

makes other provision relating thereto. This is a question of fact upon which I am not advised.

OFFICIAL OPINION NO. 86

October 8, 1953.

Mr. R. A. Marmaduke, Chief Examiner,
Indiana State Personnel Bureau,
311 W. Washington St.,
Indianapolis 4, Indiana.

Dear Sir:

This is in reply to your letter of September 11, 1953 in which you inquire as to the following:

“Chapter 153 of the Acts of 1945 in paragraph (G) provides that when a certification is made from an employment list and the appointing officer passes over the name of a veteran eligible and selects a non-veteran, reasons for such action, which are acceptable to the Personnel Board, must be given in writing.

“The usual reason given by the appointing officer is that he prefers to retain the non-veteran who has been trained and who has been on the job for perhaps several months by virtue of a duration appointment.

“The Personnel Board would like to have an official opinion as to whether it may accept a positive reason for the selection of a non-veteran who has a lower rank on the employment list than the veteran eligible, or whether the only acceptable reason for passing over a veteran would be reasons which indicate that the veteran would not be a desirable employee.”

Sub-section (G) of Section 19 of Chapter 139 of the Acts of the General Assembly of 1941, as amended, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-1319 provides:

“G. When in accordance with state personnel laws and rules, a nominating or appointing officer shall request certification of eligibles for appointment pur-

poses, the state personnel board shall certify, from the top of the appropriate register of eligibles, a number of names sufficient to permit the nominating or appointing officer to consider at least three (3) names in connection with each vacancy. The nominating or appointing officer shall make selection for each vacancy from not more than the highest three (3) names available for appointment on such certification, unless objection shall be made, and sustained by the state personnel (personnel) board to one or more of the persons certified, for *any proper and adequate reason, as may be prescribed in the rules promulgated by the state personnel board*: Provided, That an appointing officer who passes over a veteran eligible and selects a non-veteran shall file with the state personnel board his reasons for so doing, which shall become a part of the record of such veteran eligible, and shall be made available upon request to the veteran or his designated representative; the state personnel board is directed to *determine the sufficiency of such submitted reasons and, if found insufficient*, shall require such appointing officer to submit more detail information in support thereof; the findings of the state personnel board as to the sufficiency or insufficiency of such reasons shall be transmitted to and considered by such appointing officer, and a copy thereof shall be sent to the veteran eligible or to his designated representative upon request therefor: Provided, further, That if, upon certification, reasons deemed sufficient by the state personnel board for passing over his name shall three (3) times have been given by an appointing officer, certification of his name for appointment may thereafter be discontinued, prior notice of which shall be sent to the veteran eligible." (Our emphasis.)

Sub-section G, *supra*, requires that the appointing officer shall give his reasons in writing for passing over the veteran eligible and that the state Personnel Board is required to determine the sufficiency or insufficiency of said written reason.

Webster's New International Dictionary, Second Edition, 1949 defines the word "reason" as "an expression or statement

1953 O. A. G.

offered as an explanation of a belief or assertion or as a justification of an act or procedure.”

The forming of your question and the use of the word “positive” leads to the conclusion that the opposite would be a negative reason, that is to say, a reason which would negate the desirability of a veteran. It is extremely important to note in this respect that the legislature used the word “reason” rather than “cause.”

Philosophically speaking, the sum of all the antecedents of any event constitutes its cause. That is to say, that which supplies the motive or constitutes the reason for anything done or that which produces the effects and result or that on which a thing under given circumstances follow.

Griffin v. Anderson Motor Service Company (1933),
227 Mo. App. 855, 59 S. W. (2d) 805.

Reason imports appropriate and always implies the exercise of good faith and sound discretion.

Rexroth v. Holloway (1909), 45 Ind. App. 36, 90 N.
E. 87.

It is my belief that because of the use of the word “reason” rather than “cause” by the legislature and by virtue of the fact that the veteran had already been given a point preference that it was only necessary that the appointing officer have a reason which might be deemed justifiable and fair rather than a cause for passing over the veteran eligible. The apparent purpose for the review of the appointing officer’s decision was to prevent an appointing officer from passing over a veteran eligible for a reason which is arbitrary, capricious or whimsical.

It is therefore my opinion that the Board may accept a positive reason for a selection of a non-veteran who has a lower rank on the employment list than a veteran eligible so long as the reason is not arbitrary, capricious or unreasonable.