

OPINION
67-338

October 5, 1967 (OPINION)

Mr. Lloyd Zander

Commissioner

Veterans Affairs

RE: Veterans - Scholarships - Eligibility

In your letter of September 21, 1967, relating to Senate Bill 380 there are two areas in which you have questions and request clarification. These areas are:

1. To be eligible for benefits must the veteran have served one hundred and eighty days in the armed services after August 5, 1964.
2. If the veteran is eligible for the benefits, should the computation of benefits include that period of service which occurred prior to August 5, 1964?

In reference to the first question the following parts of Senate Bill 380, chapter 287 of the 1967 Session Laws, is relevant:

EDUCATIONAL ASSISTANCE TO NORTH DAKOTA VETERANS. An Act to provide educational assistance to the North Dakota veterans who have served in the armed forces of the United States for a period of more than one hundred eighty days from and after August 5, 1964, and providing an appropriation therefor."

"Section 1. DEFINITIONS. As used in this Act:

1. 'Period of Service' means any service of any veteran who served on active duty in the armed services of the United States for more than one hundred eighty days, which active duty time occurred after August 5, 1964, or who entered and was released from active duty after August 5, 1964, for a service connected disability prior to serving more than one hundred eighty days. (emphasis supplied)
2. 'Veteran' means a man or woman who served honorably and faithfully in the armed services of the United States for the period of service set forth in subsection 1 of section 1 of this Act * * *."

The language stated above does not lend itself to interpretation. It is clear and unambiguous. The Act is said to provide assistance to veterans who have served one hundred eighty days from and after August 5, 1964, and subsection 1 of section 1 states that "period of service" means one who served on active duty, "which active duty time occurred after August 5, 1964." Subsection 2 further states that to be considered a "veteran" under this Act you must meet the requirements of section 1. As stated previously, this language

leaves no room for interpretation as to what was intended by the legislature and the rule of construction in cases such as this is stated in 83 C.J.S. 577:

Where the language of a statute is plain and unambiguous, there is no occasion for construction, and this is true even though other meanings of the language employed could be found. The court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, or assume a legislative intent in plain contradiction to words used by the legislature, and need not search for the reasons which prompted the legislature to enact the statute.

An unambiguous state must be given effect according to its plain and obvious meaning, and such unambiguous statute cannot be extended beyond its plain and obvious meaning, or restricted to, or confined in operation within, narrower limits or bounds than manifestly intended by the legislature, because of some supposed policy of the law, or because the legislature did not use proper words to express its meaning, otherwise the court would be assuming legislative authority. In construing a statute expressed in reasonably clear language, the court should neither read in nor read out; and where a law is plain, unambiguous, and explicit in its terms, the exceptions are few indeed that authorize a court to read something into it that the law writers did not themselves put therein* * *."

Looking at the above quoted statutes and the quotation from C.J.S. it can be seen that this office cannot, no matter how desirable it may be, interpret these statutes in any way except as they were written by the legislature.

As to the second question the relevant material is section 5 of Senate Bill 380, chapter 287 of the 1967 Session Laws. It states:

Section 5. PERIOD OF TIME AID GIVEN - MAXIMUM - TIME LIMITATIONS WHEN BENEFITS ARE TO BE USED. Each eligible veteran pursuant to the provisions of this Act shall be entitled to receive the benefits of this Act for a period of one month for each month or fraction of a month such veteran was on active duty with the armed forces of the United States, which period, however, shall not exceed a total of thirty-six months of benefits. * * *."

The words "eligible veteran" as found in section 5 evidences an intent that the legislature used the term "veteran" in a sense different from the statutory definition set out earlier herein. The modification of the term "veteran" by the term "eligible" imparts a new meaning to the term "veteran" and makes such term subject to construction, and resort to the remaining provisions of section 5 of the Act is permissible to determine the true meaning of such term.

This statute provides that if you find the veteran is eligible for benefits he is entitled to one month benefit for each month served on active duty. It does not limit the amount of benefits to be received by the veteran to the period served after August 5, 1964.

Therefore, it is our opinion that to be eligible for benefits the veteran must have served on active duty in the armed services for more than one hundred eighty-days after August 5, 1964, and once it is determined that the veteran is eligible for the benefits, that period of time which was served prior to August 5, 1964, should be considered in computing the benefits.

This opinion supersedes the letter of July 10, 1967, issued by this office to Mr. Zander.

HELGI JOHANNESON

Attorney General