

**OPINION
45-306**

February 5, 1945 (OPINION)

VETERANS

RE: Appointments During Their Absence While in the Armed Forces

I understand that K.C. Lauster is now the acting director of the division of sanitary engineering in the state department of health. I further understand that he has asked to be designated as the director of the division of sanitary engineering. I also understand that Major Lloyd Clark, now serving in the United States Army, was the director of the division of sanitary engineering at the time he entered the United States Army.

You want to know whether, under the circumstances, as related above, you have the authority to appoint K.C. Lauster as director of the division of sanitary engineering.

Section 37-0125 of the North Dakota Revised Code of 1943 provides:

All officers and employees of this state or of a political subdivision thereof, who:

1. Are members of the national guard;
2. Are members of the officers' reserve corps of the United States of America;
3. Shall be subject to call or induction into the federal service by the president of the United States; or
4. Shall volunteer for such service,

When ordered by proper authority to active noncivilian service, shall be entitled to a leave of absence from such civil employment for the period of such active service without loss of status or efficiency rating and if they have been in the continuous employ thereof for ninety days immediately preceding, without loss of pay during the first thirty days of such leave of absence."

It will thus appear that Major Lloyd Clark is entitled to return as director of the division of sanitary engineering in the department of health, without loss of status or efficiency rating. Since he was director at the time he entered the service of the United States and is entitled to return to his employment upon the completion of his service with the United States or on discharge, without loss of status, he is really the director of the division of

sanitary engineering on leave of absence, and it would, therefore, appear to us that you would have no authority to appoint another director until it is determined that he will not seek or does not wish to return to this employment upon his completion of service or discharge.

NELS G. JOHNSON
Attorney General