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FORMAL OPINIONS

VETERANS: Veteran's Preference for Civil Service.

CIVIL SERVICE: Veteran's Preference.

The three year limitation upon the allowance of preference credit points for veterans adopted by civil service rule is a valid limitation and adoption of this rule is within the discretion of the Michigan Civil Service Commission.

Opinion No. 4846 January 9, 1975.

Honorable William Faust
State Senator
The Capitol
Lansing, Michigan 48901

Your request for opinion of the Attorney General refers to Civil Service Rule 11.2 and inquires as to the legality of the three-year limitation upon the application of preference points to the final score of military veterans on open competitive examination. Rule 11.2 provides in pertinent part:

> "Preference Credit Points.—Five preference credit points for veterans shall be added to the final passing score in any open competitive examination which is announced and for which an application has been accepted, within three years of the date of the veteran's release from active duty. . . ."

You will note that this rule provides for such credit upon open competitive examinations and not upon promotional examinations and therefore contemplates credit upon outset for entry level applications. So interpreted, military veterans are allowed five preference credit points on final scores of examinations applied for within three years of their release from active duty. Such is to be distinguished from the ten-point preference credit accorded disabled veterans on open competitive examination scores, which is given without limitation of time.

The concept of veterans' preference has long been upheld both in Michigan and in other jurisdictions. The landmark authority in the State of Michigan is *Swantush* v *Detroit,* 257 Mich 389; 241 NW 265 (1932). *Swantush,* quoting from *Koeper* v *Detroit Street Railway Commission,* 222 Mich 464, 487; 193 NW 221, 229 (1923) states:

> " 'Statutes relative to appointment and employment of veterans appeared in some States shortly after the Civil War and have always been accorded tender consideration by the courts.' " [p 394]

Swantush, quoting with approval, expresses the rationale for such preference as follows:

> " 'These decisions seem to recognize the power of the legislature, as a reward for past services performed in the army or navy, and as

> a means of promoting patriotism, to give to honorably discharged veterans a preference, where the qualifications are equal, to public offices filled by appointive power resting in some officer of the Federal, State or municipal government.'" [p 394, citing *Shaw* v *City Council of Marshalltown,* 131 Iowa 128; 104 NW 1121; 10 LRA NS 825 (1905)]

The rationale for veterans' preference is further expressed in *Koelfgen* v *Jackson,* 355 F Supp 243, 251 (D Minn, 1972), *aff'd* 410 US 976; 36 L Ed 2d 173; 93 S Ct 1502 (1973):

> "There appears to be three principal reasons which have historically been given to justify giving preference to veterans.
>
> "1. The State owes a debt of gratitude to those veterans who served the nation in time of peril. State ex rel. Kangas v. McDonald, 188 Minn. 157, 246 N.W. 900 (1933).
>
> "2. A veteran is likely to possess courage, constancy, habits of obedience and fidelity, which are valuable qualifications for any public office holder. Goodrich v. Mitchell, 68 Kan. 765, 75 P. 1034 (1904).
>
> "3. Veterans should be aided in rehabilitation and relocation because military service has disrupted their normal life and employment. Note, 26 Wash. & Lee L. Rev. 165 (1966)."

See also, *Feinerman* v *Jones,* 356 F Supp 252, 259 (MD Pa, 1973), following *Koelfgen,* and citing at footnote 2, p 259, *Swantush, supra, inter alia.*

Civil Service Rule 11.2 takes cognizance of these reasons for extending veterans' preference credits although it limits the period of time within which such credits may be extended to veterans who are not disabled. As to such a time limitation, see *Cremer* v *Alger County Road Commissioners,* 325 Mich 27, 33-34; 27 NW2d 699, 702 (1949), in which the court stated:

> "It is further contended by defendant that: 'The veterans' preference act is contrary to the Fourteenth Amendment to the Constitution of the United States in that it creates a perpetual preference without time limit.' . . . While it is true that no length of tenure is provided in the statute, we do not find that in consequence thereof the statute is violative of the noted Federal constitutional provision. . . . If, as is stated in defendant's brief: 'The veterans would be sufficiently compensated and protected and the public service would be better served by an act which would set a time limit on preference;' a matter for consideration by the legislature is presented."

A reasonable state of facts may be conceived and there is a rational basis for classification between non-veterans, veterans and disabled veterans in the allowance of preference credit points on open competitive Civil Service examinations and the limitations thereon prescribed. See *Koelfgen, supra,* and *Feinerman, supra,* generally for such discussion. It is therefore my opinion that the three-year limitation upon the allowance of preference

credit points for veterans is a valid limitation within the discretion of the Michigan Civil Service Commission.

FRANK J. KELLEY,
Attorney General.

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POLICE OFFICERS: Bail Bonds.

BAIL BONDSMEN: Police Officers.

A police officer may not serve as a bail bondsman or as an employee of a bail bondsman.

Opinion No. 4850 January 9, 1975.

Honorable Raymond J. Smit
State Representative
Box 119
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You have requested my opinion as to whether a police officer may serve as a bail bondsman or may work with a bail bondsman.

Chap. XXVIII, sec. 167(b)(1) of the Michigan Penal Code, 1931 PA 328; MCLA 750.167(b)(1); MSA 28.364(2) provides that it is unlawful for a police officer to accept any money or property from any person engaged in the business of providing bonds in criminal cases or from procuring or assisting in procuring a client for the bondsman.

Thus, a police officer is clearly precluded by law from working with, or being employed by, a bail bondsman. Moreover, the statute would be contravened if a person were to be a bondsman and a police officer simultaneously for, if that person were to receive money or property as compensation for his services as a bail bondsman, he would be prohibited from accepting such compensation while serving as a police officer.

Another approach to the same question leads to the same conclusion. 1966 PA 257 § 12; MCLA 780.72; MSA 28.872(62) states that no official authorized to admit a person to bail or to accept bail shall either furnish any part of security for bail nor act as surety for any accused admitted to bail. Although this provision refers to officials in general terms and does not specifically mention police officers, it will be noted that a police officer is one who is authorized to accept bail pursuant to 1966 PA 257, § 8; MCLA 780.68; MSA 28.872(58), which states that "any sheriff or other peace officer may take bail." As the term "peace officer" includes "police officer," *People v. Carey,* 382 Mich 285, 293; 170 NW 2d 145, 148, 1969, it is clear that police officers are prohibited from serving as a bail bondsman or as an employee of a bail bondsman.

FRANK J. KELLEY,
Attorney General.