CORRRECTION TO LAW REVIEW No. 37
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I wrote an article in the December 2001 print and Web site versions of The Officer magazine ("Law Review No. 37, Elected Officials and Reserve Duty") that needs clarification as to my assertion that there is a "national emergency or mobilization exception" to the statutory prohibition against military members who are serving on active duty for a period in excess of 270 days from also serving in most civil offices.

Upon consulting with Department of Defense officials, I have concluded that, unfortunately, neither federal law nor DoD policy currently provide such a specific exception.

Federal law and DoD policy provide that Reservists, during periods of national emergency or partial mobilization, serving for more than 270 days continuous active duty must decline to serve in their prohibited civil office. According to DoD officials, "declines to serve" means that the Reserve officer must refuse to perform any civil functions of the civil elected office or take any further acts in furtherance of their civil elected/appointed office responsibilities or duties. (This key phrase is not defined in the DoD Directive or the law.) Failure to decline to serve can subject a Reserve elected/appointed official to punitive sanctions.

The DoD Directive does not provide definitive advice whether the elected/appointed civilian official Reservist must resign their elected office or whether seeking a leave of absence is sufficient. The policy is to leave such a decision to the appropriate federal, state, or local authorities who govern the elected/appointed Reservist.

Please publish this clarification to ensure that ROA members do not rely on any national emergency or mobilization exception to the prohibition on holding elective/appointed office if they are on active duty for 270 continuous days or more. As I stated in my original article, the holding of elected or appointed civil office while on active duty for fewer than 270 days as a Reserve officer is allowable, provided that the holding of the civilian elected or appointed office does not interfere with the conduct of military duties.

Paul E. Conrad
COL, USAR
Clifton, Va.