

# MAINE STATE LEGISLATURE

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*Auburn Armory  
National Guard Armory Closings*

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January 17, 1978

Honorable Roland D. Martin  
Senate Chambers  
State House  
Augusta, Maine

Dear Senator Martin:

This responds to your letter of December 23, 1977, by which you raise certain questions regarding current proposals to close the National Guard Armory in Auburn and convey that armory to the city.

As background for this opinion, a brief history of legislative and executive decision-making relating to closure of the Auburn Armory is necessary.

The question of closure of the Auburn Armory was the subject of some concern during the first session of the 108th Legislature. In June, the Legislature enacted the current services appropriations bill, P.L. 1977, c. 380. Included within the appropriation to the Department of Defense and Veterans Services was \$35,000 in each fiscal year to eliminate the need for closing any armory. The provision in the appropriations bill read as follows:

"provides additional funding of \$35,000  
in each year to eliminate the need for  
closing any armory."

It is our understanding from discussions with Legislators that this provision was specifically intended to foreclose the necessity of closing the Auburn Armory because of lack of available funds to maintain the armory.

Chapter 380, the current services appropriations bill, including the appropriation to maintain the armory, took effect on July 1, 1977.

Subsequent to enactment of the current services appropriations, the Legislature enacted Chapter 58 of the Resolves of 1977. This Resolve read in part as follows:

"Resolved: That, subject to the provisions of federal-state agreements, but notwithstanding any contrary provision of state law, in the event the State of Maine Department of Defense and Veterans Services, Military Bureau, determines the Hasty Memorial Armory in Auburn, Maine, is not necessary for further utilization as a National Guard Armory, the State of Maine shall convey all right, title and interest in the building to the City of Auburn by appropriate deed of conveyance."

This legislation thus authorized transfer of the Auburn Armory to the City of Auburn in the event that the State of Maine Department of Defense and Veterans Services, Military Bureau, determined that the armory was not necessary for further utilization as a National Guard armory. This legislation was vetoed by the Governor. However, the veto was overridden and the Resolve was approved July 25, 1977.

Thus, in 1977, the Legislature took two acts regarding the Auburn Armory. First, it authorized \$35,000 annually in appropriations to assure that the armory would not be closed for financial reasons. Second, it authorized the transfer of the Auburn Armory to the City of Auburn upon a determination by the Department of Defense and Veterans Services, Military Bureau, that the armory was no longer necessary for National Guard purposes.

We see no conflict in the two legislative enactments as the first provided the funds to operate the armory if deemed necessary, and the second authorized transfer to the City of Auburn if the armory is deemed no longer necessary for the National Guard in light of other available alternatives or for whatever other reason the National Guard would determine it not necessary.

With this background, we address the questions raised in your letter.

First, we would note that you are correct in your citation of National Guard Regulation, NGR-405-80, which requires that disposal of the armory which is subject to an existing federal-state agreement cannot occur without the approval of the Secretary of Defense or his designee. We are advised that the Governor's Office and the Department of Defense and Veterans Services are aware of this requirement and intend to comply with it prior to any action to dispose of the armory. We would note, however, that it does not appear that Department of Defense approval is necessary prior to any decision the State Department of Defense and Veterans Services may make to vacate the Auburn Armory as unnecessary.

You then pose the question as to whether the Governor can direct the Adjutant General of Maine to vacate an armory (specifically the Auburn Armory). With regard to the Auburn Armory, we would note that the ultimate decision regarding necessity for further utilization is placed with the State of Maine Department of Defense and Veterans Services, Military Bureau, by Resolve 58. Thus, it would be this agency which is authorized to make any final decision regarding the necessity of utilization of the Auburn Armory. We are advised by the Governor's Office that they view the letter of December 1 to Major General Paul R. Day as a request rather than an order to vacate the armory. Thus the question of a gubernatorial order to vacate the armory has not yet been raised.

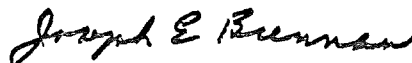
Your next question is as follows:

"In view of the fact that the Legislature included in their appropriations from the General Fund a sum of \$35,000 to eliminate the need of closing any Armory, can the Governor ignore Maine Statutes and close this Armory?"

As indicated above, the \$35,000 was included in the appropriations legislation to eliminate the need for closing any armory for financial reasons. There may be other reasons why the Department of Defense and Veterans Services may deem it appropriate to close an armory (e.g., availability of better alternative facilities, changes in organization or whatever). We emphasize again the ultimate decision on closure is one for the Department of Defense and Veterans Services. We do believe that, consistent with both the appropriations legislation and Chapter 58, the Department of Defense and Veterans Services, Military Bureau, could make a decision that the Auburn Armory was no longer necessary for utilization and thus make the Auburn Armory available for transfer to the City of Auburn.

I hope this information is helpful.

Sincerely,



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Attorney General

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