

Opinion No. 105

Montana State College—University of Montana—Veterans—World War II, Termination of Hostilities—

**Held:** 1. The exemption from fees and tuition at all units of the University of Montana provided for by Section 77-901, Revised Codes of Montana, 1947, shall apply to 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 the United States forces. Inasmuch as World War II has never been officially concluded, any person, otherwise qualified, who serves in the United States forces before a treaty of peace ends the present state of war, shall, in the absence of future action by the Montana Legislature, be eligible for the benefits provided for by the said Section 77-901, Revised Codes of Montana, 1947.

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April 19th, 1950.

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

Dear Dr. Selke:

You have requested my opinion upon a question of law arising out of the following factual situation: A student attending Montana State College has applied for exemption from the registration and incidental fees under the provisions of Section 77-901, Revised Codes of Montana, 1947. It has been determined that the student was a bona fide resident of the State of Montana at the time of his entry into military service and that he was honorably discharged. However, the dates of his service are such that the college authorities have questioned whether or not he is entitled to the benefits provided by the act. The pertinent dates are as follows: August 13, 1947, entered Naval Reserve V-6 Program; September 1, 1948, entered active service in Navy; August 31, 1949, honorably discharged from Navy.

Section 77-901, Revised Codes of Montana, 1947, was originally enacted as Chapter 194 of the Session Laws of 1943 and as amended by Section 1 of Chapter 44 of the Session Laws of 1945 is as follows:

"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, including the law and medical departments, and for extra studies in any of the units of the University of Montana, provided, however, that the provisions of this act shall not apply to persons who qualify under the provisions of the "servicemen's readjustment act of 1944," being "public law 346 of the seventy-eighth Congress, Chapter 268, second session" and "public law 16 of the seventy-eighth Congress, Chapter 22, first session," and all acts supplementary and amendatory thereof."

The language of the above quoted statute extends benefits to persons who served with the United States forces in a war. The question at hand is whether one who entered a reserve program on August 13th, 1947, and entered upon active service on September 1st, 1948, can be deemed to have served in a war.

As an aid in the resolution of the question presented herein I deem it advisable to briefly review other veteran's legislation and to examine the provisions of such statutes with reference to eligibility requirements for the benefits provided.

Chapter 22 of the Montana Session Laws of 1949 provides for a World War II Orphans' Educational Fund which shall be used to pay for the tuition, matriculation, board, room rent, books and other sup-

plies of individuals attending any of the units of the Greater University of Montana who are children of persons who served in World War II and had a legal residence in Montana at the time of entry into service and who were either killed in action between September 16th, 1940, and September 2nd, 1946, or whose death resulted from a service-incurred disability contracted between the above specified dates.

Chapter 26 of the Montana Session Laws of 1949 provides for the preference of veterans in employment in every public department and upon all public works of the State of Montana, and of any county and city thereof and defined the term "veterans of World War II" to mean men and women who served in the armed forces of the United States between September 16, 1940, and September 2nd, 1945, and who have been separated from the service under conditions other than dishonorable.

On December 31st, 1946, the President of the United States issued Presidential Proclamation No. 2714, proclaiming the cessation of hostilities of World War II, effective twelve o'clock noon, December 31st, 1946. The Proclamation stated that although a state of war still existed it was in the public interest to declare that hostilities had terminated.

Section 3 of Chapter 327 of the Public Laws of the 1st Session of the 80th Congress of the United States, approved July 25th, 1947, provides as follows in part:

"In the interpretation of the following statutory provisions, the date when this joint resolution becomes effective shall be deemed to be the date of the termination of any state of war heretofore declared by the Congress and of the national emergencies proclaimed by the President on September 8, 1939, and on May 27, 1941; . . ."

The remainder of Section 3 of Chapter 327, *supra*, consists of an enumeration of statutes, including among many others the Act of March 24, 1943 (57 Stat. 43, Chapter 22) as amended; and Section 400 (b) of the Act of June 22, 1944 (58 Stat. 288), as amended, except paragraph 12 of such section. These two acts are Public Law 16 of the seventy-eighth Congress, Chapter 22, first session, and that portion of the Servicemen's Readjustment Act of 1944 relating to educational benefits.

Public Law 16, *supra*, states that the benefits provided for shall be allowed to any person who served in the active military or naval service at any time after December 6, 1941, and prior to the termination of the present war.

It can be seen from the foregoing review of statutes that there has been little consistency in the dates which have been set as an ending point for the eligibility for benefits provided to veterans of World War II. Certainly no one date has been agreed upon so uniformly as to make it reasonable to arbitrarily set that date and rule that persons applying for the benefits provided for by Section 77-901, Revised Codes

of Montana, 1947, shall have been in the service of the United States before such date.

Section 77-901, *supra*, speaks of service in any war and the United States is still technically in a state of war even though the hostilities are over. The war will not be officially over until the treaty of peace is signed, and at this date it does not appear that such treaty is imminent.

Since the war is not officially over and Section 77-901 extends the exemption from payment of fees and tuition to all persons who served in the war, it would do violence to the plain and unambiguous language of the statute to rule that persons serving in the United States forces after the termination of hostilities and before the treaty of peace were ineligible for the educational benefits provided for. The only justifiable interpretation is that the provisions of Section 77-901 shall apply to any otherwise qualified person who serves in the United States forces before a treaty of peace is signed.

It may be well to apprise the legislative assembly of the problem under consideration in this opinion, and if the legislature so desired, legislation could be enacted providing that in the interpretation of Section 77-901, some certain specified date should be considered as the termination of World War II.

It is my opinion that the exemption from fees and tuition at all units of the University of Montana provided for by Section 77-901, Revised Codes of Montana, 1947, shall apply to all honorably discharged persons who served with the United States forces in any of its wars and who were bonafide residents of the State of Montana at the time of their entry into the United States forces. Inasmuch as World War II has never been officially concluded, any person otherwise qualified who serves in the United States forces before a treaty of peace ends the present state of war shall, in the absence of future action by the Montana legislature, be eligible for the benefits provided for by said Section 77-901, Revised Codes of Montana, 1947.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.