

**OPINION
75-63**

July 9, 1975 (OPINION)

Mr. Lloyd F. Zander
Commissioner of Veterans Affairs
Department of Veterans Affairs
1017 Fourth Avenue North
P.O. Box 1287
Fargo, ND 58102

Dear Mr. Zander:

This is in response to your letter of 24 June 1975 with regard to veterans' employment preferences.

Your question is stated as:

"Is employment preference for veterans, as set forth in chapter 37-19.1 of the North Dakota Century Code applicable to situations involving a lateral transfer within an agency or applying for a promotional transfer within an agency?"

You state that the question refers to both those agencies that do and do not maintain a register of persons eligible for employment.

Under the federal statutes, Part II Employees, 5 U.S.C.A. 2101 to 5 U.S.C.A. 4506 and the rules enacted thereunder there is extensive regulation both as to "transfer" and to preference eligibles, including veterans and disabled veterans.

This state's statutes both with regard to its "personnel system" including the state "merit system", and with regard to veterans' preferences are considerably less extensive and do not deal with transfers as such. Thus the language of the state statutes does not refer to transfers with or without regard to veterans' preferences.

Thus the basic provision for such preference contained in subsection 1 of section 37-19.1-02 of the 1975 Supplement to the North Dakota Century Code states that:

"Veterans who are North Dakota residents shall be entitled to preference over all other applicants, in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment."

The exception to the general rule as to preference as specified in subsections 1, 2 and 3 of said section 37-19.1-02 with regard to agencies maintaining lists of persons eligible for employment like subsection 1, also refers to "applicants", rather than "transferees."

Thus we would conclude that whether or not the preferences specified in chapter 37-19.1 of the North Dakota Century Code applied to a prospective transferee for either a promotional or lateral transfer would be dependent upon whether such prospective transferee could be

considered an applicant, within the meaning of that term as used in said chapter 37-19.1.

Webster's New Twentieth Century Dictionary, Unabridged, Second Edition defines applicant as:

"One who applies or makes application; as for employment, help, etc.

Petitioner; as, an applicant for charity."

On such basis, we see no distinction between a person already employed by an agency who applies for a different job therein, whether of similar status, higher status or lower status, and a person not already employed by such agency applying for the same position, and would thus conclude that the preferences specified in chapter 37-19.1 would apply to requested lateral or promotional transfers within the agency.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General