

N.D.A.G. Letter to Coats (Nov. 5, 1992)

November 5, 1992

Honorable Jim Coats
State Representative
1704 Sunset Drive
Mandan, ND 58554

Dear Representative Coats:

Thank you for your September 8, 1992, letter in which you ask a number of questions surrounding the June 9, 1992, favorable vote on measure #1 establishing a constitutional amendment to the North Dakota Constitution allowing the state of North Dakota to provide adjusted compensation to North Dakota residents who were members of the regular active duty armed forces and who served in the Persian Gulf theater or in the Grenada, Lebanon, or Panama areas of armed conflict. This amendment is similar to previous amendments to the North Dakota Constitution allowing for the payment of adjusted compensation to World War II, Korea, and Vietnam veterans. See now repealed N.D. Const. arts. 59, 65, and 87. The approved amendment provides:

The legislative assembly may provide for the payment of adjusted compensation to North Dakota residents who were members of the regular active duty armed forces and who served in the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States or to heirs of North Dakota residents who were members of the regular active duty armed forces and who died while on orders to or from the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States. The legislative assembly may provide a direct appropriation or provide for the issuance, sale, and delivery of bonds to the state of North Dakota in such principal amounts as determined by the legislative assembly to be necessary for the payment of adjusted compensation under this section. Adjusted compensation under this section may be paid at such rates, terms of service, and conditions as the legislative assembly provides.

I will address your questions in the order you presented them.

QUESTION 1:

The starting date of the Persian Gulf campaign is 2 August 90. No ending date has been declared at this time. Our present air cover in southern and northern Iraq suggests that the ending date may be some months away.

Will the regular military service personnel referred to in measure #1 be eligible for bonus

payments from 2 August 90 to the eventually designated ending date, or to a date that is the same as the date the last North Dakota Guardsman/Reservist serving in the Persian Gulf was released from federal service?

In answering your question, it must be stressed that the constitutional amendment merely gives the Legislature authority to act within certain prescribed boundaries. The amendment itself does not establish a program for the payment of adjusted compensation. The last sentence of the amendment provides that adjusted compensation under this section may be paid at such rates, terms of service, and conditions as the Legislative Assembly provides. Thus, under this broad grant of authority, it is my opinion that the Legislature could provide adjusted compensation for terms of service that do not correspond to August 2, 1990, or the date the last North Dakota Guardsmen/Reservists serving in the Persian Gulf were released from federal service. The amendment does not include any requirements on what constitutes the period of service qualifying the veteran for compensation.

QUESTION 2:

All North Dakota Guardsmen/Reservists were federalized specifically for service in the Persian Gulf area or in support service in the USA or some other area not actually in the Persian Gulf theater.

Will regular military service personnel who were not in the Persian Gulf theater, such as those serving regular tours of duty in the USA, Europe, or Asia, be eligible for monthly payments for all periods between 2 August 90 and the yet to be determined campaign ending date for the Persian Gulf War or to a date that is the same as the date the last Guardsman/Reservist was released from federal service?

As mentioned above, the constitutional amendment grants the Legislature authority to act within certain prescribed limitations. The first sentence of the amendment provides that the Legislative Assembly may provide for the payment of adjusted compensation to North Dakota residents who were members of the regular active duty armed forces and who served in the Persian Gulf theater or in the Grenada, Lebanon, or Panama areas of conflict. The references to "served in," "Persian Gulf theater," and "areas of armed conflict" suggest that the amendment only authorizes payment to those persons who served within a geographical area or directly in connection with the specific military operation. Previous constitutional amendments authorized the payment of adjusted compensation to "veterans of World War II," "veterans of the Korean conflict who served in the armed forces of the United States or any of its allies during the period from June 25, 1950, to July 27, 1953," and "veterans of the Vietnam conflict." See now repealed N.D. Const. arts. 59, 65, and 87. The minutes to Senate Concurrent Resolution 4069, the resolution submitting the constitutional amendment to the qualified electors, are reported in relevant parts as follows:

Sen. Heigaard testified in support of SCR 4069. This resolution would put on the ballot the issue of whether we should pay the regular armed forces, who spent time in the Persian Gulf, a bonus. . . .

....

General McDonald testified in favor of this resolution. He said he would pay those members of the U.S. military on activity (sic) duty and who served in the Persian Gulf from August 2 until the president calls off the emergency in that area.

During that period of time for those military members who have residence in North Dakota would receive \$100 per month in addition to their other pay. The amount is not specified in the resolution. North Dakota has had a long history of doing this sort of thing.

The only change in this resolution over previous wars is that there is no provision made for those members of the military who are serving in other than the Persian Gulf.

Given the above, it is my opinion that the newly adopted constitutional amendment does not authorize the Legislature to make adjusted compensation payments to regular active duty personnel serving regular tours outside the Persian Gulf theatre or the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States.

QUESTION 3:

The President has determined that the Iraq situation has not been resolved and has not set an ending date.

Does the next Legislature have the authority to provide bonus payments to all regular military personnel who did not serve in the Persian Gulf theater before the early 1991 termination of the shooting war but have served there since?

As noted in my answer to your first question, the amendment does not contain requirements on the period of service that qualifies for compensation. The Legislature is given the authority to set the terms of service that qualify and those terms of service are not limited by the amendment to before a certain time in 1991 when shooting stopped. The legislative classification need only be reasonable. See Horst v. Guy, 211 N.W.2d 723 (N.D. 1973).

Similar issues arose under the Vietnam Conflict Veterans Adjusted Compensation Act. See 1973 N.D. Op. Att'y Gen. 96 and 1973 N.D. Op. Att'y Gen. 494, copies of which are attached for your information.

QUESTION 4:

World War II , Korean War, and Vietnam War veterans all received \$12.50 per month for stateside service and \$17.50 per month for service in the war theater. The North Dakota Guardsmen/Reservists who were federalized for service during the Persian Gulf campaign received \$50.00 per month for stateside service and \$100.00 per month for service in the

Persian Gulf theater as provided by the 1991 legislative session.

What authority will the 1993 Legislature have in setting payment amounts and duration as a result of the approval of measure #1?

As mentioned, the last sentence of the amendment gives the Legislature fairly broad authority in setting rates, terms of service, and conditions for adjusted compensation payment. See Horst v. Guy, supra.

I hope this letter has been helpful.

Sincerely,

Nicholas J. Spaeth

tca/pg
Enclosures