

Guard Squadron are eligible for the uniform allowance which is paid annually on the first day of April of each year even though the Squadron has been alerted for Federal Service as of April 1, 1951.

March 21, 1951.

S. H. Mitchell
Brigadier General, AGC, Mont. NG
The Adjutant General
Helena, Montana

Dear General Mitchell:

Your letter of February 9, to the State Board of Examiners has been forwarded to me for my opinion on the question of whether the commissioned officers of the Montana Air National Guard Squadron are eligible for the uniform allowance paid annually on the first day of April in each year in view of the fact that the Squadron has been alerted for Federal Service as of April 1, 1951.

I believe that a study of the past and present law on this subject reveals the answer. The first law in Montana authorizing a uniform allowance for officers of the militia was Section 79, Chapter 145, Session Laws of 1911, which read as follows:

"To assist in providing the necessary uniform and equipment each commissioned officer shall receive, after his first years service as such, an allowance of forty dollars, and each year thereafter such amount, not exceeding the sum of twenty-five dollars, as he shall have expended; provided that he has performed seventy-five percent of all ordered duty, and provided further that each mounted officer shall receive an additional sum of ten dollars (\$10.00) annually, but before any money is paid to any such officer he shall furnish vouchers to the Adjutant General showing that such expenditures have been made, and all such claims shall be audited and paid as other claims against the State. (Emphasis supplied)

The present law is Section 77-148, Revised Codes of Montana, 1947, which reads as follows:

"77-148. (1370) Uniform Allowance of Officers. Every commissioned offi-

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cer of the organized militia of Montana shall, within sixty days from the date of the order whereby he shall have been appointed, provide himself, at his own expense, with the arms, uniforms, and equipments prescribed by the governor for his rank and assignment.

There shall be audited and paid annually on the first day of April in each year, to each properly armed, uniformed, and equipped officer of the active service of the organized militia of Montana, a uniform allowance of thirty-five dollars for dismounted officers and fifty dollars for mounted officers."

The 1911 law shows that it was the intention of the Legislature to assist in providing the necessary uniforms, but that before an officer could receive this assistance he had to furnish his own uniform for the first year, at his own expense, give a full year's service during which he had to perform seventy-five per cent of all ordered duty, and show that he had expended, for uniforms or equipment, the amount to be received from the State. See in this connection Volume 4, Opinions of the Attorney General at page 176.

All of this indicates that the uniform allowance had to be earned. In other words, payment was made after certain conditions had been met, and was in the nature of a reimbursement. The allowance was not granted first with the conditions being complied with later.

Turning to Section 77-148, supra, it is to be noted that initially every commissioned officer of the organized militia must provide his uniform at his own expense, and that thereafter, annually on the first day of April, the officer shall receive a certain uniform allowance. Even though the present law does not contain as many conditions that have to be met in order to be eligible for the uniform allowance as did the 1911 law, it is my opinion that the present uniform allowance is also in the nature of a reimbursement.

Applying the above to your question it follows that the uniform allowance payment to be made on April 1, 1951, is for the past year and not for the ensuing year. Hence, the fact that the Squadron has been alerted for Federal Service as of April 1, 1951, does not affect the officers eligibility for the

uniform allowance payment even though the statute does provide for payment on April 1.

It is my opinion that the commissioned officers of the Montana Air National Guard Squadron are eligible for the uniform allowance which is paid annually on the first day of April in each year even though the Squadron has been alerted for Federal Service as of April 1, 1951.

Very truly yours,
ARNOLD H. OLSEN
Attorney General