

MAINE STATE LEGISLATURE

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PART 3

MILITARY LAW

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CHAPTER 121

GENERAL PROVISIONS

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§ 701. Military purposes defined

Wherever in chapters 121 to 139 the words "military purposes" appear, they shall mean any purposes that will aid in

facilitating the preparation for or conduct of war whether for defense or offense or whether on land, sea or in the air.

R.S.1954, c. 14, § 101.

§ 702. Commander in Chief

The Governor is the constitutional Commander in Chief of the militia, except of such portions as may be at times in the service of the United States.

R.S.1954, c. 14, § 1.

§ 703. Active service in National Guard or state military or naval forces

In case of insurrection, invasion, tumult, riot, mob or body of men acting together by force with intent to commit a felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of this State or the United States, or of imminent danger thereof, or in the event of public disaster resulting from flood, conflagration or tempests, the Governor shall have the power to order into the active service of the State or in aid of any civil authority the National Guard or other authorized state military or naval forces or any part thereof that he may deem proper. Whenever the National Guard of this State or a part thereof is called forth or drafted into federal service under the Constitution and laws of the United States, the Governor shall, unless the order for the call or draft specifies otherwise, order out for service the National Guard or other authorized state military or naval forces or such part thereof as may be required; and if the number available be insufficient he shall order out the unorganized militia or such part as may be necessary. The designation of organizations called or drafted into the service of the United States shall not, during such service, be given to new organizations.

In case of a sudden and unexpected tumult, riot, mob or body of men acting together by force with intent to commit felony or to offer violence to persons or property, or by force and violence to break and resist the laws of the State or the United States, or of imminent danger thereof, a Justice of the Supreme Judicial Court or of the Superior Court or the sheriff of a county may call for aid upon a commanding officer of the National Guard or other authorized state military or naval forces, and such call shall be in writing. The commanding officer upon whom the call is made shall order out in aid of the civil authorities the military or naval

force or any part thereof under his command, and shall make an immediate report of the case to the Adjutant General and to his immediate commanding officer. He shall receive only general directions from the civil authority requesting the aid, and shall remain strictly responsible to his military superior for the manner in which the troops shall be used to accomplish the desired end.

In the event of an emergency so imminent as to require immediate action the senior officer of a command may, upon request in writing of the mayor of a city or the selectmen of a town, order out for the defense or protection of the community the forces under his command, or any part thereof, and immediately report his action and the circumstances of the case to the Adjutant General and to his immediate commanding officer.

R.S.1954, c. 14, § 2; 1959, c. 378, § 1; 1961, c. 417, § 9.

§ 704. Activation of unorganized militia

Whenever it shall be necessary to call into active service the unorganized militia, or any part thereof, the Governor shall direct his order to the chief municipal officer of any municipality, who, upon receipt of the same, shall proceed to draft by lot as many of the unorganized militia or accept as many volunteers as are required by the Governor, and shall forthwith forward to the Adjutant General a list of the persons so drafted or accepted as volunteers.

R.S.1954, c. 14, § 3.

§ 705. Failing to appear as desertion

Every member of the National Guard or other authorized state military or naval forces ordered out, and every member of the unorganized militia who volunteers or who is drafted and notified thereof, under section 704, who does not appear at the time and place designated by his commanding officer, or the chief municipal officer, within 24 hours from such time, or who does not produce from a physician in good standing a sworn certificate of physical disability to so appear, shall be deemed a deserter and dealt with as prescribed in the Uniform Code of Military Justice of the United States.

R.S.1954, c. 14, § 4.

§ 706. Unorganized militia mustered into service

Whenever any portion of the unorganized militia is called forth under the Constitution and laws of the United States or of

the State of Maine, the members thereof shall be immediately mustered into the service for such period as the call may prescribe. Whenever any portion of such unorganized militia shall be ordered into the service of the State they shall be mustered into the service for such period as the Governor may direct. Such unorganized militia when so ordered into active service shall have, as far as practicable, the same system of organization, equipment, training and discipline as are or may thereafter be prescribed for the National Guard or other authorized state military or naval forces. The Governor shall have the power to appoint the officers for any new organizations formed out of said unorganized militia.

R.S.1954, c. 14, § 5.

§ 707. Proclamation of state of insurrection

Whenever any portion of the National Guard or other authorized state military or naval forces is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or municipality in which the troops are serving or any specified portion thereof to be in a state of insurrection.

R.S.1954, c. 14, § 6.

§ 708. Civil or criminal liability; defense

No member of the militia ordered into the active service of the State shall be liable civilly or criminally for any act done, or caused, ordered or directed to be done, by him in furtherance of and while in the performance of his military duty. When an action or proceeding of any nature shall be commenced in any court by any person against any officer or enlisted man of the militia for any act so done, or caused, ordered or directed to be done, all the expenses of the defense of such proceeding or action, civil or criminal, including fees of witnesses for the defense, defendant's court costs, and all costs for transcripts of records and abstract thereof on appeal, shall be paid by the State, out of the Military Fund. It shall be the duty of the Attorney General, either personally or by one or more assistants, to defend such officer or soldier. Where the action or proceeding is criminal, the Adjutant General shall designate a judge advocate of the National Guard or other authorized state military or naval forces to conduct the defense of such member, or if the services of a judge advocate be not available, then he shall select some other competent attorney to con-

duct such defense, and the judge advocate or other attorney so selected shall receive and be paid out of the Military Fund a reasonable compensation for his professional services. In any such action or proceeding the defendant may require the person instituting or prosecuting the same to file security for payment of costs that may be awarded the defendant, which costs if recovered in action, the costs whereof have been paid out of the Military Fund, shall be paid into the State Treasury for the benefit of the Military Fund. The defendant may, in every such action or proceeding, make a general denial and give the special matter in evidence.

R.S.1954, c. 14, § 7.

§ 709. Power of Governor to organize staff

The Governor may create, organize, abolish or reorganize such staff departments as he may deem necessary or appropriate to provide for the National Guard or other authorized state military or naval forces, and appoint such staff officers as may be necessary to provide for the operation of such staff departments.

R.S.1954, c. 14, § 8.

§ 710. Staff

The staff of the Commander in Chief shall consist of the Adjutant General, who shall be ex officio chief of staff, quartermaster general and paymaster general with grade not to exceed that of major general; the senior officer on duty with each of the staff departments; and such aides-de-camp not to exceed 11 in number, one of whom may be a naval aide with rank of captain and one of whom may be an air force aide, as may be appointed by the Governor. No person shall be appointed as Adjutant General or Assistant Adjutant General unless he holds or has held a commission of at least field grade or equivalent in the Organized Militia of the State or the Armed Forces of the United States, or of a reserve component thereof, and shall have served not less than 5 years in one or more of such services and shall meet the criteria for federal recognition in the grade to which appointed as are prescribed by the regulations governing the National Guard of the United States. All other staff officers, except in the medical department and chaplains, must be at the time of their appointment commissioned officers of the Maine National Guard, or of the Maine State Guard, or other authorized state military or naval forces, or of the officers' reserve corps of the Army or Air Force of the United States, or on the retired list of the Army or Air

Force of the United States and residents of the State of Maine, on the active or retired list of or above the grade of captain but no staff officer shall be appointed from the retired list who shall have had less than 5 years of service in the Maine National Guard, or in the officers' reserve corps of the Army of the United States, or in the regular Army of the United States the last year of which shall be within 5 years immediately preceding the appointment.

Aides-de-camp, except as otherwise provided, may be detailed by the Commander in Chief from commissioned officers of the Maine National Guard, or of the Maine State Guard, or other authorized state military or naval forces, of the grades above specified, but officers so detailed shall not be relieved thereby from their regular duties except when on duty with the Commander in Chief. Honorably discharged officers or enlisted personnel who served in the United States army, air force, navy or marine corps during any foreign war, who are not members of the Maine National Guard, or of the Maine State Guard, or other authorized state military or naval forces, may be appointed by the Governor as aides-de-camp with the rank of colonel. The aides-de-camp authorized by chapters 121 to 139 shall be appointed by the Governor and, except those detailed from the active list, shall be commissioned by him and shall serve only during the term of the Governor making the appointment. The Governor may detail additional aides from the officers of the Maine National Guard or of the Maine State Guard, or other authorized state military or naval forces, for temporary duty, subject to this section.

R.S.1954, c. 14, § 9; 1963, c. 117; c. 382, § 1.

§ 711. Duties of staff officers

Officers of all staff departments shall perform the duties required of them by law, and such others, not inconsistent with the laws of the State, as correspond to those which are now or may hereafter be required, of the corresponding staff departments of the national military establishment.

R.S.1954, c. 14, § 10.

§ 712. Adjutant General; assistant

The Adjutant General of the State shall be appointed by the Governor, shall have the rank not to exceed that of major general, and shall hold office for a term of 4 years and until his successor is appointed and qualified. He shall be ex officio, chief of staff, quartermaster general and paymaster general of the State.

For the purpose of establishing the relation between the national military establishments, and the various staff departments of the State, he shall be the chief of said departments; and the requisitions, purchases and issues to be made by the senior officer on duty in certain of said departments, as prescribed, shall be made by them pursuant and in obedience to his directions and instructions.

He shall control the military department subordinate only to the Governor, and may adopt such methods of administration, not inconsistent with the laws, regulations and customs of the service of the national military establishment, so far as the same may be applicable, as he may deem necessary to render the department efficient.

He shall superintend the preparation of all returns, reports, plans and estimates required of the State by the national military establishment. On or before the 30th day of June of each year, he shall make a report to the Governor of the strength and condition of the militia and of the business transactions of the department, including a detailed statement of expenditure for all military purposes.

He shall be responsible for the care, preservation and repair of all military property belonging or issued to the State for the arming and equipping of the militia. He shall dispose of all military property of the State found unserviceable after a proper inspection, account for the proceeds and deposit the same into the State Treasury, to the credit of the Military Fund.

He shall cause to be turned in, in such manner as the national military establishment may require, such ordnance, accoutrements and equipments belonging to the United States and receive in substitution therefor such prescribed regulation ordnance and equipment, as may be necessary to conform to the standard required by the laws and regulations of the United States.

He shall, under the direction of the Governor, prepare and submit to the State Purchasing Agent requisitions for, and make issues of, such military property as is necessary to equip the organizations of the National Guard or other state military or naval forces according to the standard that is now or may be hereafter prescribed by the laws and regulations of the United States. He shall approve all issues. No such property shall be issued, or otherwise disposed of, to persons or organizations other than those of the National Guard or other state military or naval forces.

He shall keep a just and true account of all expenses necessarily incurred, including pay, transportation and subsistence of officers and enlisted men of the National Guard or of any other authorized state military or naval forces, and of all military property. He shall render annually to the Governor a statement in detail showing the disposition of all clothing, ordnance, arms, ammunition and other military property on hand and issued.

He may sell for cash to officers of the National Guard or other authorized state military or naval forces, for their official use, and to organizations of the National Guard or other authorized state military or naval forces, any military or naval property which is the property of the State. He shall, with his annual report, render to the Governor a true account of the sales so made, and shall deposit the proceeds of the same in the State Treasury to the credit of the Military Fund.

The Adjutant General shall receive an annual salary of \$10,000. He shall receive no other fee, emolument or perquisite.

The Adjutant General may appoint, subject to the approval of the Governor, an officer as Assistant Adjutant General, who shall assist the Adjutant General in the performance of his duties, and who shall, whenever the Adjutant General is absent or unable from any cause to perform his duties, or whenever a vacancy shall exist in the office of Adjutant General, perform the duties of the Adjutant General during such absence and disability, and who, in the case of vacancy in the said office, shall be acting Adjutant General until such vacancy shall have been filled by the Commander in Chief, as provided for by law.

Subject to the approval of the Governor, the Adjutant General may appoint a property officer and a plans and training officer both of whom shall meet the requirements for appointment of staff officers provided in section 710, hold office at the pleasure of the Adjutant General and receive salaries to be fixed by the Governor and Council.

The property officer shall perform such duties relative to the care, preservation and repair of military property belonging or issued to the State as the Adjutant General may from time to time direct and shall receipt and account for all property allotted to his custody and make such returns and reports concerning the same as may be required by the Adjutant General. He shall give a good and sufficient bond to the State in an amount to be determined by the Governor for the faithful performance of his duties and for the safekeeping and proper distribution of all property entrusted to his care.

The plans and training officer shall perform such duties relative to the instruction and training of the National Guard or other state military or naval forces as the Adjutant General may from time to time direct and he shall make such returns and reports concerning the same as may be required by the Adjutant General.

R.S.1954, c. 14, § 11; 1955, c. 405, § 5; c. 473, § 2; 1957, c. 418, § 2; 1959, c. 361, § 2; 1963, c. 382, §§ 2, 3.

§ 713. Property and disbursing officer

The Governor shall designate, subject to the approval of the Secretary of the Army, an officer of the National Guard or other authorized state military or naval forces who shall be regarded as property and disbursing officer for the United States. The property and disbursing officer shall give a bond to the United States, the amount thereof to be determined by the Secretary of the Army, for the faithful performance of his duties and for the safekeeping and proper disposition of federal property and funds entrusted to his care, and the costs and expenses incurred by entering into such bond shall be paid out of the Military Fund.

R.S.1954, c. 14, § 12.

§ 714. Disposal of confiscated ammunition and small arms

The State Police, the Department of Inland Fisheries and Game, the sheriff of any county and the police department of any city are empowered to loan, without charge, to the Adjutant General's Department of the State for the use of the state's military or naval forces all small arms and ammunition which have been or may be confiscated for violation of law.

R.S.1954, c. 14, § 13.

§ 715. Conflicts of interest

No officer authorized to make purchases or sales of military property shall be concerned, directly or indirectly, in the purchase or sale of any such property, except for and on account of the State; nor shall any such officer take or apply to his own use any gain or emolument for negotiating or transacting any business of his office, other than what is allowed by law.

R.S.1954, c. 14, § 14.

§ 716. Inspection of property purchased

All property purchased under the authority granted shall be inspected by an officer designated for that purpose by the Adjutant General, and no payment shall be made therefor until it shall appear by the certificate of the inspecting officer that the property is of the kind and quality specified in the contract of purchase.

R.S.1954, c. 14, § 15.

§ 717. Indebtedness contracted without authorization

No officer or enlisted man shall contract or presume to authorize the contracting of, any indebtedness on behalf of the State, unless especially authorized to do so by chapters 121 to 139 or by the express order of the Adjutant General. Any person in the military service who shall violate this section shall be dishonorably discharged and suffer such other punishment as a court-martial may direct.

R.S.1954, c. 14, § 16.

§ 718. Military Defense Commission

The State Military Defense Commission, as heretofore established, shall consist of 8 members. The Governor and Adjutant General and their successors shall be ex officio members during their respective terms of office. The Governor for the time being shall be the chairman. The other 6 members who shall be citizens of the State shall be appointed by the Governor, as follows: 2 for a term of 3 years annually. In the case of any vacancy caused by death, resignation or otherwise, the Governor shall appoint a citizen for the unexpired term. It shall be the duty of the commission to exercise general supervision and control over all armories, drill rooms, headquarters offices, stables and state owned or controlled realty used for military purposes, to consult and cooperate with the municipal authorities and to devise effective means of obtaining and maintaining such armories, and to fix, subject to the approval of the Governor, the compensation to be allowed to the municipalities as rent for them. The commission shall have the power, after consulting and hearing the responsible municipal officers, to determine the administrative question of military suitability and adequate maintenance of all armories, drill rooms, offices, headquarters offices and stables, and it shall be their duty to notify the responsible officers of all deficiencies in these respects, and should such officers fail, refuse or

neglect to take effective measures for providing such suitable buildings and their maintenance, the chairman of the commission shall initiate the prosecution prescribed by section 719. The commission is authorized where towns or municipalities have been relieved from compliance with this section to provide armories, target ranges or stables by reason of any agreement or agreements entered into between such towns or cities and the State of Maine, to hire or lease suitable buildings for drill halls, quarters, headquarters offices or stables as may be necessary to adequately house the National Guard. The commission is further authorized and directed to cooperate with the Federal Government or municipalities in establishing and coordinating national defense in this State, especially in the providing of equipment, training, facilities, suitable quarters for troops and supplies, and buildings and lands for military purposes, including construction and expansion of armories and other facilities for joint use by the National Guard and another reserve component or other reserve components of the Armed Forces of the United States. The commission may acquire real property by right of eminent domain in the manner prescribed by law for the taking of land for highway purposes, and both real and personal property by purchase, gift or otherwise, for the purpose of construction or maintenance of armories, airports, shipyards and other military facilities, including the building or improvement and maintenance of railroads or roads necessary for the more efficient use of such facilities, for military purposes and the procuring of equipment and supplies for military purposes. The members of the commission shall be reimbursed for their actual expenses incurred in the performance of their duties. The judge advocate shall be the legal adviser of the commission.

R.S.1954, c. 14, § 17; 1961, c. 213, § 1.

§ 719. Armories; offices; duty of municipal officers to provide

The municipal officers shall provide and maintain for each unit of the National Guard, or other state military or naval forces located within the limits of their municipality, armories and other necessary buildings, the suitability of which shall be determined by the State Military Defense Commission.

After consulting with the municipal officers, the State Military Defense Commission shall fix a reasonable compensation, subject to the approval of the Governor, to be paid as rent to the municipality providing and maintaining the buildings. This com-

pensation shall be paid by the State out of the appropriation for armory rental. The buildings shall be used exclusively for military purposes, unless otherwise authorized by the general regulations prescribed by the State Military Defense Commission, or by special authority of the chairman of the commission after written application by the municipal officers, and may be jointly used by the National Guard and another reserve component or other reserve components of the Armed Forces of the United States.

The Governor may accept, in the name of the State, donations of real estate and personal property to be used for military purposes by the National Guard, or other state military or naval forces, upon such conditions as the donors may prescribe. The Governor may prescribe further regulations pertaining to property so donated. The State Military Defense Commission may approve for payment from the appropriation for armory rentals necessary sums for the maintenance and operation of the property.

Whenever the Military Fund is sufficient the State Military Defense Commission may, with the approval of the Governor, erect armories and other necessary buildings upon land donated to the State for that purpose.

When a city or town constructs armories and other necessary buildings for the use of the National Guard or other state military or naval forces, the State shall reimburse the city or town for $\frac{1}{2}$ of each installment as it becomes due the contractor where the following conditions are observed:

1. Recorded deed. The city or town shall deposit with the Treasurer of State a recorded deed conveying to the State clear title to all the real estate involved.

2. Certification that installment due. The State Military Defense Commission shall certify in writing to the Treasurer of State that an installment is due.

3. State contribution. The state contribution shall not exceed a total of \$50,000 to each city or town.

4. Number of projects biennially. Not more than 3 such armory projects shall be erected biennially.

The municipal officers shall provide target ranges for units of the National Guard, or other state military or naval forces, located within the limits of their municipality, except where ranges are provided from the funds appropriated for the purpose by the Federal Government. The municipal officers shall maintain

the target ranges in good condition regardless of the method by which they were obtained. The suitability of target ranges shall be determined by the senior officer in the Ordnance Department of the National Guard, or other state military or naval force, and approved by the Adjutant General. These target ranges shall be open for the use of members of the National Guard, or other state military or naval forces, at all times, subject to the approval of the Adjutant General.

The legislative body of a municipality may raise money for purchasing, leasing, constructing and maintaining, or may accept by gift or otherwise, real estate and personal property to be used for armories, other necessary buildings, and target ranges for units of the National Guard, or other state military and naval forces, located in the municipality.

To carry out this section there shall be a biennial appropriation known as the Military Fund, from which payment is to be made by the Treasurer of State upon vouchers issued by the State Military Defense Commission to the State Controller.

Any municipal officer who fails to take effective measures for providing and maintaining suitable armories, other necessary buildings, and target ranges as prescribed by this section, or who uses the buildings without authority, or who abuses the authority granted is guilty of a misdemeanor. He shall be prosecuted by complaint or indictment before a court of competent jurisdiction and upon conviction shall be punished by a fine of not less than \$100 nor more than \$400, or by imprisonment for not less than 3 months nor more than 6 months, or by both. Any fine imposed by the authority of this section shall be paid into the State Treasury and credited to the Military Fund.

All real estate and personal property owned or leased by the State, by any municipality, or by any organization of the state military or naval forces, and used for military purposes is exempt from all taxation during the period of such ownership or lease and use.

R.S.1954, c. 14, § 18; 1957, c. 405, § 4; 1961, c. 213, § 2.