

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

we are precluded from organizing until such time as 'any part' of the Maine National Guard is called into service.

"3. Reference 'b', above, appears to indicate that were reference 'a' worded to permit the organization of a 'Maine State Guard' such could be accomplished at this time.

"4. It is requested that —

(1) You comment on our assumptions.

(2) Recommend, if necessary, a possible solution which would allow organization of a State Guard."

In response to your request we believe that, in reference to "b" above, that your assumption that you are precluded from organizing a Maine State Guard until such time as any part of the Maine National Guard is called into service, is a proper assumption.

It appears to us that this situation can only be changed by Legislative Act. Those sections of Chapter 14 relating to the Maine State Guard would have to be amended so as to eliminate those provisions which would indicate that the Maine State Guard could be organized only when any part of the National Guard of this State is in active federal service, and the elimination of related provisions such as appear in sections 89 and 99 of chapter 14, R. S. 1954.

JAMES GLYNN FROST

Deputy Attorney General

May 1, 1961

To: Robert R. Washburn, Director of Veterans Affairs

Re: Ruling requested on eligibility for World War Assistance based on type of discharge

This memo is in response to yours of February 23, 1961 in which you ask questions relating to the determination of the status of a veteran in so far as his discharge is concerned.

"For World War Assistance purposes, Paragraph IV of Section 10 of Chapter 26 as amended of Revised Statutes of 1954, defines a veteran as follows:

"The term "veteran" shall be construed to mean any person who served in the armed forces of the United States on active duty during World War I, World War II or the Korean Campaign, not dishonorably discharged."

You state that:

"Inasmuch as the Veterans Administration makes rulings on eligibility for their benefits based on types of discharges and because they are in the best position to make such rulings, it is the desire of this Division to follow VA policy on eligibility insofar as is consistent with the statutes under which we operate.

"We have no problem with the straight honorable discharge, nor with the straight dishonorable discharge. There are a myriad of types in between and certain other special situations that we encounter. It is with some of these that we have difficulty."

You then ask for rulings on the following situations:

"1. Veteran enters service during wartime, is discharged solely for purposes of reenlistment without interruption, and was not otherwise eligible for discharge at that instant. Subsequently, he is dishonorably discharged in either a wartime or peacetime period. VA holds this is in effect one period of service and no eligibility for benefits based on this period of service. Our present policy: same as VA and so recommend."

Answer: The policy appears to us to be proper.

"2. Veteran has two periods of service during wartime, one period honorable and other dishonorable. VA holds benefits may be granted based on the honorable period of service. Our present policy: to base eligibility on the *second* period of service and so recommend."

Answer: The policy appears to us to be proper assuming that the second period of service is the one on which a dishonorable discharge has been granted.

"3. There are a myriad of types of discharges between honorable and dishonorable. There are even some types ostensibly honorable in nature which VA has ruled after investigation to be in effect dishonorable. Our present policy: to follow VA ruling."

Answer: VA rulings ought to be used by you merely as a guide. It would be improper for you to permit some third party to substitute his discretion and judgment for that discretion and judgment that should be exercised by you. Otherwise the policy appears to be proper.

"4. As our benefits are based on war time service, our policy is to totally ignore any period of service rendered solely in peacetime regardless of type of discharge, and so recommend."

Answer: This policy appears to be proper; peacetime meaning any time outside the periods indicated by section 10 of Chapter 26, which section outlines the dates of World War I, World War II, or the Korean conflict.

JAMES GLYNN FROST

Deputy Attorney General

May 5, 1961

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Application for Real Estate Brokers License

This is in answer to your request for an opinion of May 2, 1961.

You have inquired whether or not an individual who holds a broker's license and is designated as a broker for other corporations must have the recommendations of three citizens as required by the Revised Statutes of 1954, Chapter 84, Section 5. In my opinion, requirements of Section 5 are mandatory and every application for a broker's license must have the recommendations provided by Section 5.

You have also inquired whether or not other individuals who will work for the corporation must be licensed when the corporation already has a designated broker. I would refer you to the Revised Statutes of 1954, Chapter 84, Section 3,