

Opinion No. 78

**Veterans—Educational Benefits—War
—Korean Conflict—Chapter 194, Laws
of 1943—Chapter 44, Laws of 1945.**

Held: The intent of the legislature in enacting the law extending educational benefits to all eligible veterans who served honorably in the United States in any of its wars, is construed as extending the said benefits to veterans of the Korean Conflict, which although not technically declared a war, contains all of the attributes of a war as envisaged by the legislature. Educational benefits as provided by state law may properly be extended to eligible veterans of the Korean Conflict.

April 25, 1952.

Mr. E. J. Callaghan, Director
Veterans Welfare Commission
State of Montana
Helena, Montana

Dear Mr. Callaghan:

You have recently requested my opinion as to whether veterans of the Korean Conflict are entitled to the benefits as provided by Chapter 194, Laws of 1943, as amended by Chapter 44, Laws of 1945. Section 1 of this Act, as amended, reads:

“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." (emphasis added)

The answer to your inquiry depends upon the interpretation to be given the above emphasized words. It is evident from the very language of the act that the intent of the legislature was to provide educational benefits to eligible veterans, however, it is noteworthy that the provisions thereof were not limited to veterans of World War II, on the contrary the act expressly states that the benefits will accrue to "all honorably discharged persons who served with the United States forces in any of its wars . . ."

Is the present Korean conflict a "war" as was contemplated by the legislature at the time of the original enactment of Chapter 194, Laws of 1943, and at the time of the subsequent amendment as contained in Chapter 44, Laws of 1945? In construing a statute, the intention of the legislature is the controlling consideration, and, in the construction thereof, courts may look to the history of the times and the cause or necessity influencing the passage of the Act. (*Lerch v. Missoula Buick & Title Co.*, 45 Mont. 314, 123 Pac. 25; *Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 235 Pac. 422; *State ex rel. Williams v. Kamp*, 106 Mont. 444, 78 Pac. (2d) 585). At the period the Act in question was passed, this country and the citizens of Montana in the armed forces were engaged in a struggle of force against the force and forces of enemy nations. Through an act of Congress this struggle was designated a war and specifically named "World War II". The present struggle in Korea of force against force involves all of the elements of a war with the sole exception that the Congress of the United States has not declared the same to be

a war. It has been designated a conflict, and a police action.

Realistically war may be defined as hostile contentions by means of armed forces, carried on between nations, states or rulers. (*Gillow v. Kiely*, D. C. N. Y., 44 F. (2d) 227, 233). It means and intends the destruction of life and property. (*The Ambrose Light*, 25 F. 408). It was held in *Arce v. State*, Tex., 202 S. W. 951, L. R. A. 1918 E. 358, that in the battle of San Ygnacio between United States troops led by General Pershing and expeditionary forces of Mexico commanded by officers of the Carranza de facto government, where soldiers engaged in combat were killed, wounded and captured, that a state of "war" existed. The court in holding such cited an official opinion issued by Brig. Gen. Enoch H. Crowder, Judge advocate, U. S. A. as follows:

"It is thus apparent that under the law there need be no formal declaration of war but that under the definition of Vattel a state of war exists so far as concerns the operations of the United States troops in Mexico by reason of the fact that the United States is prosecuting its rights by force of arms and in a manner in which warfare is usually conducted. The statutes which are operative only during a period of war have been interpreted as relating to a condition and not a theory. * * * I am therefore of the opinion that the actual conditions under which the field operations in Mexico are being conducted are those of actual war. That within the field of operations of the expeditionary force in Mexico it is a time of war within the meaning of the fifty-eighth article of war."

In the case of *Hamilton v. McClaghrey*, 136 F. 445, the court stated:

"Mr. Justice Grier, delivering the opinion in *Prize Cases*, 67 U. S. (2 Black) 666, 17 L. Ed. 459, says: "War has been well defined to be that state in which a nation prosecutes its right by force." In the present case, at no time was there any formal declaration of war by the political department of this government against either the government of China or the "Boxer" element of the government. A formal declaration of war,

however, is unnecessary to constitute a condition of war. * * *

The court then held that a condition of war existed in China within the spirit and intent of the fifty-eighth article of war.

Recurring to the history of the time when Chapter 194, Laws of 1943, was enacted to determine the intent of the legislature, it was their intent to benefit those citizen veterans who had served during time of war. I cannot limit the construction of that law so as to exclude those veterans who have served their country honorably in the present Korean conflict, which is at least a condition of war.

It is therefore, my opinion that the intent of the legislature was to provide educational benefits to all eligible veterans who served in the United States forces in any of its wars, and that the present Korean conflict, although not technically declared a war, has all the attributes of a war as contemplated by the legislature. It follows, of course, and it is my opinion, that educational benefits should be extended to eligible veterans of the Korean conflict.

Very truly yours,
ARNOLD H. OLSEN
Attorney General