

RESOLUTION NO. 79-216

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO PROVIDING THAT THE BENEFITS OF SECTION 31641.1 AND RELATED SECTIONS OF THE GOVERNMENT CODE SHALL NOT BE AVAILABLE TO EMPLOYEES NEWLY HIRED

WHEREAS, this Board of Supervisors on May 6, 1958 did adopt Resolution 3103, in accordance with Section 31641.95 of the Government Code, which Resolution determined that members of the Mendocino County Employees Retirement System should be permitted to obtain credit in said system for certain public service rendered prior to employment with this County per Government Code Section 31641.1 and related Sections, and

WHEREAS, Section 31641.95 has been amended to provide that at any time after Section 31641.95 has been adopted, the governing board of the County or district, by majority vote, may adopt a further resolution declaring that from and after a future date stated further in the resolution, the benefits of the resolution described in the first paragraph of Section 31641.95 shall not be available to any employees who are hired by the County or district after that date, and

NOW, THEREFORE BE IT RESOLVED that the benefits of Section 31641.1, 31470.7, 31478, 31480, 31461.2, 31461.3, 31461.4, 31461.8, 31461.9 as authorized by Resolution 3108 shall not be available to any employees who are hired by the County of Mendocino or any district which is a member of the Mendocino County Employees Retirement System or who join said retirement system on or after this dated July 3, 1979.

The above and foregoing resolution was introduced by Supervisor Cimolino, who moved its adoption, seconded by Supervisor de Vall and passed and adopted this 3rd day of July, 1979, by the following roll call vote:

AYES: Supervisors Eddie, Cimolino, de Vall, Barbero

NOES: None

ABSENT: Supervisor Banker

WHEREUPON, the Chairman declared said resolution passed and adopted and SO ORDERED.

Chairman
CHAIRMAN

ATTEST: Albert P. Beltrami
Clerk of Said Board

By: Deputy

Deputy

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October 17, 1978

RECEIVED

OCT 19 1978

YUBA COUNTY COLLECTOR
YUBA CO.

TO: Irene Lange
Retirement Administrator

FROM: John A. Drummond
County Counsel

SUBJECT: #78-757 -- "Public Service" - §§31478, 31479,
31641.1 County Employees Retirement Laws of 1937

I. QUESTION

By memorandum of August 30, 1978, you have submitted the following questions:

"1. Can 'Reserve Military Service' time be purchased for the same period the individual was in the County Retirement System?"

"2. Can 'Reserve Military Service' time be purchased for the period when the individual was not in County service? If 'yes' would the entire period while in Military Reserve be allowed or that portion when 'service was rendered' ie: the required 2 weeks per year and one or two evenings per month."

II. LEGAL RESEARCH AND ANALYSIS

Government Code §31641.1 states in pertinent part:

"A member who was in public service before becoming a member may elect . . . to receive credit in the retirement system for all allowed public

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service time. Credit for part time service shall be calculated as provided in section 31641.5."

Government Code §31641.5 states in pertinent part:

"Where county service prior to membership was rendered on a part-time basis, the member may receive credit for such proportion of the time he held the part-time position as the time he was actually engaged in the performance of the duties of such position bears to the time required to perform the same duties in a full time position."

Government Code §31479 states:

"'Public Service' means service rendered as an officer or employee of a public agency for which service, the officer or employee received compensation from the public agency and with respect to which he is not entitled to receive credit in any retirement system supported wholly or in part by public funds after he becomes a member of this system.

Thus Government Code §31479 imposes three additional requirements:

- 1) The service must be rendered;
- 2) The service must be services for which the officer or employee receives compensation; and
- 3) The service must be service for which he is not entitled to receive credit in any retirement system supported wholly or in part by public funds after he becomes a member of the Mendocino County Retirement System."

Government Code §31478 defines "Public Agency" to include the United States of America.

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I am attaching for your convenience 30 Cal. Ops. Atty. Gen. 49 which provides that Military Service is public service except where such Military Service entitled the employee to credit under another retirement system and a pension is or will be paid to the employee under such system and further holding that the pension paid for a service connected disability does not disqualify the employee from receiving public service buy in credit.

III. OPINION AND CONCLUSION

Based upon the above code sections and Attorney General Opinion, the following are my conclusions and opinions:

1. A member may not buy in for reserve time rendered after he has become a member in the Mendocino County Retirement System.
2. A member may buy in for military reserve time actually rendered for which he is paid provided that he is not entitled to receive credit in any retirement system supported either wholly or in part by public funds for such service after he become a member of this system.

Very truly yours,

JOHN A. DRUMMOND
County Counsel

JAD:sw

Enclosure: above indicated

ANALYSIS

camp in the Cleveland National Forest, California. Sites are sub-leased or rented only for guests. The camp does not presently comply with the Auto and Trailer Park Act (Health & Safety Code, § 18003).

The jurisdiction of the Division of Housing of the State of California is as the enforcement agency (Health & Safety Code, § 18009) and its powers are to that code unless otherwise provided by law.

The system of National Forests in the State is governed by federal law. Congress has, however, delegated jurisdiction within national forest territories to the State as expressly provided:

"No criminal, over persons within the boundaries of a national forest or changed by reason of their removal from the United States, shall be prosecuted for offenses against the United States within the meaning of this provision if the national forest is situated shall not, and shall not lose its jurisdiction, nor the rights of its citizens, or be absolved of its duties." (U.S. Code, Title 16, §480.)

The term "camp" in a national forest does not preclude a camp (sec. 18003) means "... any area set aside for rent to two or more owners for the purpose of furnishing their own camping equipment, or users of trailer coaches or campers, for securing their trade" (sec. 18002). The statute, being general public health and safety.

The fact that a trailer park or camp may give rise to the same epidemic as in one open trailer park as in one open trailer park show no special tolerance for parks.

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Section 18200 provides:

"It is unlawful for any person to do any of the following unless he first makes application in writing to the Division of Housing and obtains a permit therefor: ... (c) Operate, or rent, lease, sublease, let, or hire out for occupancy any space in an auto and trailer camp. ..."

" 'Person' means any person, firm, association, organization, partnership, business trust, corporation or company" (sec. 19).

The organization in question is clearly a "person" within the meaning of section 18200, *supra*, and as such may not "rent, lease, sublease, let or hire out" spaces in its auto and trailer park without having obtained the requisite permit from the Division of Housing following compliance with the State or local (sec. 18009) laws.

Section 18009 provides:

"The provisions of this part relating to auto and trailer camps apply to all parts of the State except within cities, counties, and cities and counties that have enacted and are enforcing local ordinances regulating auto and trailer camps and such ordinances prescribe minimum standards equal to or greater than the provisions of this part. ..."

The section reserves to the local authority the police power to prohibit, or to regulate, auto and trailer camps by imposing higher standards than the act. We are not informed with respect to city or county regulations in the matter before us.

We therefore conclude the operation herein in question is an auto or trailer park or camp within the scope of the Auto and Trailer Park Act, and within state and local enforcement jurisdiction.

Opinion No. 57-45—July 26, 1957

SUBJECT: COUNTY EMPLOYEES' RETIREMENT LAW—Military service is public service under, except where such military service entitled employee to credit under another retirement system and pension is or will be paid to employee under such system; pension paid for service connected disability does not disqualify.

Requested by: COUNTY COUNSEL, SAN BERNARDINO COUNTY.

Opinion by: EDMUND G. BROWN, Attorney General.
William J. Power, Deputy.

Honorable Albert E. Weller, County Counsel of San Bernardino County, has requested the opinion of this office as to whether military service is public service under the County Employees' Retirement Law of 1937.

Our conclusions may be summarized as follows:

Military service is public service under the provisions of the County Employees' Retirement Law of 1937 except where such military service entitles the

employee to receive credit in another retirement system supported wholly or in part by public funds and a pension is or will be paid to the employee by the retirement system. A pension paid because of a disability incurred in military service where the pension is based upon the degree of disability and not on salary or length of service does not disqualify.

ANALYSIS

Chapter 363 of Statutes of 1955 added sections 31470.7, 31478, 31479, 31480, 31641.1, 31641.2, 31641.3, 31641.4, 31641.8, 31641.9, and 31641.95 to the Government Code. (All section references herein are to the Government Code unless otherwise indicated.) The sections mentioned are part of the County Employees' Retirement Law of 1937 and make it possible for a county employee, upon making certain contributions, to receive retirement credit for service rendered as an officer or employee of a public agency prior to becoming an employee of the county. Section 31641.95 makes adoption of the sections optional with the governing body of the local agency.

Sections 31478, 31479, and 31641.4 read as follows:

Section 31478. "'Public agency' means the United States of America, this State, or any department or agency of either, or any city, public corporation, municipal corporation, or public district, which city, public corporation, municipal corporation, or public district is situated in whole or in part within the county. Section 31468 does not apply to this section."

Section 31479. "'Public service' means service rendered as an officer or employee of a public agency for which service the officer or employee received compensation from the public agency and with respect to which he is not entitled to receive credit in any retirement system supported wholly or in part by public funds after he becomes a member of this system."

Section 31641.4. "A member shall receive credit for employment in public service only for such service as he is not entitled to receive a pension or retirement allowance from such public agency, and the service for which he elects to contribute must be certified to by an officer of the public agency where he rendered such public service to the effect that no pension or retirement allowance will accrue to him by virtue of his employment in such public agency."

The Army and Navy are departments of the United States (*U.S. v. Meyer*, 140 F. 2d 652), and an officer in the armed forces is certainly an officer of the branch of service to which he belongs. It has been said that an officer of the armed forces is an officer of the United States (*U.S. v. Canella*, 63 F. Supp. 377; *People of State of Colorado v. Maxwell*, 125 F. Supp. 18), but since it is sufficient to entitle a person to public service credit if he is shown to be an officer of a department of the United States, it is not necessary to decide whether an officer in the armed forces is an officer of the service to which he belongs or of the United States itself. Service rendered as an officer in the armed forces does, then, fall

ment system supported wholly or in part by the county. It will be paid to the employee by that county if the employee has a degree of disability incurred in military service and not on salary.

Sections 31470.7, 31478, 31479, 31641.8, 31641.9, and 31641.95 to be added to the Government Code are part of the County Employees' Retirement System. It is possible for a county employee, prior to becoming an employee of the county, to be a member of one of the sections optional with the county.

as follows:

Under the United States of America, the employee of either, or any city, public agency, or public district, which city, public agency, or public district is situated in whole or in part within the county, 31468 does not apply to this

service rendered as an officer or employee of the county and with respect to which the employee's retirement system supported by the county becomes a member of this

receive credit for employment in the county. If the employee is not entitled to receive a pension from the county, and the service for which he is entitled to be certified to by an officer of the county is public service to the effect that credit will accrue to him by virtue of his

the United States (*U.S. v. Meyer*, 369 U.S. 502, 82 S. Ct. 1038, 1962, 18 L. Ed. 2d 1041). It has been said that an officer of the armed forces is certainly an officer of the United States (*U.S. v. Canella*, 63 F. Supp. 377; *People v. Canella*, 18 Cal. 2d 18), but since it is sufficient to show to be an officer of a department or agency to decide whether an officer in the armed forces or of the United States, then, fall

squarely within the definition of public service found in section 31479. While it is true that service as an enlisted man in the armed forces has not been considered employment within the meaning of the Workmen's Compensation Act (*Peterson v. 20th Century Fox*, 75 Cal. App. 2d 587), we believe that the term "employee" as used in section 31479 must be given a broad meaning. In *Knight v. Board of Administration*, 32 Cal. 2d 400, it was said that the term "employee" has no fixed meaning and that its flexibility is of special significance when considered in connection with the rule that statutory provisions for pensions are to be liberally construed. For the purposes of legislation making it possible for county employees to obtain additional retirement credit, there is no reason to distinguish between service as an officer and service as an enlisted man. If the term "officer" as used in section 31479 includes officers of the armed services, and there is no question but that such officers are included, it would seem, under the liberal rule of construction above mentioned, that the term "employee" would encompass enlisted men. It is therefore our conclusion that military service is public service within the meaning of section 31479.

To be eligible for credit under the public service provisions there is no requirement that the previous public agency employment bear any relation to the present county employment; the fact, then, that in some cases at least the experience acquired in the armed forces would be of a limited and restricted nature, does not militate against a construction that would include military service.

Section 31479 precludes the granting of public service credit if the employment for which it is sought entitled the member to credit in some other retirement system. Section 31641.4 provides that before establishing public service credit the member must present a certificate from an officer of the public agency where he rendered public service to the effect that no pension or retirement allowance will accrue to him by virtue of his employment in such public agency. There are a number of different pension or retirement benefits that may accrue because of military service. These may be divided roughly into the veterans' benefits provided under Title 38 of the United States Code Annotated, the retirement benefits of the type now provided for service personnel by Title 10 of the United States Code, and certain credits that are allowed for old age and survivors insurance purposes.

Parts I and II of Veterans' Regulation 1(a) (38 U.S.C.A. ch. 12A), provide a pension for veterans of the armed forces who suffered service-connected disabilities, Part I being applicable to wartime disabilities, Part II to peacetime disabilities. The benefits provided under the two parts mentioned bear a closer resemblance to workmen's compensation than to the benefits that would accrue under a retirement system. Such awards are not made in recognition of the veteran's faithful service but rather are designed to recompense him for injuries incurred. The fact, then, that an employee is receiving a Part I or Part II pension or would be eligible to receive such a pension should not preclude the obtaining of public service credit for military service. Part III of Regulation 1(a) grants a pension to certain war veterans who, from nonservice-connected causes, suffer permanent total disability and whose annual income is less than \$1,400 if single and \$2,700 if mar-

ried. Entitlement to a Part III pension is not a matter of certainty predicated upon reaching a certain age but rather is based upon two contingencies, permanent total disability and the amount of the veteran's income. There is, in most cases at least, only a possibility that the veteran would ever draw a Part III pension. To disqualify a person from obtaining public service credit we believe that there must be a reasonable certainty that he will enjoy some benefits from his past public service employment. The mere fact, then, that a person may become eligible for a Part III pension is not sufficient to bar him from obtaining public service credit for his military service.

Pensions payable under Title 10 of the United States Code are something different from those payable under Title 38; by and large it may be said that pensions payable under Title 10 are analogous to the allowances paid under the public retirement systems operating in this state. Thus, regular Army personnel may be retired for age or length of service (10 U.S.C. 3881 *et seq.*) with a retirement allowance based upon salary and years of service (10 U.S.C. 3991). Military service which would entitle the member to a pension of this type could not be used to establish public service credit.

The mention herein of several pension schemes provided for persons in the military service is not intended to be exhaustive, rather it is for the purpose of illustrating the difference between what might be termed a "retirement allowance" and those payments that are analogous to workmen's compensation. Nor is the distinction made between the benefits available under Title 38 and Title 10 intended to make a clean line of cleavage. In certain instances the allowance provided by Title 10 for disability retirement (see the option allowed under section 1401, which bases the retirement allowance on the degree of disability) would seem to be akin to workmen's compensation, while at the same time the benefit provided by sections 581, *et seq.*, of Title 38 bears a resemblance to a retirement allowance rather than disability compensation. In summary, it may be said that the receipt of a pension, or eligibility for a pension because of service in the armed forces, does not disqualify the person for public service credit if that pension is paid because of a disability incurred and the pension is based upon the percentage of the disability.

Credit for old age and survivors insurance purposes is given for military service rendered after September 15, 1940 (42 U.S.C.A. secs. 410(m), 417). While section 31479 limits the definition of "public service" to employment which is not credited for retirement purposes in a public retirement system, section 31641.4 makes it evident that retirement credit which does not carry with it the entitlement to an allowance is not disqualifying.

If the member has sufficient old age and survivors insurance coverage to entitle him to a pension on reaching the appropriate age, his military service carries credit in another retirement system and it does not qualify for public service credit. If on the other hand the member simply has old age and survivors insurance credit because of his military service, but not sufficient coverage to qualify for an old age and survivors insurance pension, his military service may be counted as

public service. In speaking of eligibility for such a pension, it is payable without regard to the person reaches age 65 or 62. Certain age and survivors insurance pay that a person eligible to such benefits service credit and there would be old age and survivors insurance pay.

It is possible, of course, after as prior public service, that such a federal pension of some type. This involving military service and military employment. If the contingency in the United States there is no reason why

Opinion No.

SUBJECT: NOTARY PUBLIC is of, for acknowledgment of public misrepresented.

Requested by: ASSEMBLYMAN

Opinion by: EDMUND G. BRO Miriam E. Wolff, D.

The Honorable Frank G. B. District, has asked for our opinion in case of a misrepresented identity of the party whose acknowledgment is

Our conclusion may be summarized

Under the circumstances outlined his surety would be liable under his

The appointment and duties of Division 1, Chapter 3 of the Code is empowered to take acknowledgment. Section 8206 requires him to keep may be charged by the notary for an official bond to guarantee that specifically makes the notary and neglect.

It has been suggested that it be harsh for the reason that a notary when he does not, in fact, know

matter of certainty predicated on two contingencies, permanent income. There is, in most cases, never draw a Part III pension. Service credit we believe that there by some benefits from his past that a person may become eligible from obtaining public service

United States Code are something and large it may be said that to the allowances paid under the. Thus, regular Army personnel (U.S.C. 3881 *et seq.*) with a retirement (10 U.S.C. 3991). Military pension of this type could not be

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and survivors insurance coverage to ppropriate age, his military service car- does not qualify for public service has old age and survivors insurance t sufficient coverage to qualify for s military service may be counted as

public service. In speaking of an old age and survivors insurance pension, and eligibility for such a pension, we have had in mind only that pension which is payable without regard to the physical condition of the person when he or she reaches age 65 or 62. Certain disability benefits are also available under the old age and survivors insurance program (42 U.S.C.A. 223). It would seem unlikely that a person eligible to such benefits would be in a position to apply for public service credit and there would appear to be no need to discuss this phase of the old age and survivors insurance program at length.

It is possible, of course, after the member has established his military service as prior public service, that subsequent events might render him eligible for a federal pension of some type. This contingency, however, is not limited to cases involving military service and might occur with respect to many types of federal employment. If the contingency is not to bar former civilian employees of the United States there is no reason why it should apply to former military personnel.

Opinion No. 57-120—July 26, 1957

SUBJECT: NOTARY PUBLIC is liable personally, and surety is liable on bond of, for acknowledgment of party he does not know, and whose identity is misrepresented.

Requested by: ASSEMBLYMAN, 52nd DISTRICT.

Opinion by: EDMUND G. BROWN, Attorney General.
Miriam E. Wolff, Deputy.

The Honorable Frank G. Bonelli, Assemblyman from the 52nd Assembly District, has asked for our opinion as to whether a notary public is liable in the case of a misrepresented identity where the notary is not, in fact, acquainted with the party whose acknowledgment he takes.

Our conclusion may be summarized as follows:

Under the circumstances outlined, the notary would be personally liable, and his surety would be liable under his bond.

ANALYSIS

The appointment and duties of the notaries public are stated in Title 2, Division 1, Chapter 3 of the Government Code. Under section 8205, a notary is empowered to take acknowledgments and to perform certain other official acts. Section 8206 requires him to keep records, Section 8211 sets forth the fees which may be charged by the notary for his services. Section 8212 requires that he execute an official bond to guarantee the faithful performance of his duties. Section 8214 specifically makes the notary and his sureties liable for official misconduct or neglect.

It has been suggested that the law, with reference to notaries public, may be harsh for the reason that a notary is frequently asked to take acknowledgments when he does not, in fact, know the signer of the document. We do not find any