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ARMED FORCES UNITED STATES—RIGHT OF EMPLOYE TO RESTORATION, POSITION IN THE STATE CLASSIFIED SERVICE AFTER RESIGNATION TO ENTER ARMED FORCES —ENTITLED TO SUCH RESTORATION UPON HONORABLE DISCHARGE—REQUIREMENTS—CONDITIONS IMPOSED BY SECTION 486-16a G. C.

Columbus, Ohio, April 30, 1945

Miss Gertrude Jones, Chairman, The State Civil Service Commission of Ohio

Dear Miss Jones:

This will acknowledge receipt of your letter of March 16, wherewith you enclose a communication received by your office from Dr. Roger E. Heering, Director of Health, and request my opinion on the question set out in said communication.

From Dr. Heering's letter it appears that certain persons formerly employed in the Department of Health and assigned for service to city

and general health districts, resigned from their employment at various times to enter the armed forces, which resignations in each case were prior to the date upon which an opinion was rendered by my predecessor holding that persons employed by the Director of Health to work in local health districts are within the classified civil service of the state. His question is whether or not such persons upon being honorably discharged from the military forces are entitled to restoration of the positions held by them on the dates of their resignations.

In regard thereto, your attention is directed to Section 486-16a of the General Code, which reads in part:

> "Any person who at the time he held or holds an office or position under the classified service and has held such office or position for a period of ninety days or more, enlisted or enlists in the armed services of the United States subsequent to December 8, 1941, was or is commissioned in said armed services or was or is called into said armed services in consequence of an act of Congress, the call of the president of the United States, or due to his status in the reserve forces, national guard, or other similar defense organization shall, within thirty days after making application therefor, be restored to the office or position held by him immediately prior to his entering into the armed services of the United States, provided, such person is at such time physically able to perform the duties of such office or position. Such application for restoration shall be made to the appointing officer of such person within a period of ninety days after receipt of an honorable discharge or certificate or other evidence showing satisfactory completion of his period of service."

It will be noted that the above provision in clear and plain language includes all persons who leave the classified service of the state to enter the armed forces and that there is no distinction between such of those persons who have resigned or who have obtained so-called "military leave." In fact nowhere in the statute is any reference made to a "military leave" of absence. To the contrary, the statute contemplates a separation from the service and not a leave of absence.

It will be noted that the statute provides that such persons shall be *restored* to the positions held by them and that such application for *restoration* shall be made, etc. The word "restored" is defined as follows: to bring back to a former state; to bring back, to renew or reestablish

after interruption; to bring or put back to a former position or condition, to replace; to return, as a person or thing, to a former place.

It is thus seen that the word "restored" connotes the giving back to something which is lost or which has been surrendered. In the case of a leave of absence a person in the classified service has never lost his position or been separated from the service.

You are therefore advised that in my opinion persons who were employed by the Director of Health and assigned to work in local health districts, who resigned from their employment to enter the armed forces, are entitled to a restoration of their respective positions upon an honorable discharge from the armed forces, if such persons meet the other conditions imposed by Section 486-16a of the General Code, regardless of whether such resignation occurred prior or subsequent to January 4, 1945.

Respectfully,

HUGH S. JENKINS

Attorney General