

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

August 7, 1959

To: Walter H. Kennett, Director

Civil Defense

Re: "Comparison of State Civil Defense Legislation", Examination of National Emergency - Authority available in this State in case of
This memo is in response to a letter dated June 2, 1959, from the Executive Office of the President, Office of Civil and Defense Mobilization, in which this office was requested to:

1. Examine "Comparison of State Civil Defense Legislation" for accuracy, and,
 2. To identify extraordinary or emergency authority available in this State during periods of war or national emergency caused by threat of war.
1. - On Page 19-1 of the "Comparison" paragraph numbered 2, the word "wherever" as seen in "wherever it is deemed advisable by the Governor - - -" should be changed to "whenever".

On page 19-3 paragraph numbered 10, in order to remove ambiguity should be amended to read that: Non-employees of mobile reserve battalions paid \$6.00 per day. Correction underlined.

Sub-paragraph 2 of paragraph numbered 12 on page 19-3 should be amended at line 5 just before the semi-colon to include the words "in times of emergency."

2. - Extraordinary or emergency authority available during periods of war or national emergency caused by threat of war:

Chapter 14, R. S. of 1954 as amended, contains what is in essence the emergency powers of the Governor, except those powers contained in Chapter 12 (State Civil Defense and Public Safety Council).

Chapter 14 sets forth the powers of the Governor as they relate to the military law, i. e., the Militia, National Guard, and other State military forces. The Governor may:

Section 2 -

"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, in term time or vacation, 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 forces 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 (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."

The remainder of the chapter deals with the organization and duties of the several bodies established to provide protection to the state and its citizens.

Article VII of the Maine Constitution also deals with the military, giving constitutional permission and some direction as to the establishment of the military.

Article V Part First (Executive power) Section 7, of the Maine Constitution, is of utmost importance when considering the use of the state military in a national emergency. The section reads as follows:

"Commander in chief of the militia; not to march the militia out of state. He shall be commander in chief of the army and navy of the state, and of the militia, except when called into the actual service of the United States; but he shall not march nor convey any of the citizens out of the state without their consent, or that of the legislature, unless it shall become necessary, in order to march or transport them from one part of the state to another for the defense thereof."

Jesse Lynn Frost
Deputy Attorney General

JWF:CBH