

Opinion No. 166.

Armed Forces—Veterans' Burial—
Militia—National Guard.

Held: A person honorably discharged from the National Guard but without a record of active service in the Army of the United States is not a person who has "served in any branch of the armed services of the United States." as that language is used in Section 4536, Revised Codes of Montana, 1935, as last amended by Chapter 25, Laws of 1945.

June 13, 1946.

The Veterans' Welfare Commission
State of Montana
Box 1702
Helena, Montana

Gentlemen:

You have inquired whether a person honorably discharged from the National Guard but without a record of active service in the Army of the United States is eligible for the veterans' burial provided by Section 4536, Revised Codes of Montana, 1935, as last amended by Chapter 25, Laws of 1945.

Section 4536, Revised Codes of Montana, 1935, as amended by Chapter 25, Laws of 1945, provides in part:

"It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged soldier, sailor or marine, whose duty it shall be to cause to be decently interred the body of any honorably discharged person, whether male or female, and including nurses, who shall have served in any branch of the armed services of the United States and who may hereafter die . . ." (Emphasis mine.)

The question resolves itself to this: Is a person who serves in the National Guard but not while on active duty as a member of the Army of the United States, serving in a branch of the armed services of the United States?

This question is answered by the federal statute:

"The National Guard of the United States is hereby established. It shall be a reserve component of the Army of the United States and shall consist of those federally recognized National Guard units, and organizations, and of the officers, warrant officers, and enlisted members of the National Guard of the several States, Territories, and the District of Columbia, who shall have been appointed, enlisted and appointed, or enlisted, as the case may be, in the National Guard of the United States, as hereinafter provided, and of such other officers and warrant officers as may be appointed therein as provided in section 111 hereof (No. 81 of this title): **Provided, That the members of the National Guard of the United States shall not be in the active service of the United States except**

when ordered thereto in accordance with law, and, in time of peace, they shall be administered, armed, uniformed, equipped, and trained in their status as the National Guard of the several States, Territories, and the District of Columbia, as provided in this act . . ." (Title 32, No. 4A, F. C. A.) (Emphasis mine.)

It is therefore my opinion a person honorably discharged from the National Guard but without a record of active service in the Army of the United States is not a person who has "served in any branch of the armed services of the United States," as that language is used in Section 4536, Revised Codes of Montana, 1936, as last amended by Chapter 25, Laws of 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General