

MAINE STATE LEGISLATURE

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September 14, 1972

Lt. Col. Kenneth Wood, Deputy Chief State Police

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State Police--Restrictions as to members joining military

SYLLABUS:

The Chief of State Police can make a regulation limiting the number of members of the State Police who may be allowed to enlist in National Guard, Air Guard, State Guard, and in the reserves of the Marine Corp, Navy, or Coast Guard when there is no state of national or State emergency, and who are under no service obligation, subject to the approval of the Personnel Board.

FACTS:

Stated in the question.

QUESTION:

Whether or not the Chief of State Police can make a regulation limiting the number of members of the State Police who may be allowed to enlist in the National Guard, Air Guard, State Guard and in the reserves of the Marine Corps, Navy or Coast Guard when there is no state of national or State emergency, and who are under no service obligation.

ANSWER:

Yes, but see limitations specified in "Reasons" hereunder.

REASONS:

25 M.R.S.A. § 1501 provides in pertinent part:

"Subject to the Personnel Law, the Chief of the State Police may enlist suitable persons as members of the State Police to enforce the law and employ such other employees as may be necessary. The Chief of the State Police shall make rules and regulations, subject to the approval of the Personnel Board, for the discipline and control of the State Police."
(Emphasis supplied.)

It would seem to be reasonably possible for the Chief of State Police to conclude that the proper functioning of his Department might be substantially impaired if all or a large percentage of the members of the State Police also served simultaneously in the National Guard, Air Guard, State Guard or in the Reserves of the

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Marine Corps, Navy or Coast Guard. He could well envisage that problems of duty scheduling and State Police reserve force availability, particularly during weekends, drill nights and training periods, might unduly jeopardize the efficiency of that Department. Accordingly, the Chief could conclude reasonably that in order to insure proper control of the members of the State Police a regulation which prohibited enlistment in the National Guard, Air Guard, State Guard and in the reserves of the Marine Corps, Navy and Coast Guard during periods of no national or State emergency by such members who were not under legal obligation to perform such service was fairly required in order to ensure proper "control" of his Department. Therefore, he could make such a regulation, subject to the approval of the Personnel Board.

In this connection it should be noted that 25 M.R.S.A. § 1503 provides that members of the State Police "shall hold no other office during their term of service." This provision would, by itself, preclude a member of the State Police from accepting a commission as an officer in one of these units.

However, the question posed is whether or not such a regulation could be adopted which would "limit" the number of such enlistments, rather than total prohibition. While we have answered that question in the affirmative, we must caution that such "limitation" must be founded upon some reasonably distinguishing basis; arbitrary discrimination is impermissible; all persons similarly situated must be treated alike. Hence, if a "limiting" approach is adopted, there is an added need for care in drafting and implementing the regulation.

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