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B-167880, Jan. 28, 1970

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B-167880, JAN. 28, 1970

MISCELLANEOUS--MILITARY PAY--SET-OFF DECISION TO SECRETARY OF DEFENSE CONCLUDING THAT MILITARY DEPARTMENTS MAY NOT DEDUCT MONEYS FROM PAY OF ACTIVE DUTY AND RETIRED MILITARY PERSONNEL WITHOUT THEIR CONSENT TO SATISFY DEBTS TO VETERANS ADMINISTRATION OCCASIONED BY DEFAULTS ON MORTGAGES GUARANTEED BY VA. UNDER 38 U.S.C. 1826(B) MILITARY DEPARTMENTS ARE PROHIBITED FROM DEDUCTING MONEYS FROM PAY OF ACTIVE DUTY OR RETIRED MILITARY PERSONNEL IN LIQUIDATION OF DEBTS TO VA FOR MORTGAGE DEFAULT EXCEPT WHERE MEMBER CONSENTS OR WHERE COURT OF COMPETENT JURISDICTION HAS DETERMINED SERVICEMAN'S LIABILITY.

TO MR. SECRETARY:

REFERENCE IS MADE TO THE LETTER OF JANUARY 5, 1970, FROM THE ASSISTANT SECRETARY OF DEFENSE (COMPTROLLER), REQUESTING A DECISION AS TO WHETHER THE MILITARY DEPARTMENTS MAY DEDUCT MONEYS FROM THE PAY OF ACTIVE DUTY AND RETIRED MILITARY PERSONNEL, WITHOUT THEIR CONSENT, IN ORDER TO SATISFY THEIR INDEBTEDNESS TO THE VETERANS ADMINISTRATION OCCASIONED BY DEFAULTS ON MORTGAGES GUARANTEED BY THE ADMINISTRATION. THE MATTER IS DISCUSSED IN DEPARTMENT OF DEFENSE MILITARY PAY AND ALLOWANCE COMMITTEE ACTION NO. 438.

THE QUESTION PRESENTED IS STATED IN THE COMMITTEE ACTION AS FOLLOWS:

"MAY THE MILITARY DEPARTMENTS LEGALLY ASSIST THE VETERANS ADMINISTRATION IN THE LIQUIDATION OF INDEBTEDNESS OF ACTIVE DUTY OR RETIRED MILITARY PERSONNEL IN THE INVOLUNTARY COLLECTION OF INDEBTEDNESS TO V.A. OCCASIONED BY DEFAULTS ON MORTGAGES GUARANTEED BY THE V.A.?"

IN THE ABSENCE OF SPECIFIC STATUTORY AUTHORITY, THE GENERAL RULE IS THAT THE CURRENT PAY (INCLUDING RETIRED PAY) OF A MEMBER OF THE ARMED SERVICES MAY NOT BE WITHHELD WITHOUT HIS CONSENT TO LIQUIDATE GENERAL DEBTS DUE THE UNITED STATES. SEE 42 COMP. GEN. 83, 85 (1962). IN ADDITION, SUBSECTION (B) OF 38 U.S.C. 1826 PROVIDES THAT:

"(B) NO OFFICER, EMPLOYEE, DEPARTMENT, OR AGENCY OF THE UNITED STATES SHALL SET OFF AGAINST, OR OTHERWISE WITHHOLD FROM, ANY VETERAN ANY PAYMENTS (OTHER THAN BENEFIT PAYMENTS UNDER ANY LAW ADMINISTERED BY THE VETERANS ADMINISTRATION) WHICH SUCH VETERAN OR WIDOW WOULD OTHERWISE BE ENTITLED TO RECEIVE BECAUSE OF ANY LIABILITY TO THE ADMINISTRATOR ALLEGEDLY ARISING OUT OF ANY LOAN MADE TO, ASSUMED BY, OR GUARANTEED OR INSURED ON ACCOUNT OF, SUCH VETERAN OR WIDOW UNDER THIS CHAPTER, UNLESS (1) THERE IS FIRST RECEIVED THE CONSENT IN WRITING OF SUCH VETERAN OR WIDOW, AS THE CASE MAY BE, OR (2) SUCH LIABILITY AND THE AMOUNT THEREOF WAS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A PROCEEDING TO

WHICH SUCH VETERAN OR WIDOW WAS A PARTY."

SECTION 1818(A) OF TITLE 38 PROVIDES THAT THE TERM "VETERAN" IS TO BE DEFINED BY PARAGRAPHS (1) AND (2) OF SECTION 1652(A). PARAGRAPH (1) PROVIDES THAT A VETERAN IS ELIGIBLE FOR THE LOAN BENEFITS PROVIDED BY THE LAW IF HE HAS SERVED ON ACTIVE DUTY FOR A PERIOD OF MORE THAN 180 DAYS (UNLESS SEPARATED SOONER FOR A SERVICE-CONNECTED DISABILITY), PART OF THAT SERVICE HAVING BEEN PERFORMED AFTER JANUARY 31, 1955, AND IF HE WAS DISCHARGED OR RELEASED FROM ACTIVE DUTY UNDER CONDITIONS OTHER THAN DISHONORABLE. PARAGRAPH (2) WAIVES THE REQUIREMENT OF A DISCHARGE OR SEPARATION FOR ONE WHO HAS SERVED IN AN ACTIVE DUTY STATUS FOR AT LEAST TWO YEARS SO LONG AS HE CONTINUED ON ACTIVE DUTY WITHOUT A BREAK IN SERVICE.

IT IS OUR OPINION THAT 30 U.S.C. 1826(B) CLEARLY AND UNAMBIGUOUSLY PROHIBITS THE MILITARY DEPARTMENTS FROM INVOLUNTARILY DEDUCTING MONEYS FROM THE PAY OF ACTIVE DUTY OR RETIRED MILITARY PERSONNEL IN LIQUIDATION OF THEIR INDEBTEDNESS TO THE VETERANS ADMINISTRATION ARISING UNDER CHAPTER 37 OF TITLE 38, U.S.C. BY VIRTUE OF DEFAULTS ON MORTGAGES GUARANTEED BY THE ADMINISTRATION. YOUR QUESTION, THEREFORE, IS ANSWERED IN THE NEGATIVE EXCEPT WHERE THE MEMBER CONSENTS TO SUCH COLLECTION OR WHERE A COURT OF COMPETENT JURISDICTION HAS DETERMINED THE SERVICEMAN'S LIABILITY.