

# MAINE STATE LEGISLATURE

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Tort Claims National Guard Activities  
14 M.R.S. § 8103-1-E

# STATE OF MAINE

Inter-Departmental Memorandum Date April 19, 1977

To Col. Earl L. Adams, Chief of Staff Dept. Military Bureau - Defense and Veterans Services  
From Gregory W. Sample, Assistant Dept. Attorney General  
Subject Maine National Guard liability for emergency activities

## Question:

Does passage of the Maine Tort Claims Act, 14 M.R.S. c. 741, expose the Maine National Guard to liability for damages or injuries it may cause in the performance of emergency duties, such as responding in the event of floods, riots, etc.?

## Answer:

No. Duties of the Maine National Guard performed in response to a declaration of emergency by the Governor are expressly excepted from any waiver of sovereign immunity contained in the Maine Tort Claims Act.

## Discussion:

Your memorandum of March 10, 1977 requesting this opinion refers specifically to "emergency duty," which we have assumed to be limited to actions of the Maine National Guard in response to a declaration of emergency by the Governor, occasioned by an existing or imminent disaster or catastrophe as set forth in 37-A M.R.S. § 57 (1976 Supp.) Any and all activities of the Maine National Guard when called duty in accordance with such a proclamation of emergency by the Governor are expressly excepted from the provisions of the Tort Claims Act, in subsection 1(E) of § 8103, regardless of the provisions of § 8104.

Sovereign immunity from damages caused by or arising from such activities is unaffected by passage of the Maine Tort Claims Act.

*Gregory W. Sample*

