

Montana Soldiers Home, Eligibility for Admission to. Board of Managers, Montana Soldiers Home, Rule and Regulations of. Eligibility for Admission, to Montana Soldiers Home.

Honorably discharged soldiers, sailors, or marines, who served in the Army or Navy of the United States during the late Civil War, the Mexican War, the late war with Spain, the Sioux War of 1876, or the Nez Perce War of 1877, who are invalids by reason of disease, wounds, or other disability contracted in

the service, are eligible for admission to the Montana Soldiers Home.

Volunteer citizens who served in either the Sioux or Nez Perce campaigns under command of a military officer are eligible for admission.

The board of managers is clothed with inherent powers under the law to determine who shall be eligible for admission to the Home.

May 31st, 1913.

Dr. W. H. Campbell,
Secretary Board of Managers, Montana Soldiers' Home,
Columbia Falls, Montana.

Dear Sir:

Replying to your recent request for an interpretation of the provisions of Sec. 1290 of Chap. 93 of the Laws of the Thirteenth Legislative Assembly, together with your request for an opinion as to the eligibility of candidates for admission to the Montana State Soldiers' Home, will say that after careful consideration beg leave to advise as follows:

As you are aware, when the home was established its object was set forth to provide a home and substance to honorably discharged soldiers, sailors and marines who have served in the United States army or navy during the war of the rebellion, and who have become unable to earn a livelihood by reason of such service or from age or otherwise. (Sec. 1283 Revised Codes of Montana, 1907.) Later, by act approved February 22nd, 1899, Sixth Session Laws, Chap. 50, Sec. 1290, Revised Codes, provision was made to the effect that any soldier, sailor or marine who served in the army or navy of the United States during the late civil war or in the Mexican war or in the late war with Spain, and received honorable discharge therefrom, and who at the time of admission is an invalid by reason of disease contracted, wounds received, or by reason of other disability, shall be eligible to admission to the benefits of the home, under the rules and regulations prescribed by the board of managers thereof, on the certificate of disability of a county commissioner to the county physician of the county in which the applicant may reside. The last Legislative session amended this section so as to include persons as eligible to admission who within the borders of the territory of Montana served in the Sioux war of 1876, or the Nez Perce war of 1877, and received honorable discharge therefrom. Applicants under this provision must, of course, at the time of admission, be invalids by reason of disease contracted, wounds received, or by reason of other disability, but they are to be admitted:

"Under the rules and regulations prescribed by the board of managers on the certificate of disability by a county commissioner to the county physician of the county in which the applicant may reside."

The test of qualification appears to be that an applicant must have *served* in either the Sioux war or the Nez Perce and received *honorable discharge* therefrom. In commenting upon the interpretation to be given the words above italicized, you inquire whether the meaning be an official discharge in the military sense or whether the act applies only to persons in the regular service to the exclusion of volunteers who served under the command of a military officer. It has been held that service in the army of the United States means in battle or service as soldiers under the command of officers of the army.

Stuart v. U. S. 85 (18 Wall U. S. 84.)
21 L. E. D. 816.

It has further been held, under an act providing that no minor shall be enlisted or mustered into the military service of the United States without the consent of his parent or guardian, that the word "military service" includes both regular and volunteer service.

In re Burns, 87 Fed. 796.

As bearing further upon the interpretation to be given the word "service," it has been held, under an act computing the longevity age, that the words "for every five years he may have *served* or shall *serve* in the army of the United States" include cadet service at West Point, and that the words "actual time of service in the army or navy or both" include cadet service at West Point.

U. S. v. Watson, 9 Sup. Ct. 430.
130 U. S. A. 32 L. E. D. 852.

It would appear therefore that volunteer citizens who serve in either of these wars under the command of a military officer are eligible to admission into the home. As to the manner in which proof of honorable discharge is to be made by applicants for admission, you are advised that the usual method, as you are aware, of proving honorable discharge, is by the production of the certificate itself. This is the best evidence, but it is not the only evidence.

Fitchburg v. Lumenbury, 12 Mass. 358.

Hanson v. South Scituale, 115 Mass. 336.

Since the act provides that admission to the home shall be had under the rules and regulations prescribed by the board of managers, and that nowhere is there to be found any express legislative declaration as to the kind or character of proof required of an applicant, it would appear that the board in its administrative capacity is clothed with inherent power to determine under the law who shall be eligible to admission to the home, being restricted only in the matter of admission that an applicant shall have served in either one or more of the wars designated in the act, and that such service was honorably terminated to the satisfaction of the board of managers, whose jurisdiction is to determine for itself the matter here under discussion.

Very truly yours,

D. M. KELLY,
Attorney General.