

Number 37, December 2001: Elected Officials and Reserve Duty

By COL Paul Conrad, USAR

Reserve officers who are elected officials are asking, "May I keep my civilian elected office if activated?"

There is the provision concerning elected officials at Title 10, United States Code Section 973, and implemented by DoD Directive 1344.10, "Political Activities of Members of the Armed Forces on Active Duty," that states in part that no Reserve officer on active duty "may be a candidate for, or hold civil office." This prohibition includes federal elective office, a presidential appointed position (requiring Senate approval), or any SES position under 5 U.S.C. sections 5312-5317. The directive states that no armed forces member on active duty may hold by election any civil office in a state or local government or the District of Columbia, any territory, possession or commonwealth of the United States, or any political subdivision.

The DoD directive goes on to say that as long as the individual is not serving on "EAD," i.e., extended active duty (defined as "active duty under a call or order for a period in excess of 270 days"), the Reserve officer may hold a partisan or nonpartisan civil office if such office is held in a private capacity and does not interfere with the performance of military duties. The directive makes additional exceptions for serving as a regular or Reserve law-enforcement member of civilian fire or rescue squad, as long as the service does not interfere with military active duty.

What does this mean? Any federal SES employees, presidential appointees, and federal, state or local elected officials doing their active-duty service (fewer than 270 continuous days), such as full-time training, annual training, active military school attendance, and active duty in support of their Reserve component or their active component who can maintain their civil elective office without interference with their military obligations are not in violation of the law or Department of Defense Directives and service regulations. If you volunteer for a 270-day active-duty tour far from home where you maintain your civilian elected office, you could put your elected official status in jeopardy.

What if you are a Reserve officer and you receive orders to EAD? The DoD Directive requires that you request military retirement if eligible and that you shall be retired if eligible. If you are not eligible for retirement, the military service will proceed to discharge you or release you from active duty, as determined by the service secretary.

These requirements to retire or separate do not apply if you agree to give up your civil elected office, if the service secretary concerned makes a finding that you should not be discharged or released from active duty based upon

the needs of the service, or if you can show that you meet one of the following exceptions: (1) that you have an active-duty (contractual) obligation resulting from schooling or other training; (2) that you are serving or have been issued orders to serve afloat or in an area that is overseas, remote, a combat zone, or a hostile-fire pay area; or (3) that you have been activated during a period of declared war, a national emergency, or other period when a unit of the Reserve or National Guard has been called to active duty (generally presidential Selected Reserve call-up or partial mobilization). If you refuse to give up your elective office, and you are not eligible to retire from the military, and the exceptions listed above do not apply, you can be subject to disciplinary or adverse administrative actions under service regulations.

Any Reserve officers called to active duty for 270 days or more pursuant to President Bush's recent executive order for partial mobilization and declaration of national emergency resulting from the 11 September 2001 terrorist attacks should be able to claim the national emergency or mobilization exceptions to the prohibitions against serving in an elected civil office. If you are serving on non-EAD or mobilization orders, you need to consult your command legal counsel to ensure that you do not put your civilian elected official status or military career in jeopardy. LTC Paul Conrad is legal counsel, Office of the Chief, Army Reserve.

[Note: The Hon. Matt Blunt, the elected secretary of state of Missouri, has been recalled to active duty as a lieutenant in the Naval Reserve.]