

July 24, 2006

Timothy A. Espich, Director
Governor's Office of Veterans Affairs
77 South High Street, 7th Floor
Columbus, Ohio 43215

SYLLABUS:

2006-032

So long as a former member of the armed forces of the United States served on active military duty and received an honorable discharge or honorable separation, he is eligible for appointment under R.C. 5901.02 as a member of a veterans service commission, whether or not such active military duty was for training purposes. (1990 Op. Att'y Gen. No. 90-049 (syllabus, paragraph one), limited due to statutory amendment.)



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OPINION NO. 2006-032

Timothy A. Espich, Director
Governor's Office of Veterans Affairs
77 South High Street, 7th Floor
Columbus, Ohio 43215

Dear Director Espich:

You have requested an opinion of the Attorney General whether an individual who has active military service only in a training environment meets the service requirements of a "veteran" in order to be eligible for appointment under R.C. 5901.02 as a member of a veterans service commission.

You have informed us that this individual served a 6-month period of active military duty for training purposes, which is common for members of the Reserve Forces, in contrast to the more traditional one, two, or three-year period of active military duty. You also mention that 1990 Op. Att'y Gen. No. 90-049 concluded in syllabus, paragraph one that: "Pursuant to R.C. 5901.01, the word 'veteran,' as used in R.C. Chapter 5901, means 'an honorably discharged member of the armed forces of the United States who served on active duty for reasons other than training.'" Based upon this conclusion in 1990 Op. Att'y Gen. No. 90-049, as well as the alternative definition of the word "veteran" set forth in R.C. 5901.01(B), *see* note one, *infra*, you question whether the individual you describe qualifies as a "veteran" who is eligible for appointment as a member of a veterans service commission under R.C. 5901.02. For the reasons set forth below, we conclude that "a former member of the armed forces of the United States who served on active military duty and received an honorable discharge or honorable separation," R.C. 5901.01(A), is eligible for appointment under R.C. 5901.02 as a member of a veterans service commission, whether or not his active duty service was for training purposes.

Let us begin by examining the statutory scheme governing the appointment of members of a veterans service commission. According to R.C. 5901.02:

In each county there shall be a commission known as "the veterans service commission." Except as provided in [R.C. 5901.021], the commission shall be composed of five residents of the county appointed to five-year terms by a judge of the court of common pleas. At the time of appointment or reappointment to the commission, no commission member appointed under this section shall be an

employee of the commission or hold an elective or other appointive office of the county served by the commission.

Each member of the commission appointed under this section shall be an *honorably discharged or honorably separated veteran*. Within sixty days after the date of appointment, each such member shall file the member's form DD214 with the governor's office of veterans affairs in accordance with guidelines established by the director of that office. (Emphasis added.)

Thus, in order to be eligible for appointment under R.C. 5901.02 as a member of a veterans service commission, one must be an "honorably discharged or honorably separated veteran."

Your question concerns the meaning of the word "veteran," as used in R.C. 5901.02. According to R.C. 5901.01, the word "veteran" is defined, in part, as follows:

As used in sections 5901.01 to 5901.37 of the Revised Code:

(A) *Except as otherwise provided in division (B) of this section*, "veteran" means either of the following:

(1) A former member of the armed forces of the United States who served on active military duty and received an honorable discharge or honorable separation, a member of the armed forces of the United States who died on active military duty, or a member of the armed forces of the United States missing in action more than ninety days;

(2) A member of the United States merchant marine to whom either of the following applies:

(a) The member has an honorable report of separation from the active duty military service, form DD214 or DD215.

(b) The member served in the United States merchant marine between December 7, 1941, and December 31, 1946, and died on active duty while serving in a war zone during that period of service. (Emphasis added.)¹

¹ R.C. 5901.01(B) sets forth an alternative definition of the term "veteran," but limits the application of that definition to the word "veteran," as used in R.C. 5901.08 "and other sections of the Revised Code with regard to applications for financial assistance under [R.C. 5901.02-.15]." According to R.C. 5901.01(B):

As used in section 5901.08 and other sections of the Revised Code with regard to applications for financial assistance under sections 5901.02 to 5901.15 of the Revised Code, "veteran" means either of the following:

(1) A person who served in the armed forces of the United States on active military duty and was discharged from the service under honorable conditions, and who either *served on active duty for reasons other than training* or, while serving on active duty for training, incurred a disability recognized by the department of veterans affairs or department of defense as service-connected;

Because your question concerns eligibility for appointment under R.C. 5901.02 as a member of a veterans service commission, the definition of “veteran” set forth in R.C. 5901.01(A) applies.

Clearly, the individual about whom you ask did not die on active military duty and, presumably, was not missing in action more than ninety days. In addition, this individual did not serve as a member of the United States merchant marine. He, therefore, qualifies as a “veteran” for purposes of membership on a veterans service commission if he “served on active duty and received an honorable discharge or honorable separation.” R.C. 5901.01(A)(1).

As you have explained, it has been your belief that, in order to be eligible for appointment to a veterans service commission, a veteran must meet the more extensive requirements set forth in R.C. 5901.01(B). One such additional requirement for those who served other than in the merchant marine is set forth in R.C. 5901.01(B)(1), *see* note one, *supra*, which requires that an individual’s active duty service be “for reasons other than training” or that the individual, “while serving on active duty for training, incurred a disability recognized by the department of veterans affairs or department of defense as service-connected.” According to R.C. 5901.01(B), however, that definition of “veteran” is limited to R.C. 5901.08 and other sections of R.C. 5901.02-.15 that relate to applications for financial assistance.² Eligibility for appointment as a veterans service commission member is not a part of R.C. 5901.02-.15 that relates to applications for financial assistance. Thus, by its own terms, R.C. 5901.01(B) does not

(2) A person who served in the United States merchant marine, who either served on active duty for reasons other than training or, while serving on active duty for training, incurred a disability recognized by the department of veterans affairs or department of defense as service-connected, and to whom either of the following applies:

(a) The person has an honorable report of separation from the active duty military service, form DD214 or DD215.

(b) The person served in the United States merchant marine between December 7, 1941, and December 31, 1946, and died on active duty while serving in a war zone during that period of service. (Emphasis added.)

See generally R.C. 5901.08 (stating, “[e]ach applicant for financial assistance under [R.C. 5901.02-.15] shall be a *veteran*, an active-duty member of the armed forces of the United States, or the spouse, surviving spouse, dependent parent, minor child, or ward of a veteran or active-duty member of the armed forces of the United States, who has been a bona fide resident of the county in which application is being made for at least three months” (emphasis added)).

² *See generally, e.g.*, R.C. 5901.09 (requiring applicants for financial assistance to provide a statement of income and property); R.C. 5901.14 (stating, in part: “[t]o each person certified by the veterans service commission to the county auditor, the auditor shall issue a warrant upon the county treasurer for the allowance awarded to that person by the commission”).

apply to the term “veteran,” as used in R.C. 5901.02, concerning appointments to a veterans service commission.

Had the General Assembly intended that, in order to be eligible for appointment to a veterans service commission, an individual must have served on active duty “for reasons other than training,” it could easily have included in R.C. 5901.01(B) language that extended the application of that definition to eligibility for appointment to a veterans service commission, or added that language to the definition of “veteran” set forth in R.C. 5901.01(A). *See generally, e.g., Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (the General Assembly, “[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended”). In the absence of such additional language, we cannot extend the application of the definition of “veteran” set forth in R.C. 5901.01(B) to situations not expressly included therein, *e.g.*, eligibility for appointment to a veterans service commission. *See generally State v. Taniguchi*, 74 Ohio St. 3d 154, 156, 656 N.E.2d 1286 (1995) (“[a] court should give effect to the words actually employed in a statute, and should not delete words used, or insert words not used, in the guise of interpreting the statute”).

You have also mentioned 1990 Op. Att’y Gen. No. 90-049, which concluded, in part, that the term “veteran,” as used in R.C. Chapter 5901, means an “honorably discharged member of the armed forces of the United States who served on active duty for reasons other than training.” At the time 1990 Op. Att’y Gen. No. 90-049 was issued, however, former R.C. 5901.01 provided one definition of the word “veteran,” as used throughout then R.C. Chapter 5901: “an honorably discharged member of the armed forces of the United States who served on active duty for reasons other than training.” 1987-1988 Ohio Laws, Part III, 4685 (Am. Sub. H.B. 626, eff. Sept. 14, 1988). The requirement that an individual’s active duty service be for reasons other than training, however, now appears only in R.C. 5901.01(B), which, as discussed above, does not apply to the term “veteran,” as used in R.C. 5901.02, concerning eligibility for appointment to a veterans service commission. Based upon the current definition of the word “veteran” set forth in R.C. 5901.01, we limit the definition of “veteran” set forth in 1990 Op. Att’y Gen. No. 90-049 (syllabus, paragraph one) to the use of that term in R.C. 5901.08 and other sections of R.C. 5901.02-.15 that relate to applications for financial assistance.

Based upon the foregoing, it is my opinion, and you are advised that, so long as a former member of the armed forces of the United States served on active military duty and received an honorable discharge or honorable separation, he is eligible for appointment under R.C. 5901.02 as a member of a veterans service commission, whether or not such active military duty was for training purposes. (1990 Op. Att'y Gen. No. 90-049 (syllabus, paragraph one), limited due to statutory amendment.)

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO
Attorney General

