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Tennessee Complies with 10 U.S.C. 12736

By CAPT Samuel F. Wright, JAGC, USNR*

In Law Review 48 (July-August 2002), I explained the relationship between 10 U.S.C. 12736 and "no double-dipping" rules in state retirement systems. If a period of military service is otherwise properly creditable under state law, you cannot be deprived of that credit on the grounds that you are receiving Reserve component (age 60) retirement credit for that same period of service. Under the Supremacy Clause of the United States Constitution, Federal law preempts State law on this point.

In a short note published in the October 2002 issue of The Officer, I stated that Tennessee (along with Alabama, Alaska, and Minnesota) is still violating 10 U.S.C. 12736. I recently learned that this is incorrect, at least in the case of Tennessee. In an opinion dated 5 May 1987, the Tennessee Attorney General acknowledged the supremacy of Federal law on this point. See Opinion No. 87-82, Tenn. AG Lexis 115.

Let us assume that you were on active duty from 1976 to 1980, when you left active duty and affiliated with a Reserve component. You also went to work for the State of Tennessee in 1980, and you want to purchase State retirement credit for the 1976-80 active military service. Tennessee will not deprive you of that right on the grounds that your Reserve (age 60) retirement is based in part on that 1976-80 active duty period. To do otherwise would be to violate 10 U.S.C. 12736.

Captain Wright was employed as an attorney for DoL for ten years. He was largely responsible for drafting USERRA, along with one other DoL attorney. He also helped to write the successful appellate briefs for the veterans in both the Imel and the Akers cases. Most recently, he was on active duty for 71 days (May–July 2001), including 40 days in Bahrain. Please see his July 2001 “Law Review” article.

You may write to Captain Wright at ROA, or you can reach him by e-mail at **samwright50@ yahoo.com**.