

MAINE STATE LEGISLATURE

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July 3, 1922

To Hon. Percival P. Baxter, Governor of Maine
Re: Armories

Your letter, asking me to give an opinion on the right of the State to expend money on an armory building erected by a municipality, to be used by a National Guard and the people of the community, is before me, and I beg leave to submit the following reply:

History of the Legislation.

The military laws of Maine are based on Chapter 307 of the Public Laws of 1865, amended in 1868 and 1869. These were not incorporated into the Revision of 1871, and from 1871 to 1880 there were no laws relating to armories in this State.

By Chapter 225 of the Laws of 1880, the military law was re-enacted, and Section 84, relating to armories, reads as follows:

"The mayor and aldermen and selectmen shall provide to each company of the volunteer militia within the limits of their respective places, a suitable armory or place of deposit for the arms . . . furnished it by the state. . . They shall also provide a suitable room for the safe keeping of books, the transaction of business, and the instruction of officers for each regiment or separate battalion of Maine volunteer militia located within their limits, and a reasonable compensation for rent of any such armory, headquarters, or place of deposit, not exceeding the sum of one hundred dollars per annum may be allowed to the town or city so furnishing such armory, headquarters, or place of deposit, and paid from the state treasury."

This act was incorporated into the Revision of 1883, Chapter 3, Section 43, and became Chapter 4 of the Revision of 1903, Section 68 providing for armories by a municipality where a company of militia was located. . . Up to 1909, the law provided that the municipalities should provide armories for the National Guard, and the State was authorized to contribute towards the rent and maintenance of the same to a limited extent.

By virtue of Chapter 206, Section 95, of the Public Laws of 1909, the Armory Commission was established, and in the Revision of 1916, the law became Chapter 15; Section 96 relates to armories. This law was amended by Chapter 259 of the Public Laws of 1917 and provided for the exclusive use of armories by the National Guard, unless otherwise authorized by general regulations or by special authority granted to the municipal officers. By Section 96 of the same chapter, municipal officers were given authority to raise money by taxation for the purpose of erecting armories.

The Legislature of 1919, by Chapter 239, passed an act to enable cities and towns to procure State aid for the construction of armories.

Chapter 123 of the Public Laws of 1921 provides for the more general use of the armory buildings for public purposes, and, in my opinion, was enacted for the purpose of allowing cities and towns raising money by taxation for armory purposes to have a broad and liberal use and occupancy of the same, so long as the rights of the National Guard are not abridged thereby.

Procedure.

In order to determine the question at issue and to find out whether or not the State may spend money on a building which is to be used in part by the municipality, it is necessary to analyze the act of 1919.

Section 1 of Chapter 239 provides six things to be done pertaining to the construction and use of armories built by State aid, and they are as follows: (See Section 1, a and b.)

1. The municipal officers must notify the Armory Commission in writing of their desire and intention to erect an armory, and shall designate and furnish a plot of ground suitable and sufficient;
2. On this application, the Armory Commission must make an investigation to see that the locality is such that the military organization can be formed and maintained within its limits in accordance with the requirements of the military law, etc.;
3. The Commission, if they decide in favor of the application, shall so notify the municipal officers;
4. The town shall furnish a lot and acquire good and sufficient title to it and submit the same to the Armory Commission;
5. It is then the duty of the Armory Commission to furnish the city or town plans and specifications for an armory adapted to the locality;
6. The only thing then remaining to be done is for the municipal officers, under supervision of the Armory Commission, to let the contract for the construction of the armory in accordance with the plans and specifications furnished by the Armory Commission.

Conclusion.

Any armory built under the provisions of the act of 1917, as amended by the Public Laws of 1919, shall be occupied as follows (Section 98 of Chapter 259, Public Laws of 1917):

1. The armory shall be used subject to the provisions of law and the regulations prescribed by proper authority, which, in my opinion, includes the authority of the Federal Government and the State National Guard.

2. The armory shall be for the exclusive use of the National Guard whenever needed, without limit or abridgement, but it may be used by the municipality for any public purpose when authorized by the general regulations for the government of armories prescribed by the Armory Commission.

3. It may be used for other purposes by special authority of the chairman of the Armory Commission.

4. By Chapter 123 of the Public Laws of 1921, all armories erected by State aid shall be subject to the foregoing rules and regulations, but may be used for any public purpose authorized by the municipal officers, which does not interfere with military purposes.

The only remaining question is to determine the powers and duties of the Armory Commission, and a reference to Chapter 206, Section 95, of the Public Laws of 1909, will disclose that the Armory Commission is authorized

"to exercise general supervision and control over all armories, drill-rooms, and headquarters offices, to consult and cooperate with the municipal authorities and to devise effective means of obtaining and maintaining such armories. . . and 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, and headquarters offices; and it shall be their duty to notify the responsible municipal 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 92."

It is my opinion that full power is given to the Armory Commission to have made and to approve plans and specifications of such armory buildings as are suitable for the joint use of the National Guard and the municipality where they are located.

In my opinion, the Armory Commission may, and should, approve and furnish plans and specifications for any building for the joint use of the National Guard and the municipality, that the town or city is willing to erect with the money provided by the State under the act. I base this opinion upon the theory that, as the military laws are enforced in times of peace, what is good for the individual is good for the State.

In my opinion, the legislature intended to authorize towns to build armories with State aid for the benefit of the National Guard, and for the further public use and benefit of the same to the community where the armory is located, the manner and extent of the use by the town or city to be commensurate with the amount of money expended by the municipality.

I, therefore, advise you that, in my opinion, the Armory Commission has the power, and it is its duty, to make such rules and regulations relating to armories as will allow the municipalities where they are erected the use of the same at all times when not needed by the National Guard.

Ransford W. Shaw
Attorney General