STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

91063

AUG 5 1991

DATE: August 2, 1991

SUBJECT: Hiring Preferences of Military Veterans

REQUESTED BY: Harold W. Clarke, Director
Department of Correctional Services

WRITTEN BY: Don Stenberg, Attorney General
David Edward Cygan, Assistant Attorney General

We are writing in response to your request for our office to again review the application of Neb.Rev.Stat. § 48-227 (Reissue 1988) regarding hiring preferences of military veterans. You asked whether a veteran is entitled to a preference each time the veteran applies for a job with the state. In response to our request for additional information, you provided us a letter which sets forth additional facts. Apparently, in the case which arose in your agency, the complainant had worked for a state agency for a number of years following his discharge from the military. He then left state employment to work in the private sector. However, he returned to state employment again working for a different agency.

As you have noted in your Opinion Request, our office examined this issue at the request of the Department of Labor in 1984. As a result, we published Attorney General Opinion No. 225, written by L. Jay Bartel and approved by the former Attorney General, Paul L. Douglas. The problem appears to be, as it was in 1984, what is the meaning of the term "seeking employment"? Opinion No. 225 noted that absent any statutory definition of this ambiguous phrase, deference must be made to the intent of the Legislature. PPG Industries Canada Ltd. v. Kreuscher, 204 Neb. 220, 281 N.W.2d 762 (1979). We further noted that the introducer's statement of purpose in this bill was to: (1) "put these veterans back to work after they have been honorably discharged from service of their country," and (2) clarify "disagreements in the area of application

L. Jay Bartel
J. Kirk Brown
Laurie Smith Camp
Elaine A. Chapman
Delores N. Coe-Barbee
Dale A. Comer
David Edward Cygan
Mark L. Ells
James A. Elworth
Lynne R. Fritz
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Sharon M. Lindgren
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Harold I. Mosher
Fredrick F. Neid
Paul N. Potadle
Marie C. Pawol
Kenneth W. Payne
LeRoy W. Sievers
James H. Spears
Mark D. Starr
John R. Thompson
Susan M. Ugai
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

of the employment of those men (and now women) who have been employed in the service of their country" regarding "who had the ultimate responsibility of taking them back." Transcript of Government and Military Affairs Committee hearing of April 17, 1969, p. 45; transcript of floor debate, July 30, 1969, p. 340.

Our Opinion concluded that these statements demonstrated that the Legislature's intent in enacting Neb.Rev.Stat. § 48-227 was to provide an employment preference to veterans applying for state or government positions upon their return from military service. Thus, the purpose of the statute was to give veterans a preference only when applying for or seeking initial employment.

We appreciate your ability to provide us with additional information pursuant to our request. It was necessary in order to respond to this Opinion Request due to the fact that your request only indicated that the individual applied for different jobs and did not indicate whether or not the individual had ever been hired for a particular job prior to his application with the Department of Correctional Services. Arguably, pursuant to the legislative intent of the Nebraska veterans preference statute, an individual might still be entitled to a preference if upon his discharge from the military he has applied for several jobs but never received gainful employment. However, the factual situation you have set forth reflects that the individual did obtain employment subsequent to his discharge from the military and prior to his application to the Department of Correctional Services.

Therefore, our counsel to you remains as it was in 1984 to the Department of Labor. That is, based upon the facts as you have set forth, the veteran is not entitled to a preference the second time he applies for a job with the State of Nebraska. For a more detailed analysis of the principles set forth above, we would direct your attention to Attorney General Opinion No. 225.

Sincerely,

DON STENBERG
Attorney General

David Edward Cygan
Assistant Attorney General

32-01-14.91

APPROVED BY:

Attorney General