

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

Governor under the provisions of Sections 1 and 2 of said Act (Public Laws 1941, Chapter 305).

It should be clearly understood by all executive officers that the authority given to the Governor under the Civilian Defense Act to invest certain persons with powers, does not in any way lessen the authority of sheriffs, constables, police, wardens and other executive officers in the enforcement of all laws, including the Civilian Defense Act itself. In other words, violations of the Civilian Defense Act come within the authority of the duly constituted officers of the law even though there may be other persons named who shall possess limited authority for the enforcement of the orders and regulations issued under the Act. The fact that certain persons have authority to enforce the rules and regulations issued under this particular law, does not in any way lessen the authority of the regular law enforcement officers to enforce those rules and regulations.

Instructions to this effect should be sent out to all sheriffs and police heads.

Attorney General

From:

April 28, 1942

Frank I. Cowan, Attorney General

To:

Honorable Sumner Sewall  
Governor of Maine

I have been discussing with Adjutant General Carter the question of your authority to authorize the organization and enlistment as a part of the Maine State Guard of certain irregular bodies and groups and certain individuals who for one reason or another are not eligible to become regular members of the Maine State Guard or are not so situated that they can accept the training requirements of the Guard. Our difficulty in the past has been in the provision of Section 92 of Chapter 7 of the Laws of 1941 setting up the Maine State Guard which uses the words "provided that the organization shall not conflict with the laws of the United States."

General Carter has now shown me a copy of a War Department circular out of the office of the Chief of the National Guard Bureau, bearing date of April 13, 1942 and bearing number 421 (insignia) gen.-78. This circular quotes a "directive" issued by the Adjutant General of the Army to the Commanding Generals of all Corps Areas, etc.; refers to Article I, annexed to the Hague Convention No. 4, October 18, 1907, which classifies irregular or guerrilla troops as lawful belligerents; and sets up a set of suggested regulations.

It is very possible that the common law doctrine of militia, to wit, that it includes all males capable of bearing arms, is the law in Maine without regard to the fact that Section 1 of the Military Law restricts the militia to ages between 18 and 45. However, the Maine State Guard Act, as amended by Chapter 312 of the Public Laws of

1941, approved January 23, 1942 as an emergency Act, sets the age of the persons from whom the State Guard can be drawn as "such able bodied male(s) . . . who shall be more than 18 years of age".

There is no doubt in my mind that you have the authority to set up as many divisions or branches or different types of organization of the Maine State Guard as you see fit. These can include both regular and irregular bodies and may be equipped with any type of uniform that you wish to authorize. The State Guard Act does not require any particular type of armament and it does not require that the arms shall be furnished by the State.

As a matter of fact the extent of your authority in time of war, insofar as organizing and equipping the militia is concerned, can be carried to the fullest extent without any Legislative authority whatsoever.

Section 4, Article XL of the State Constitution provides in part as follows:

"It shall be the duty of the Governor to issue from time to time such orders and regulations and to adopt such other means of administration as shall maintain the prescribed standard of organization, armament and discipline; and such orders, regulations and means adopted shall have the full force and effect of law."

It is to be seen that the above Constitutional provision expressly authorizes you to perform all functions in connection with the militia except actual enlistment. Whether or not the power of enlistment or drafting is included among the necessary powers of the Governor in time of war is a question that we don't have to pass on at the present time because the amended State Guard Act covers the matter of enlistment.

In other words, the war-time powers for enlisting, organizing, training and equipping the State Militia which you, by virtue of constitutional and statutory provisions, possess as Governor, are sufficiently broad so that you can act as your judgment dictates in incorporating into the State Guard any added branches which you may desire, and the rules and regulations in regard to their equipment and training, as long as they do not directly conflict with the laws of the United States, are wholly discretionary with you.

Attorney General

May 1, 1942

William D. Hayes, Esquire  
State Auditor  
State House  
Augusta, Maine

Dear Sir:

I have been giving further thought to the question you brought up for discussion yesterday in regard to your right or duty to with-