

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)

*Further guard liability of guardsmen in emergency
Tort Claims: National Guard
14 M.R.S.A. 8103-2-E*

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 21, 1977

To: Joseph M. Hochadel, Executive Department
From: Donald G. Alexander, Deputy Attorney General
Re: National Guard Emergency Proclamation

This responds to your memorandum of November 7, 1977, and the documents attached thereto.

Briefly, it is my view that sufficient uncertainty exists when comparing the provisions of Title 37-A and the Maine Tort Claims Act, 14 M.R.S.A. § 8101, et seq., that it would be advisable to issue the proclamations in order to protect the State from liability where guard personnel are used in situations such as the Baxter fire. I would note further, however, that the guard exemption specified in § 8103-2-E of the Tort Claims Act only protects the State. Individual guardsmen have been and would continue to be liable for their own acts either separately or jointly with the State to the same extent as that liability existed prior to the Tort Claims Act if the negligence of the individual guardsman could be demonstrated and they were not otherwise exempt by the Tort Claims Act or some other law. I am not sure if guardsmen would be covered by the general State employee provision in § 8103-3.

Thus, I do not believe the emergency proclamations would be adequate to protect individual guardsmen, although, as I read them, they would be adequate to protect the State.

It may be appropriate to consider some statutory changes in this area to further define the potential liability of the State and of individual guardsmen when acting in a situation such as the Baxter fire.

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec