

MAINE STATE LEGISLATURE

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No ✓

August 27, 1965

Major General E. W. Heywood
Phillip M. Kilminster, Assistant

Adjutant General
Attorney General

Request for an Opinion Special Allowance, Maine State Guard

FACTS:

Chapter 131, Section 1042, Title 25 M.R.S.A., provides for remuneration for unit commanders at the rate of \$50 per year and company clerks and supply sergeants at \$25 per year, who, in the opinion of the Adjutant General, are entitled to remuneration because of care and responsibility of military property, coupled with a satisfactory performance of military duties. The Department of the Adjutant General has supported these individuals in the Maine National Guard when they have satisfactorily performed these duties.

QUESTION:

With the activation of the Maine State Guard in October, 1964, the question arises as to whether or not the above-stated provision could be properly applied to individuals of the Maine State Guard.

ANSWER:

See opinion.

OPINION:

The statutory provisions of our military law which govern the active service, pay and allowances, and disability compensation of individuals in the National Guard and other authorized military forces, generally apply to individuals in the Maine State Guard.

25 M.R.S.A. § 883 provides in part:

"All of sections 793, 798 and 1041 not inconsistent with this chapter shall apply to and govern the Maine State Guard when ever such guard has been organized.

"No pay will be allowed the officers and enlisted men of the Maine State Guard for drill and inspections, but nothing in this section shall be construed as to invalidate the provisions of section 1041 which are applicable to the Maine State Guard. . . ."

By declaring section 1041 applicable to the Maine State Guard, we believe our Legislature also concluded that section 1042 would apply to certain individuals in the State Guard. Sections 1041 and 1042 are correlative sections of our military law which provide for compensation of military personnel. Sections 1041 and 1042 must be read together. The former section authorizes pay and allowance for officers and enlisted men "of the National Guard or other authorized state military or naval forces" when called for active duty. By its own terms, section 1041 would apply to the Maine State Guard even in the absence of the legislative declaration to this effect in 15 M.R.S.A. § 883 quoted supra.

In addition to the pay and allowance provisions of section 1041, section 1042 provides for certain special allowances. The special allowance provisions of 1042 are not limited in application to personnel in any particular military organization however.

We therefore conclude that remuneration for the care of military property entrusted to certain individuals in the activated Maine State Guard is permissible under the terms of section 1042.

Phillip M. Kilmister
Assistant Attorney General