

**Number 57, November 2002:
STATE "NO DOUBLE-DIPPING" RULES VIOLATE FEDERAL LAW**

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Q: I read with interest your Law Review Number 48, "Retirement Benefits of Government Employees Who Are Reservists" (July/August 2002). I am a police officer in California, nearing retirement. I am also a retired Army Reserve officer. I will draw my military pay when I attain the age of 60. I served on active duty for seven years, during the Vietnam Era. Of course, my Army Reserve retirement is based in part on that active-duty period. The Web site of the California Public Employee Retirement System seems to imply that I am ineligible to purchase the credit because I am using the same period of active duty to help me qualify for my Army Reserve retirement benefits. What gives?

A: Title 10, United States Code, section 12736 (10 U.S.C. 12736) provides as follows: "No period of service included wholly or partly in determining a person's right to or the amount of retired pay under this chapter [Chapter 1223 deals with "retired pay for non-regular service"] may be excluded in determining his eligibility for any annuity, pension, or old-age benefit under any other law, on account of employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly creditable under it." Applying this section, the United States Court of Appeals for the Ninth Circuit struck down California's "no double-dipping" law. [See *Cantwell v. County of San Mateo*, 631 F.2d 631 (9th Cir.), cert. denied, 450 U.S. 998 (1980).]

The bottom line is that you can purchase state retirement credit for your active-duty service, although you are also using your active-duty time (with your Army Reserve time) to qualify for your Reserve (age 60) retirement. As applied to Reserve (not regular) military retirement, California's "no double-dipping" rule is invalid under the Supremacy Clause of the United States Constitution.

Because you are a member of ROA and read these Law Review columns, you know that you do not have to accept at face value what the state of California's Web site says. Purchasing the state retirement credit for your active-duty time is probably worth many thousands of dollars in extra retirement benefits.

Please don't accuse me of "blowing my own horn," but I respectfully suggest that this situation is another excellent illustration of the value of ROA. This Law Review column alone is worth the cost of membership, perhaps many times over.

I realize that I am preaching to the choir because most of you reading this article are already members of ROA. Nonetheless, you probably know several

Reserve and National Guard officers who are eligible for ROA membership but have not joined, or have allowed their memberships to lapse somewhere along the line. Please contact those friends and acquaintances and get them to join ROA.

Anyone who is or has been a commissioned or warrant officer in any of the seven uniformed services is eligible to join ROA. This includes National Guard and active-duty officers, as well as Reserve officers. An eligible person can join via our Web site, which is www.roa.org. One can also call ROA's membership department at 1-800-809-9448. ROA

* Military title used for purposes of identification only. The views expressed in these articles are the personal views of the author and are not necessarily the views of the Department of the Navy, the Department of Defense, the Department of Defense or the U.S. government.