STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 20-13

Eligibility Requirements for Tennessee State Veterans' Homes (TSVH)

Question 1

Under Tennessee state law, may Tennessee State Veterans' Homes (TSVH) admit veterans who received a general discharge under honorable conditions?

Opinion 1

No. Under Tennessee law, TSVH shall "provide support and care for honorably discharged veterans who served in the United States armed forces." Tenn. Code Ann. § 58-7-101(b). An "honorable discharge" from the United States armed forces is separate and distinct from "a general discharge under honorable conditions."

Question 2

If Tennessee law does not allow TSVH to admit veterans who received a general discharge under honorable conditions, is Tennessee law preempted by federal law, which would allow such admissions at TSVH?

Opinion 2

No. Federal law does not preempt the eligibility requirements imposed by States. To the contrary, federal law contemplates that each State will establish eligibility and admission criteria for its state veterans' homes.

ANALYSIS

1. "Honorable Discharge" vs. "General Discharge Under Honorable Conditions"

Tennessee established its state veterans' homes (TSVH) pursuant to the federal program in Title 38 of the United States Code and Title 38 of the Code of Federal Regulations. See Tenn. Code Ann. § 58-7-112 ("It is the intention of the general assembly that, in establishing state veterans' homes, the state shall apply for a grant from the United States veterans' administration and/or obtain its approval for leasing existing facilities pursuant to Public Law 95-62 (38 U.S.C. §§ 5031-5037).").[1]

[1] The law regarding state veterans' homes is now mostly found in Title 38, Part II, Chapter 17 and Title 38, Part VI, Chapter 81 of the United States Code.

The "primary purpose" of the TSVH is "to provide support and care for *honorably discharged veterans* who served in the United States armed forces." Tenn. Code Ann. § 58-7-101(a) and (b) (emphasis added). The italicized words express a legislative intent that the TSVH services are available only to those veterans who have been *honorably discharged. See Freeman v. Marco Transp. Co.*, 27 S.W. 3d 909, 911 (Tenn. 2000) (explaining that, when a statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used in the statute).[2]

Because Tenn. Code Ann. § 58-7-101(b) refers to veterans who have been separated from service in the United States armed forces, it is appropriate to look to United States military law regarding the meaning of the term "honorably discharged," and that law establishes that an "honorable discharge" is different and distinct from a "general discharge under honorable conditions."

> *a*. *Honorable.* An honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. . . .
>
> *b*. *General (under honorable conditions).* If a Soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record. . . .
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> *c*. *Under other than honorable conditions.* Service may be characterized as under other than honorable conditions only when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons, . . .

Army Reg. 135-178 ¶ 2-9. *See also* Army Reg. 600-8-24 ¶ 1-22 (defining discharges as "Honorable characterization of service (HD)" and "General Under Honorable Conditions Character of Service (GD)" for army officers); 32 C.F.R. § 724.109(a) (similarly characterizing and defining separations from naval service as "Honorable," "Under Honorable Conditions (also termed General Discharge," and "Under Other Than Honorable Conditions (formerly termed Undesirable Discharge)"); SECNAV Instruction 5420.174D ¶ 114 (defining "Honorable," "General (Under Honorable Conditions)," and "Under Other Than Honorable Conditions (formerly termed 'undesirable discharge')" discharges); AFI 36-3208 § 1.18 (characterizing and defining an airman's service as "Honorable," "Under Honorable Conditions (General)," and

[2] Tennessee is not alone in limiting eligibility for certain benefits to honorably discharged veterans. *See, e.g., Boylan v. Matejka*, 770 N.E.2d 1266 (App. Ct. Ill. 2002) ("When setting forth the eligibility requirements for an Illinois Veteran Grant, the legislature used the term "honorably discharged" rather than "discharged under honorable conditions." The meaning of the term "honorably discharged" is clear. Only those armed forces personnel who perform their duties and behave properly as defined by the armed forces may be honorably discharged. It is equally clear that an individual who receives a general discharge under honorable conditions has not been honorably discharged. If the legislature had desired to make Illinois Veteran Grants available to those who received a general discharge under honorable conditions, it could have so specified.").

"Under Other Than Honorable Conditions"); 32 C.F.R. § 865.106(c)(1) (discussing changes in an airman's characterization of discharge upon review, "for example, [from] General Discharge to Honorable Discharge"); and 32 C.F.R. § 553.11(c) ("No veteran is eligible for interment, inurnment, or memorialization in Arlington National Cemetery unless the veteran's last period of active duty ended with an honorable discharge. A general discharge under honorable conditions is not sufficient for interment, inurnment or memorialization in Arlington National Cemetery.").

In sum, the terms "discharged honorably" and "generally discharged under honorable conditions" are not synonymous, but rather refer to two separate and distinct groups of veterans. Tennessee law specifies TSVH shall provide support and care "for honorably discharged veterans who served in the United States armed forces." Tenn. Code Ann. § 58-7-101(b). It does not include the separate and distinct group of veterans who received a general discharge under honorable conditions. *See* Tenn. Att'y. Gen. Op. 94-047 (Apr. 5, 1994) (opining that "[t]he unequivocal distinction made in the federal regulation between honorable discharge and general discharge under honorable conditions leads us to conclude that an honorable discharge . . . does not include any other type of discharge from the military . . . ."). Accordingly, under state law, TSVH may not admit veterans who received a general discharge under honorable conditions.

2. Federal Preemption of State Law

As explained above, Tennessee law permits TSVH to provide care only to "honorably discharged veterans" and not to veterans who received "a general discharge under honorable conditions." Federal law establishing state homes for veterans, on the other hand, makes Title 38 state veterans' home benefits available not just to a veteran who was honorably discharged but also to a veteran who was generally discharged under honorable conditions. Under federal law, a "veteran" who is eligible for benefits like those provided by state veterans' homes is "a person who served in the active military, naval, or air service, and who was discharged or released therefrom *under conditions other than dishonorable*." 38 U.S.C. § 101(2) (emphasis added). Thus, under federal law and military law and regulations, the italicized term includes both veterans who have received an "honorable discharge" and veterans who have received "a general discharge under honorable conditions."

The question then is whether federal law preempts Tennessee law—i.e., Tenn. Code Ann. § 58-7-101(b)—to require TSVH to provide care to veterans who were honorably discharged *and* to veterans generally discharged under honorable conditions. It does not. That Tennessee's law has more restrictive eligibility requirements—i.e., limits the benefit to veterans who have been honorably discharged—does not mean it is preempted by federal law.

Under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, federal law preempts state law if "(1) Congress expressly preempts state law; (2) Congress has completely supplanted state law in that field; (3) adherence to both federal and state law is impossible; or (4) the state law impedes the achievements of the objectives of Congress." *Wadlington v. Miles, Inc.*, 922 S.W.2d 520, 522 (Tenn. Ct. App. 1995) (citing *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604-605 (1991)). None of those situations exists here. Congress has neither expressly preempted state law nor completely supplanted state law in this field. Tennessee law fosters and does not impede the objectives of the federal law establishing state veterans' homes.

And there is no conflict between state and federal law. It is entirely possible to comply with both: federal law *permits* the state veterans' homes to serve veterans who have been discharged under conditions other than dishonorable, which includes both honorable discharge and general discharge under honorable conditions, but it does not *require* the States to provide care for both groups.[3] Indeed, specifically regarding eligibility requirements, the U.S. Department of Veterans Affairs expressly states on its website that "*[e]ach State establishes eligibility and admission criteria for its homes*." https://www.va.gov/GERIATRICS/pages/State_Veterans_Homes.asp. (Last visited on 5/12/20, emphasis added.)

Moreover, even though state homes must comply with certain requirements to be certified and reimbursed by the federal government for some services,[4] generally, federal law does not control the administration of state homes.

> Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any State home for which facilities are constructed or acquired with assistance received under this subchapter.

38 U.S.C. § 8137; *see also* 38 C.F.R. 51.210(v) ("VA Management of State Veterans Homes. Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing nursing home care."); 38 U.S.C. § 1742(b) ("The Secretary may ascertain the number of persons on account of whom payments may be made under this subchapter on account of any State home, but shall have no authority over the management or control of any State home.").

[3] As explained in a different context in Tenn. Att'y Gen. Op. 89-33 (Mar. 10, 1989), even though Tennessee law is more restrictive than federal law, "there is no conflict with the Supremacy Clause of the United States Constitution. Under the Supremacy Clause of Article VI of the Constitution of the United States, of course, federal enactments pre-empt conflicting state exercise of power where Congress has the power to act and clearly states its intent to preempt. Here, by contrast, the Veterans' Affairs statutes and regulations clearly reject any preemption of state authority, providing that states are in control of administration of such homes." (Internal citations omitted.)

[4] For example, 38 U.S.C. § 1745(a)(1) requires veterans to have a service-connected disability for reimbursement for nursing home care.

In sum, federal law does not preempt the eligibility requirement of Tenn. Code Ann. § 58-7-101(b). To the contrary, federal law contemplates that each State will establish eligibility and admission criteria for its state veterans' homes.

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