

**Opinion No. 95.****Notice of Separation—Honorable Discharge—Veterans—County Clerk.**

**Held:** County clerk must file both the navy honorable discharge certificate and notice of separation from the United States Naval Service. Chapter 58, Laws of 1943, provides for the furnishing of certified copies of public records when necessary to all veterans and is not limited to the furnishing of certified copies to or for incompetent veterans.

November 19, 1945.

Mr. Melvin N. Hoiness  
County Attorney  
Yellowstone County  
Billings, Montana

Dear Mr. Hoiness:

You have requested my opinion relative to whether or not the navy's notice of separation should be filed with and as a part of the naval discharge.

Chapter 54, Laws of 1943, amends Section 5654, Revised Codes of Montana, 1935, to read as follows:

"It shall be the duty of the county clerk of any county of the State of Montana to record, without charge, in a book kept for that purpose the certificate of discharge of any honorably discharged person, regardless of sex, who served with the United States forces in any of its wars."

The information formerly given on the reverse side of the navy's honorable discharge certificate, and which

was present at the time of the above referred to amendment, is now contained on the notice of separation from the United States Naval Service. Therefore, the Montana Legislative Assembly intended that the information contained in the discharge certificate at the time the amendment was made was to be recorded without charge for the protection and assistance of the veterans.

The condition now is that two forms, one being termed the discharge, and the other a notice of separation, give the information formerly contained on the discharge certificate itself. The new navy discharge certificate does not contain sufficient information to protect a veteran in claims he may present, and unless the notice of separation is filed with the honorable discharge certificate, the veteran does not have a complete record and may be precluded from presentation of a claim and protection under the above referred to amendment.

The purpose of the above referred to amendment was to protect a returning veteran by recording information on his honorable discharge certificate so that the veteran would have a permanent record, and be able at any time to secure certified copies in order to present claims or to protect himself, as the case might be. The terminology utilized "certificate of discharge" must be construed as having covered the certificate of discharge as then in effect, and the fact that one branch of the service has split up its former certificate of discharge into two forms, one now termed "notice of separation from the United States Naval Service," should not nullify the purpose of this act. The purpose of this act may only be carried out by the filing for record of both the certificate of discharge and the notice of separation at the same time.

The county clerks are required only to record certificates of discharge, as above defined, of any honorably discharged person, who served with the United States forces in any of its wars.

A similar inquiry has been submitted to this office in regard to the application of Section 16 of Chapter 58, Laws of 1943, asking if the county clerk and recorder should charge a fee for certified copies to all veterans other than incompetent veterans. Section 16 of Chapter 58, supra, states:

"When a copy of any public record if required by the veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' administration, the official custodian of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf or the authorized representative of the veterans' administration with a certified copy of such record."

The wording of this section in no way restricts the furnishing, without charge, of public records to incompetent veterans, but specifies that copies of any public records, when required by the veterans' administration in determining the eligibility of any person to participate in benefits made available by the veterans' administration, are to be furnished without charge, to the applicant, or any person acting in his behalf, or the authorized representatives of the veterans' administration.

It is therefore my opinion that the county clerk, in complying with Section 5654, Revised Codes of Montana, 1935, as amended by Chapter 54, Laws of 1943, must file both the navy honorable discharge certificate and the navy notice of separation from the United States Naval Services together in order to carry out legislative intent. The information contained in each of the instruments is necessary to complete the discharge certificate.

It is further my opinion that Section 16 of Chapter 58, Laws of 1943, provides for the furnishing of certified copies of public records when necessary, to all veterans, and is not limited to the furnishing of certified copies to or for incompetent veterans as set out above.

It is also my opinion that Section 5654, Revised Codes of Montana, 1935, as amended supra, limits the required filing for record of the county clerks to certificates of discharge of any honorably discharged person, and in the case of those honorably discharged from the navy also the instrument denominated "Notice of Separation from the United States Naval Service," which contains the information formerly contained in certificates of discharge from the navy. The law does not require the county clerk to file

without charge certificates of service, for officers, citations and other papers that are not discharges, and cannot be construed as necessary and inherent parts of discharges.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General