



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

*Travis Co,*

Miss Fannie M. Wilcox  
State Librarian  
Austin, Texas

Dear Miss Wilcox:

Opinion No. 0-2251  
Re: S. B. No. 190, 46th Legis-  
lature (1939) -- Prefer-  
ence in employment by heads  
of departments to discharged  
soldiers, sailors, nurses  
and marines.

You propound to us for a legal opinion the fol-  
lowing questions:

"In filling vacancies on the staff  
of the Texas State Library where 'techni-  
cal library training' is required by law,  
is it necessary that a discharged sol-  
dier, sailor, nurse or marine be employ-  
ed as stated above if he does not show  
evidence of having sufficient 'technical  
library training' to perform the duties  
of the position satisfactorily, and a  
person having the required training can  
be obtained?"

Article 5445 of Title 89 of the Revised Civil  
Statutes of Texas, governing Library and Historical Com-  
mission provides:

"Heads of departments and library  
assistants shall be required to have  
technical library training; and heads  
of departments shall have had at least  
one year of experience in library work  
prior to appointment. Clerks shall be  
required to hold a diploma from a first-

class high school according to the standards of the State Board of Education or the University of Texas, or to present satisfactory evidence of educational training equal to that provided by such high school and also to present satisfactory evidence of proficiency in stenography and typewriting or bookkeeping."

Senate Bill No. 100, 46th Legislature (General Laws 46th Leg., reg. sess. p. 617, Vernon's Tex. Civ. Stat., Art. 4413 (30)) in Sec. 1 provides:

"That from and after the effective date of this Act, in every State Department in this State, all honorably discharged soldiers, sailors, nurses and marines, from the Army and Navy of the United States in the late Spanish-American and Philippine Insurrection Wars, and the China Relief Expedition, and the late World War, wherein the United States of America and the Allied Nations were engaged in war against the Imperial Government of Germany and its allies, and who are and have been residents or citizens of the State of Texas for a period of ten (10) years next preceding the date of application, and are competent and fully qualified, shall be entitled to preference in appointments, employment, and promotion over other applicants therefor; provided, however, that no such preference shall be extended to such soldiers, sailors, marines, and nurses who are receiving from the State or Federal Government any monies totaling Fifty (\$50.00) Dollars or more by reason of disabilities incurred during active service in the Army, Navy, Marine, or Nurse Corps, or by reason of Old Age Assistance payment, or any other Social Security monies provided by law, and the persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of age, or by reason of any physical disability, provided such age or dis-

ability does not render him incompetent to perform properly and capably the duties of the position applied for; and when such soldier, sailor, nurse, or marine shall apply for appointment or employment under this Act, the officer, executive head of such department or person or persons, whose duty it is or may be to appoint or employ such person to fill such position and/or place, shall before appointing or employing any one to fill such position and/or place, make an investigation as to the qualifications of said soldier, sailor, nurse and/or marine for such position or place, and if the applicant is a person of good moral character and can perform the duties of said position applied for by such person as hereinabove provided, said officer, executive head of department, board and/or other person having the appointive power, shall appoint said soldier, sailor, nurse, or marine to such position and/or place of employment."

Senate Bill No. 190 is not a statute of qualifications or eligibility for appointment; it is a pure preferential statute as between applicants, who are eligible and qualified. If an applicant of the favored class mentioned in S. B. No. 190 is not qualified under Article 5445 of the Revised Civil Statutes, he not only is not entitled to a preference in the matter of appointment, but he is not entitled to appointment at all. The fair meaning of the Preference in Employment Act is that amongst applicants, all of whom are competent and qualified, the preference to the extent required by the statutes must be given to the favored classes.

The statutes prescribing qualifications for employees must be construed in connection with S. B. No. 190, the Preference of Employment Act, so as to harmonize and give effect to both Acts without destroying either.

Trusting that this will have answered your ques-

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tion satisfactorily, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Spier*  
Ocie Spier  
Assistant

OS-MR

APPROVED APR 27, 1940

*George B. Mann*  
ATTORNEY GENERAL OF TEXAS

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