

January 9, 1934.

You have requested our opinion on the preference rights, if any, of ex-service men in the matter of public employment.

So far as pertinent here Section 5653 Revised Codes of 1921, as amended by Chapter 133, Laws of 1927, provides as follows: "In every public department, and upon all public works of the State of Montana, and of any county and city thereof, honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Philippine Insurrection, and of the late war with Germany and her allies, * * * shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved; * * *."

We think this law is a valid expression of the legislative will. Certainly, statutes almost identical with it have been subjected to attack in the courts on one constitutional ground or another and have been invariably upheld. (*Goodrich v. Mitchell*, 75 Pac. 1034; *Shaw v. City Council*, 104 N. W. 1121, 10 L. R. A. (n. s.) 825; *State v. Empe*, 204 N. W. 572; *Swantush v. City of Detroit*, 241 N. W. 265; 46 C. J. 958. See, also, *Opinion of the Justices*, 44 N. E. 625.)

The cases cited recognize the power of the legislature to give to honorably discharged veterans a preference, where the qualifications are equal, to public places filled by appointment by some officer or board of the state, county or municipal government, as a reward for past services rendered in the army or navy in time of war, and as a means of promoting patriotism.

Needless to say the veteran who would benefit by the law must apply for the vacant position and must bring the fact that he is entitled to preference to the attention of the appointing power. (*People v. Simonson*, 72 N. Y. S. 84; 46 C. J. 959.)

Where the veteran is refused the position sought, and it appears the board or officer making the appointment acted arbitrarily or capriciously or in bad faith, he may apply to the courts for

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Veterans—Ex-Service Men—Preference for Appointment and Employment.

Held: Section 5653, R. C. M., 1921, as amended by Chapter 133, Laws of 1927, validly gives honorably discharged veterans a preference, where qualifications are equal, to public positions filled by appointment.

The Veteran must apply for the position and point out his right to preference.

He may apply to the courts for redress where it appears that he was arbitrarily or capriciously or in bad faith refused the appointment.

redress. (State v. Addison, 92 Pac. 581; State v. Empe, Supra; State v. District Court, 50 Mont. 289; State v. Board of Examiners for Nurses, 52 Mont. 91; 38 C. J. 598; 46 C. J. 959.)

In conclusion, we believe the statute in question is calculated to serve a useful and beneficent purpose and should be observed whenever possible.