section shall—

"(1) during such period, and during any period of hospitalization incident to the performance of such duty, receive pay at the rate of $50. per month;

"(2) be deemed to be serving in pay grade E-1 (under four months) for the purpose of determining his eligibility to receive allowances for subsistence or for travel and transportation, or to receive any benefit under title IV of the Career Compensation Act of 1949, as amended; and

"(3) be deemed to be a member of a reserve component called or ordered into active service for extended service in excess of thirty days for the purpose of determining eligibility for any benefit made available to members of reserve components by the Act entitled 'An act to provide for members of the reserve components of the Armed Forces who suffer disability or death from injuries incurred while engaged in active duty training for periods of less than thirty days or while engaged in active duty training,' approved June 20, 1949 (63 Stat. 201), except that (A) no such person shall be entitled to any benefit under section 621 of the National Service Life Insurance Act of 1940, as amended, and (B) the indemnity accorded to such person under the Servicemen's Indemnity Act of 1951, as amended, shall terminate thirty days after the release of such person from such period of active duty for training.

"Except as specifically provided by this subsection, no person shall become entitled, by reason of his performance of a period of active duty for training required by clause (1) of subsection (c) of this section, to any right, benefit, or privilege provided by law for persons who have performed active duty in the Armed Forces."

It is to be noted that, in the legislative history in connection with this section of the law, the following statement appears:

"Inasmuch as persons enlisted in the Reserve and undergoing the period of active-duty training are not specifically authorized to receive the benefits indicated below, they would be excluded from such benefits:

"Benefits of title V (mustering-out payment) of the Veterans' Readjustment Assistance Act of 1952, or any other benefits under any laws administered by the Veterans' Administration, except the Servicemen's Indemnity Act of 1951, as amended, with respect to his initial 6 months of active duty for training.

"Quarters allowances.
Benefits of the Dependents Assistance Act of 1950.
Incentive pay.
Veterans' prefcrence." (Emphasis supplied)
84th Congress, First Session, 1955, *U.S. Code, Court and Administrative News,* Page 2815.

Since from the legislative history it appears that it was not the intention to give veterans preference, and from reading section 262(d) of the Reserve Forces Act of 1955, it does not appear that veterans' preference was given to such individuals. It must, therefore, follow that persons who enlisted pursuant to the above program do not attain veterans' preference under Federal law.

You will note that persons called to duty pursuant to section 262 of the Reserve Forces Act of 1955 are called to active duty for training; they remain assigned to the Reserve component to which they had been originally assigned.

Our office has indicated that whether or not a person is entitled to veterans' status may be in part a Federal question. By Memorandum Opinion dated September 11, 1957, we ruled that whether service in the military forces is active or inactive service should be determined by Federal law.

Since Congress has seen fit to state that men who enlist pursuant to section 262 of the Reserve Forces Act of 1955 are not to have veterans' preference, we are of the opinion that men enlisting pursuant to this program enlist in the reserve forces of the United States and therefore, are not to be considered as serving on active duty so as to entitle them to be considered veterans under N.J.S.A. 18:13–112.4(r).

Very truly yours,

HAROLD KOLOVSKY
Acting Attorney General

By: FRANK A. VERGA
Deputy Attorney General

FEBRUARY 5, 1958

HON. CARL HOLDERMAN, *Commissioner*
Department of Labor and Industry
State House
Trenton, New Jersey

FORMAL OPINION 1958—No. 3

DEAR COMMISSIONER HOLDERMAN:

You have requested our opinion as to the construction of the industrial homework law (L. 1941, c. 308; N.J.S.A. 34:6–136.1 et seq.). More specifically, you ask whether manufacturing under the following conditions constitutes industrial homework under that act:

First, the individual operates in an outbuilding situated in the rear of his house; as, for example, a garage or chicken house used as a work room.

Second, the individual operates in an outbuilding of the above type in the rear of a house in which other persons dwell but in which he does not dwell.

Third, an individual operates in the building in which he dwells but in a room separate from his living quarters but with entrance to his home and to his work room from a common hallway.

Fourth, the individual operates in a room in the house in which he dwells where the room for the manufacturing operations is so separated from his living quarters that an entrance to the work room from the living quarters can be effected only by going out of doors from the living quarters and entering into the work room from an outside door.

N.J.S.A. 34:6–136.2(e) provides:

> "(e) 'Industrial homework' means any manufacture, in a home, of materials or articles for an employer, but shall not be construed to mean or include any manufacture performed for an employer by any person employed by him at the place of manufacture, where such place is used for manufacturing only, and who does not dwell in the building where the manufacture is performed, even though persons may dwell in other parts of such building; provided, however, that where persons dwell in such building, the living quarters shall be entirely separate and independent from the part of the build-