

A-3-12

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## ARIZONA ATTORNEY GENERAL

January 21, 1960

The Honorable Laurance T. Wren  
County Attorney, Coconino County  
Flagstaff, Arizona

Dear Mr. Wren:

GOODFARB	
I Concur	LES HARDY
I Concur	FRANK GIBSON
C.C. THAD MOORE	

Receipt is acknowledged of your letter of January 18, in which you ask our office the following questions:

1. Does the statement "honorably discharged soldier", as appears in subsection 6 of Section 42-271, A.R.S., and the term "discharge papers", as appears in Section 42-273, A.R.S., require a formal and complete discharge from the armed forces of the United States by a claimant for exemption from property taxation?
2. Can a person otherwise meeting the requirements of the statutes for claiming a veteran's exemption who is now in the military service of the United States but who has never been honorably discharged from the armed forces claim an exemption from property taxation on the basis of a report of separation and a certificate of service as specified on government form 93-96, 1 November, 1947?

It is the opinion of this office that the answer to both questions is in the negative.

Courts which have considered the first question have come to the conclusion that for a person to receive the benefits of an "honorably discharged soldier" all that is necessary is proof of honorable service and a formal honorable discharge paper or papers are not necessary. The Supreme Court of California in Dierkes v. City of Los Angeles (1945) 25 Cal.2d. 933, 156 P.2d. 741, 742, allowed a pension to an employee veteran who was not honorably discharged but who was honorably retired from the United States navy. The Court saying:

"We are satisfied that the words 'honorably discharged from such service' must be construed to mean, in a proper case, honorably relieved, released, transferred, or retired from active duty status, \* \* \*

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Otherwise, we would face a totally unfair and discriminatory situation of no benefits going to veterans whose only difference in the honorable service which they accorded our country, would have been the type of discharge or separation paper which they received when leaving active service. The Supreme Court of California in the Dierkes case discussed this discriminatory situation as follows:

"\* \* \*Likewise here it is our duty to avoid, if reasonably possible, a result which would upon a purely arbitrary basis (the fact that the particular employ-veteran was given an 'honorable discharge' instead of being transferred without discharge to inactive status in the reserve corps) confer credit benefits upon some city employe-veterans who had served the nation honorably in the armed forces (and had been 'discharged') while denying such benefits absolutely to other city employe-veterans who had served equally honorably in the armed forces (but who had been transferred to inactive status in the reserve corps or retired instead of being discharged).

\* \* \* \* \*

To the same effect is Swan v. City of Fargo (1950) 77 N.Dak. 333, 43 NW 2d. 292, 295.

This office is of the belief that our Legislature took cognizance of this situation, since the right to veteran's tax exemption benefits can be proved either by discharge papers or such other evidence as is shown by the records on file in the appropriate department of the United States that the applicant has performed services which entitle him to the benefits of article 9, Constitution of Arizona. A.R.S. § 42-273.

This office must also take notice of the fact that all those entering active service since 1951, receive a certificate of service upon leaving active service and being transferred to the active or inactive reserve. Until that reserve time is completed, the veteran would receive no formal honorable discharge paper. It certainly would seem unfair, and not the intent of the Legislature, that many of our veterans who served honorably but who were transferred to the reserve and have not yet received formal discharge papers should be denied the benefits that our Constitution and statutes provided for those who have given service in war time.

For that reason our answer to Question No. 1 must be in the negative.

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County Attorney, Coconino County

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Regarding Question No. 2, it is our opinion that Form 53-96 does not show on its face that the service was either honorable or dishonorable, or that the status of the separation was honorable or dishonorable. Appropriate evidence of what type of service the veteran gave and what type of separation he received must be shown, according to A. R. S. § 42-273. Since we are certain that any applicant separated from the service can make such a showing by appropriate evidence from records of the appropriate department of the United States, it is our opinion that the same must be done and that Form 53-96 does not fulfill the requirements set forth in that statute.

Your letter of January 15 to the Honorable Thad Moore of the State Tax Commission of Arizona has been given to this office by Mr. Moore, for answer. Please consider the above letter opinion an answer to his letter, as well as the letter directed to us on January 15.

Very truly yours,

WADE CHURCH  
The Attorney General

STANLEY E. GOODFARB  
Assistant Attorney General

SEJ:cc

cc to:

The Honorable Thad Moore  
Arizona State Tax Commission

Originator	<i>Stan Goodfarb</i>
I Concur	<i>Les Harder</i>
I Concur	<i>Stanley E. Goodfarb</i>

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