

OPINION
46-301

March 20, 1946 (OPINION)

VETERANS

RE: Preference for Employment

This office is in receipt of your letter of March 11 in which you propound the following questions:

1. One part of the statute provides that State employees who served in the armed forces are entitled to pay during the first thirty days of a military leave of absence. Is this provision retroactive insofar as those who enlisted or volunteered prior to the passage of the act is concerned or would it be applicable only in the instances where the person volunteered or enlisted following the passage of the law?
2. Assume that Mr. A holding the rank of Associate Professor and Head of a Department in an institution of higher learning volunteered in the Army in 1942. Mr. B was employed as a replacement as Head of the Department and will continue in the employ of the institution. When Mr. A returns, is the institution obliged to place him in his former position as Head of the Department and Associate Professor or would an offer of a position of Associate Professor (excluding the Department Head title) satisfy the requirements of Chapter 239?"

Answering your first question, I beg to advise that section 1 of chapter 239 of the Session Laws of 1945 is a reenactment of section 51 of chapter 221 of the Session Laws of 1941. This chapter was an emergency measure and became effective on March 12, 1941; consequently, any person who entered military service after the effective date of said act is entitled to the privileges thereunder.

Your second question, however, presents a more difficult problem. First, what is implied by the following language, "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 * * *?"

Referring to question no. 2, undoubtedly Mr. A considers that being the head of a department was a "status" and that status implies not only that he is reinstated to a position but that it must be of equal dignity and standing with the position he had when inducted into the armed forces of the United States.

The writer was assistant attorney general at the time chapter 221 of the Session Laws of 1941 was enacted, and some of the members of the committee on military affairs who sponsored the bill discussed it with me--particularly section 21. As I recall, it was their intention that where a person holding a position with the state was

inducted into military service, he should, upon return, be entitled to the same position or one of equal rank and standing.

The only legal definition we can find which would probably be applicable here is to the effect that "status" means standing, state, or condition, and as applied to a claim can mean nothing more. Reynolds kv. Pennsylvania Oil Co. 89 P. 610, 150 Cal. 629.

Webster's New International Dictionary defines "status" as follows:
"1. Law. The condition of a person by which the nature of his legal personality and his legal capacities are determined, and therefore the nature of the legal relations to the state or to other persons into which he may enter, including, as commonly used, a person's condition arising out of age (as infancy or wardship), sex (as marriage), mental incapacity, age (as infancy or wardship), sex (as marriage), mental incapacity, crime, alienage, or public station. 2. a. State or condition of a person. b. Position of affairs. 3. Finance. The period or time for which an annuity is limited to be paid as determined by the continuance or permanence of an assigned thing or things. * * *"

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