

March 7, 1956

Honorable John J. Holmes
 State Auditor and Ex-Officio
 Commissioner of Insurance
 State Capitol Building
 Helena, Montana

Dear Mr. Holmes:

This will acknowledge your letter of January 27, 1956, wherein you requested an official opinion relative to the veterans preference laws pertaining to public employment.

In your letter of request, you point out that Section 11-1905, R.C.M., 1947, as amended by Chapter 29, Laws of 1955, which was approved February 17, 1955, has reduced the age qualification for a fireman from 45 years of age, to 31 years of age, at the time of original appointment. Section 11-1905, R.C.M., 1947, as amended, reads as follows:

“Qualifications Of Firemen. The qualifications of firemen shall be that they shall be qualified voters of the city or town, not, at the time of original appointment, over thirty-one (31) years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty.”

You further point out that a veteran over the age of 31, with a non-service connected disability which would not incapacitate the veteran from performing the rigorous duties of a fireman, and several non-veterans under the age of 31, have applied for the position of fireman on a municipal fire department.

Your specific question is whether Section 11-1905, R.C.M., 1947, as amended by Chapter 29, Laws of 1955, supra, would prevent such disabled veteran, over the age of 31, from receiving preference under Section 77-501, R.C.M., 1947, as amended by Chapter 120, Laws of 1955, in obtaining public employment on a fire department.

Opinion No. 64

**Disabled Veterans —
 Veterans Preference Act—
 Public Employment—
 Firemen Qualifications — Statutes**

HELD: A veteran applicant for the position on the fire department, over the age of 31, who has a non-service connected disability which does not incapacitate the veteran from performing the rigorous duties of a fireman, is not prohibited nor restricted by Chapter 29, Laws of 1955, from being appointed as a fireman on the municipal fire department, and further, must be given preference in appointment and employment.

Section 77-501, R.C.M., 1947, as amended by Chapter 26, Laws of 1949, and by Chapter 120, Laws of 1955, which was approved on March 2, 1955, provides in part as follows:

"77-501. The purpose of this act is to provide for preference of veterans, their unremarried widows, and dependents, and certain disabled civilians in appointment and employment in every public department and upon all public works of the State of Montana and of any county and city thereof.

* * *

(2) Preference To Appointment And Employment. **In every public department and upon all public works of the State of Montana and of any county or city thereof, the following shall be preferred for appointment and employment: veterans, their wives and widows, and the other dependents of disabled veterans; disabled civilians recommended by the state rehabilitation bureau;**

Provided that age, loss of limb, or other physical impairment which does not in fact incapacitate, shall not be deemed to disqualify any disabled veteran or any such disabled civilian provided he or she possesses the business capacity, competency, and education to discharge the duties of the position involved;

Provided further that those of the above described veterans who have disabilities admitted by the veterans administration of the United States to have been incurred in service in any of said wars or military expeditions or police action, where such disabilities do not in fact incapacitate, shall be given preference in employment over other veterans." (Emphasis Supplied)

By reading the "purpose" of Chapter 120, Laws of 1955, and the definition of the term "veterans" as defined in said Chapter, it is clear that veterans preference must be given to all those veterans who were discharged from the service of their country under conditions other than

dishonorable, in public employment. This expressed view gives consideration to the intention of the legislature and public policy of rewarding those persons who have sacrificed years of their lives in the protection of our republic at a great cost to the advancement of their personal careers.

By reference to Chapter 120, Laws of 1955, as quoted supra, commonly called the Veterans Preference Act, it is clear that the age qualification, as required by Chapter 29, Laws of 1955, is specifically waived and not applicable in those cases where a veteran has a disability (either non-service or service connected) which disability does not in fact incapacitate the veteran from discharging the duties of the position involved. Thus, in the instant situation, wherein the veteran applicant is over the age of 31 and the veteran has a non-service connected disability which would not incapacitate the veteran from performing the rigorous duties of a fireman, the age qualification of 31 years of age at the time of the original appointment to the fire department is waived and is not applicable. Further, following the express direction of the statutes, said veteran must be given preference in appointment and employment.

It is therefore my opinion that a veteran applicant for the position on the fire department, over the age of 31, who has a non-service connected disability which does not incapacitate the veteran from performing the rigorous duties of a fireman is not prohibited nor restricted by Chapter 29, Laws of 1955, from being appointed as a fireman on the municipal fire department, and further, must be given preference in appointment and employment.

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