

*Legislature - Senator - Military Service
Leave & Absence.*

October 31, 1942

280-D

*Letter to Senator Blatnik
attached*

Oct. 17-11-42.

J. C. Henley, Esquire
Village Attorney
Hibbing, Minnesota

Dear Sir:

This is to confirm telegram and telephone call in answer to your wire of October 30, in which you asked for an opinion on the following:

"In event Senator Blatnik is re-elected November 3rd, 1942, and qualifies, and then cannot serve because of army duty, who would declare that vacancy exists if there would be one?"

The answer to this question is found in Article IV, §3, of the State Constitution, which provides that each house of the legislature shall be the judge of the election, returns, and eligibility of its own members. Under this provision, any question arising as to the right of a member of either house who might be absent in military or naval service to take or hold his seat can be determined only by the house concerned after the legislature convenes.

In the meantime, the right of any person who is absent in military or naval service to run for the legislature is governed by Laws 1941, Chapter 120, §2, Subdivision 4 (Minnesota Statutes 1941, §192.261, Subdivision 4), which provides as follows:

"No person who is engaged in active service in any of the military or naval forces of the state or of the United States within or without the state shall thereby be disqualified from being a candidate for or from being elected or appointed to any public office within the state if he is

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otherwise eligible therefor. A person who is elected or appointed to any such office and who at the commencement of the term thereof is engaged in any such active military or naval service shall not thereby be disqualified from assuming and holding such office if he is otherwise eligible therefor and if his military or naval service is not constitutionally or legally incompatible therewith. Such person, if prevented by his military or naval duties from taking office in person, may file his oath of office, also his bond, if required, by mail or other means of transmittal, and shall thereupon be deemed to have assumed office, subject to all the provisions of this act, so far as applicable."

It is impossible for this office or any other authority to determine in advance what would happen in case a person elected to the legislature should be unable, by reason of absence in the military or naval service, to qualify and take his seat in person at the opening of the session, and in case his right thereto should be questioned. The Supreme Court has held repeatedly that the courts have no power to pass on questions involving the right of a person elected to the legislature to take or hold his seat, the house to which he was elected being the sole judge thereof under the constitutional provision above cited.

Very truly yours

J. A. A. LURNQUIST
Attorney General

By

CHESTER S. WILSON
Deputy Attorney General

CSW:fm