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Honorable Roy C. McGinnis
Director
Department of Veterans Affairs
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Veterans - Military Department -
National Guard

Dependents of a member of
National Guard or reserve unit
who is killed or disabled while
on weekend drill or annual
training exercise, entitled to
educational benefits provided by
Code of Alabama 1975, Sections
31-6-4, 5 and 6.

Dear Mr. McGinnis:

You have asked the opinion of this office as to whether or not National Guard or reserve units are included in the term "Armed Forces" as pertains to the application of Code of Alabama 1975, Sections 31-6-4, 5 and 6. Those Code sections provide educational benefits for wives or widows and children of any person whose death or disability occurred "while serving as a member of the Armed Forces."

Code, Section 31-6-2 defines "Armed Forces" as follows:

"Such term shall include the United States Army, Air Force, Navy, Marine Corp and Coast Guard, and such term shall also include the units of those branches of the services having women troops. It shall also include

Honorable Roy C. McGinnis
Page Two

the Army, Navy, Marine Corp and Coast
Guard Nurse Corp."

In further interpretation of this definition, 10 U.S.C. 3078 provides:

"The Army National Guard while in the
service of the United States is a
component of the Army."

There is a similar provision for the Air National Guard
(see 10 U.S.C. 8078).

Therefore, it would appear that the controlling question is to determine if duties performed during periods of weekend drills and the annual training exercises are federal service, and in the case of the Alabama National Guard, that such duties are not performed in a state capacity.

38 U.S.C. 101 defines active duty for training as full-time duty under 32 U.S.C. 316, 502, 503, 504, or 505. Such sections include the federal requirement for weekend drills and annual training exercises. The State Military Department advises that funds used to pay members of the Alabama National Guard for both weekend drills and annual training are federal funds. The paychecks are issued directly by the U. S. Army Finance Office at Ft. Rucker, Alabama and are drawn upon the account of the U. S. Treasury.

Therefore, it is the opinion of this office that weekend drills and annual training exercises constitute such service of the United States as to render National Guard and reserve units as a part of the Armed Forces during such training. This opinion is based upon the fact of payment from federal funds, and is consistent with the definition of "active military or naval service of the state" as found in Code, Section 31-2-38 which construes periods of training as being in the active military or naval service of the state only "if such duty is paid for solely from state funds and no federal funds are used."

You have queried further as to whether a member's travel to and from the training site should be also included within such definition. It is the opinion of this office that your

Honorable Roy C. McGinnis
Page Three

question should be answered affirmatively. Active duty for training includes authorized travel to or from such duty (38 U.S.C. 101). You are further directed to 38 U.S. Code 106 for factors used in determining the hour from which a member begins so to proceed or to return from a duty station.

This opinion will not address the factual question of whether or not the disability or death occurred "in line of duty," or was "service-connected" which would depend on the circumstances of each particular case. The opinion concerns only the general question of inclusion of National Guard and reserve components within the definition of "Armed Forces."

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-



R. FRANK USSERY
Assistant Attorney General

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