

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Major-General E. W. Heywood
Parker Hennessey, Chief

March 1, 1968
Adjutant General
State Police

Suppression of Civil Disturbances

You have asked several questions in connection with the suppression of civil disturbances by military forces of the State.

The first question relates to the circumstances under which the Governor is authorized to order to active service the National Guard or the militia. It should be borne in mind that the word "militia" is an all-inclusive word. By 25 M.R.S.A. § 761, it is divided into these classes: The National Guard, the naval militia, other organized militia units and the unorganized militia. 25 M.R.S.A. § 703 provides:

"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."

As for the unorganized militia, they may be ordered out only when the National Guard is ordered into federal service, and the number available is insufficient to meet the federal call. See 25 M.R.S.A. § 703.

It is our opinion that unless one of the conditions listed in 703 exists, the Governor does not have the power to order the National Guard or the militia into active service for the suppression of civil disturbances.

The next question concerns the issuance of an emergency proclamation in the absence of the Governor from the State. 25 M.R.S.A. § 307 provides that in such case the person who can do so is the person who would act as Governor if the office of Governor were vacant.

In descending order, these are:

President of the Senate
Speaker of the House of Representatives
Secretary of State

(See Constitution, Article V, Part 1, section 14)

You next ask what powers of arrest members of the National Guard and private citizens have.

When there is an unlawful assembly, 17 M.R.S.A. §§ 3355 and 3356 provide that private citizens may be called upon to aid the officers, whose duty it is to disperse the assembly, in arresting and securing the persons composing it.

§ 3356 provides that when an armed force is called out it shall obey the orders for suppressing such assembly, and arresting and securing the persons composing it which it receives from the Governor, any justice or judge of a court of record, the sheriff of the county, or any 2 of the officers mentioned in § 3355 (municipal officers, constables, marshal, deputy marshal and police officers, and the sheriff and his deputies).

LEON V. WALKER, JR.
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