

## Opinion No. 89

**Honorable Discharge—Merchant Marine—Fees and Tuition.**

**Held:** As the law now stands, a person who served as a member of the United States Merchant Marine during World War II is not entitled to free fees and tuition in the units of the University of Montana, under Chapter 44, Laws of 1945, since he is not honorably discharged within the meaning of that Act.

December 30, 1947

Dr. George A. Selke, Chancellor  
The University of Montana  
State Capitol  
Helena, Montana

Dear Chancellor Selke:

You have requested my opinion on the following question:

Is a person who served as a member of the United States Merchant Marine during World War II entitled to free fees and tuition in the units of the University of Montana under Chapter 44, Laws of 1945?

Insofar as it is here involved we must take the law as the legislature has given it to us. They have provided in Chapter 44, Laws of 1945:

"All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of the State of Montana at the time of their entry into said United States forces shall have free fees and tuition in any and all of the units of the University of Montana. . . ."

Three prerequisites to free fees and tuition are set out in the quoted portion of the statute:

1. Honorable discharge
2. Service with the United States forces
3. Bona fide residence in Montana at the time of entry into the United States forces.

To obtain the benefits of this law, all three conditions must be met. The merchant mariner must show that he qualifies under all the requirements.

Upon completion of service with the Merchant Marine, the War Shipping Administration issued a certificate to the person ending service, under authority of Title 50, U.S.C.A., appendix, section 1471. The certificate provides:

"This is to certify that 'Blank' has on this date completed a period of substantially continuous service in the Merchant Marine, commencing (date), within the meaning of Public Law 87, 78th Congress (57 Stat. 162), and the Rules and Regulations issued pursuant thereto by the Administrator, War Shipping Administration. This certificate is issued for the purpose of establishing reemployment rights under said Public Law.

"'Blank' is eligible to be relieved from any future consideration for classification into a class available for service under the Selective Service System."

Since this is the evidence of service in the Merchant Marine granted upon severance, the question is whether such certificate constitutes an honorable discharge within the meaning of Chapter 44, Laws of 1945.

Our Supreme Court in Valley County v. Thomas (1939) 109 Mont. 345 at 368, 97 Pac. (2d) 345, stated the principle of statutory construction which is applicable to the grant made in Chapter 44, Laws of 1945:

"It was early decided in the land grant, ferry, bridge and tax cases, that public grants, whether of property rights or other attributes of sovereignty, should be strictly construed and that no additional covenants or other limitations upon the public power are to be created by implication."

The Federal District Court of Montana in United States v. Butte A & P Ry. Co. (1930) 38 Fed. (2d) 871, 873, ruled:

"In the matter of grants of public property, any and all doubts are resolved against the grantees. Those who claim to be of the class of beneficiaries must find their warrant in express language of the granting act, and not at all in strained ingenious, and unusual interpretations and inferences."

The rule was stated in *In re Mendenhall* (1935) 10 F. Supp. 122, 123:

"In so far as liberal construction is required, as always it is extended only to those within the classes to which the statute grants a privilege." (Emphasis mine).

Upon its face the certificate recites that it is issued for the purpose of establishing reemployment rights under Title 50, U. S. C. A., appendix, section 1472. It refers only to the period of service—substantially continuous. It relieved the holder from classification under the Selective Service System. But it did nothing more. The certificate constituted no relief from a military status, but rather a termination of a contract of employment, under which Merchant Mariners served. The certificate granted merely bestowed the benefits of reemployment rights and eligibility for exemption from Selective Service classification. Thus it was not in the nature of an honorable discharge, as required by Chapter 44, Laws of 1945.

Since the certificate granted merchant mariners does not constitute an honorable discharge, as provided in Chapter 44, supra, it is unnecessary to consider the questions which arise under the other requirements of the quoted portion of Chapter 44, Laws of 1945.

It appears the legislature did not take into account in this Act, the loyal men who served in the Merchant Marine; perhaps this matter should be presented for consideration of the next legislature.

It is, therefore, my opinion that as the law now stands, a person who served as a member of the United States Merchant Marine during World War II is not entitled to free fees and tuition in the units of the University of Montana, under Chapter 44, Laws of 1945, since he is not honorably discharged within the meaning of that Act.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General