

March (1954)  
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**ARIZONA ATTORNEY GENERAL**

March 22, 1954  
Letter Opinion  
No. 54-70-L

Brigadier General Nils O. Ohman  
Commander, 36th Air Division  
Davis-Monthan Air Force Base  
Tucson, Arizona

Re: Arizona Law pertaining to Firearms.

Dear General Ohman:

This is in reply to your letter of March 16, 1954, in which you ask our opinion as to the legality of key personnel of your command carrying concealed weapons while outside the limits of Davis-Monthan Air Force Base.

The basic principle concerning firearms in the State of Arizona is found in Article 2, Section 26, Constitution of Arizona, which reads as follows:

"§26. (Right to bear arms) -- The right of the individual citizen to bear arms in defense of himself or the state shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men."

The statutes dealing with firearms are found in Sections 43-2201, et. seq. A.C.A., 1939, as amended, the pertinent parts of which may be summarized as follows:

Section 43-2201, A.C.A., 1939. No person may carry a firearm concealed or unconcealed with intent to assault another.

Section 43-2204, A.C.A., 1939. No person may discharge a firearm in any store, public or business house. No person may discharge a firearm in any city or town except in necessary self-defense.

Section 43-2205, A.C.A., 1939. No person, except

a peace officer in actual service in discharge of his duty, may carry any type of concealed weapon (weapon as used in these sections includes knives other than pocket knives).

Section 43-2206, A.C.A., 1939. No person may carry a weapon, concealed or unconcealed, into any building where persons are assembled for public, religious, political, educational, social, or scientific purposes or for amusement.

The foregoing material briefly summarizes the Law of Arizona as it pertains to firearms. The most significant section as concerns your problem at Davis-Monthan Air Force Base is Section 43-2205 (above), which is an absolute prohibition against the carrying of concealed weapons by any person except peace officers.

There is no prohibition, however, with the exceptions above outlined, against any person carrying an unconcealed weapon in the State of Arizona. This state does not require permits to carry unconcealed weapons, nor does it require the registration thereof.

It is the opinion of the Department of Law, therefore, in accordance with the foregoing constitutional and statutory mandates, that personnel of the Davis-Monthan Air Force Base may, while off the base, carry unconcealed but not concealed weapons.

If we may be of further assistance in this or any other matter, do not hesitate to call upon us.

Yours very sincerely,

R. DEAN BURCH  
Special Assistant to  
The Attorney General

RDB:mp

54-70-L.

Pickrell  
Hunter  
Thompson

D. K. Calusa  
J. M.

May 12, 1954

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**ARIZONA ATTORNEY GENERAL**

Mr. James J. Murphy, Jr.  
Director, Veterans' Affairs  
Arizona Veterans' Service Commission  
427 Arizona State Building

Dear Mr. Murphy:

We enclose herewith our opinion written pursuant to your request of April 26, 1954, concerning the status of the Korean conflict as a war, under the terms of Article 9, Section 2 of the Constitution of Arizona.

Very truly yours,

ROBERT W. PICKRELL  
Special Assistant to  
The Attorney General

RWP:LR  
encl

(Opinion No. 54-70)

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ARIZONA ATTORNEY GENERAL

May 12, 1954  
Opinion No. 54-70

TO: Mr. James J. Murphy, Jr.  
Director, Veterans' Affairs  
Arizona Veterans' Service Commission  
427 Arizona State Building  
Phoenix, Arizona

RE: Article 9, Section 2, Constitution  
of Arizona.

QUESTIONS: (1) Would service during the recent Korean conflict be considered as war service within the language of Article 9, Section 2, Constitution of Arizona, "provided, that no such exemption shall be made for such persons other than widows unless they shall have served at least sixty days in the military or naval service of the United States during time of war"?

(2) If so, what are the dates which constitute Korean service?

The problem posed by your first question has recently been considered by several courts of other jurisdictions from an insurance standpoint. The cases which we have been able to find have arisen out of the double indemnity clauses of various insurance policies which contain provisions of various wording to the general premise that such double indemnity was payable if the accidental death does not result from military or naval service in time of war. At the outset, let us acknowledge that these cases to which we will refer are interpretations of contracts which were subject to the party's wishes at the time the contracts were drawn in contrast to our present problem concerning a constitutional tax-exemption provision. However, it is our feeling that these cases should be given great consideration because of the fact that they define the almost identical wording of our Constitution, "time of war".

The cases to which we refer and which we will now discuss have arrived at two opposite views, which fact makes the final answer to our problem very difficult. Let us first discuss those cases which hold that the Korean conflict was not a war; *BELEY v. PENNSYLVANIA*

MUTUAL LIFE INSURANCE CO., 95 Atl. 2d 202; HARDING v. PENNSYLVANIA MUTUAL LIFE INSURANCE CO., 95 Atl. 2d 221; WESTERN RESERVE LIFE INSURANCE CO. v. MEADOWS, 256 S.W. 2d 674. The facts of these cases are identical insofar as the terms of the insurance policies are concerned. In the BELEY case, the deceased was killed in action in Korea on March 7, 1951; the deceased in the HARDING case met death in a railway accident while enroute to camp for military training on September 11, 1950; MEADOWS met death in a crash of a military plane on August 23, 1951. The final result of these decisions was to hold that the double indemnity was payable by the insurance carrier.

The foregoing line of authorities base the final conclusion in general on the fact that Congress never did act to declare war in connection with the Korean conflict and that war is a word with a political and not a judicial meaning, thus requiring the court to look to the declaration of war only, and that the parties to such an insurance contract had a right to have a definite meaning placed on the words of the contract. The general philosophy of this view can be found on page 205 of the BELEY case:

"\* \* \* Who, then, would be the tribunal to decide whether such an undeclared conflict did or did not amount to a 'war,'-- a jury, a court? What would be the criterion of decision,--the number of troops involved, the number of casualties, the duration of the hostilities? If, for example, Beley had lost his life in action in Korea a day or two after our troops first arrived there, would a war have then existed or would it not have become a war until the magnitude of the struggle finally revealed itself and the casualty lists became so distressingly long and frequent?"

We have found two cases which hold to the opposite view to the effect that the Korean conflict was a war within the words herein involved, they are: WEISSMAN v. METROPOLITAN LIFE INSURANCE CO., 112 Fed. Sup. 420 and STANSBERRY v. AETNA LIFE INSURANCE CO., 98 Atl. 2d 134. Here again, in these cases, the insurance provisions in connection with double indemnity were the same as the foregoing cases. WEISSMAN was killed by enemy fire in Korea on August 31, 1951. STANSBERRY was killed by a mine explosion on March 28, 1952 in Korea. In opposition to the view stated in the BELEY case, these latter cases ignore the idea that Congress must have declared war before a war could exist within the meaning of these contracts. In effect they hold that the situation and circumstances will govern even though Congress has not acted. This view is best stated in the WEISSMAN

case at page 422 as follows:

"\* \* \* However long may have been its previous conception, it nevertheless sprung forth suddenly from the parent brain, a Minerva in the full panoply of war. The President was bound to meet in the shape it presented itself, without waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact."

and again on page 425:

"We doubt very much if there is any question in the minds of the majority of the people of this country that the conflict now raging in Korea can be anything but war. Certainly those who have been called upon to suffer injury and maiming, or to sacrifice their lives, would be unanimous in their opinion that this is war--war in all of its horrible aspects. And the families deprived of the love and companionship of their sons, brothers, husbands and fathers--who meet each day with hope and fear for their boys and men in Korea--and the widows and orphans of the men who died there--certainly they are aware of the stark reality that the Korea conflict is war."

We feel that these cases furnish us with a fairly complete picture of both sides, however, it would seem that the view held that the Korean conflict was not a war, while being very logical in many respects, ignores the underlined reasoning behind the double indemnity provisions of the various insurance contracts and likewise would ignore the purposes of Article 9, Section 2 of the Arizona Constitution concerning veterans' exemptions. As the court points out in taking the stand that the Korean conflict was a war, the company intended "time of war" to mean an armed conflict during the time the insured would be subject to a greater risk than the company cared to insure. This greater risk develops out of these facts and circumstances of armed conflict and has nothing to do with whether or not Congress has formally declared war.

The people of the state of Arizona, in passing Article 9, Section 2 of our Constitution, intended that exemptions be given to those who serve during the time of great danger and risk and here again, the situation giving rise to this great danger and risk existed in Korea despite the fact that Congress had not declared war.

In answer to your first question, it is the opinion of this office that the Korean conflict must be considered a war within the language of Article 9, Section 2, Constitution of Arizona.

Your second question poses a most difficult problem in light of the fact that there was no formal declaration of war or formal treaty in regard to the Korean conflict. In the past, various courts of the United States have held that the time of war should be determined by the formal declaration, and the formal treaty which followed the cessation of hostilities. However, as we have noted above in regard to the Korean conflict, no formal declaration or treaty was made.

In view of these facts, it is our opinion that Korean service within the meaning of Article 9, Section 2, should be limited to the actual dates of fighting in Korea. So far as we can determine, the Korean conflict began on June 24, 1950 and ended on July 27, 1953. Considering the fact that further hostilities have not resumed, and together with the fact that Congress never declared a state of war to exist, it is the opinion of this office that the time of war, in connection with the Korean conflict, would have to be between those dates.

ROSS F. JONES  
The Attorney General

ROBERT W. PICKRELL  
Special Assistant to  
The Attorney General