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1927

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CHAPTER 12

MILITARY CODE

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MILITIA

2395. Military code—This act shall be known as the military code. ('21 c. 506 § 1)

2396. Act to conform to U. S. regulations—The intent of this act and all acts of the state affecting the military forces, is to conform to all acts and regulations of the United States affecting the same subjects, and all acts of the state shall be construed to effect this purpose, and anything to the contrary shall be held to be null and void as long as the subject matter shall have been acted on by the United States; and upon any subject not acted upon with reference to these matters by United States authority, any act of the state shall be in full force and effect. ('21 c. 506 § 2)

2397. What are military forces—The term military forces shall include the National Guard, and in addition thereto the Militia when called into service of the state. The designation "company," as used in this act, shall be understood and construed to include a company of infantry, engineers, signal corps, a flight of the air service, a battery of field artillery, a troop of cavalry, or any similar organization in any branch of the military service authorized by federal law for this state, including a permanent detachment of the medical department attached to a line or staff organization, a field hospital, or a headquarters detachment. The designation, "battalion," applies in like manner to squadron of cavalry and air service. "Active service" shall be understood and construed to be service on behalf of the state, in case of public disaster, war, riot, tumult, breach of the peace, resistance of process, or whenever the same is threatened, whenever called upon in aid of civil authorities, at encampments whether ordered by state or federal authority, or upon any other duty requiring the entire time of the organization or person. "On duty" shall include periods of drill and such other training and service as may be required under state or federal law, regulations or orders. The terms, "in the service of the United States" and "not in the service of the United States," used herein shall be understood to mean and be the same as such terms are used in the National defense act of congress approved June third, nineteen hundred sixteen and amendments thereto. ('21 c. 506 § 3)

2398. U. S. army regulations—All matters relating to the organization, discipline and government of the military forces not otherwise provided for in this act shall be decided by the custom, regulations and usage of the United States army. ('21 c. 506 § 4)

2399. Militia—The militia shall consist of all able-bodied male citizens of the state and all other able-bodied males, resident therein, who have or shall have declared their intention to become citizens of the United States, who shall be eighteen or more years of age, and, except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into three classes, the national guard, the naval militia, and the unorganized militia.

The officers, judicial and executive, of the government of the United States and of the states; persons in the military or naval service of the United States; custom house clerks, persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals, and navy yards of the United States; pilots and mariners actually employed in the sea service of any citizen or merchant within the United States, shall all be exempt from militia duty without regard to age, and all persons who because of religious beliefs shall claim exemption from military service if the conscientious holding of such belief by such person shall be established under such regulations as the president of the United States shall prescribe, shall be exempt from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President of the United States shall declare to be noncombatant. ('21 c. 506 § 5)

2400. Enumeration of persons subject to military duty—Whenever a state census is taken, each enumerator, in addition to his other duties, shall designate upon his return all persons enumerated by him who are subject to military duty under this chapter. As soon as the returns are complete, the superintendent of the census shall make and certify to the adjutant general lists of the names, alphabetically arranged and consecutively numbered, of all persons so designated in each town, village and city, arranged by counties, and showing the age, occupation and address of each person. And he shall accompany such lists with a table showing the number of enumerated militiamen in each town, village, city and county. The adjutant general shall prescribe blanks therefor. ('21 c. 506 § 6)

2401. Assessors to make lists—Whenever the governor shall so direct by his proclamation issued in an even-numbered year, and at least thirty days before the day the assessment books are required by law to be delivered to the assessors, all such assessors shall make upon blanks prescribed by the adjutant general, duplicate lists of the names, alphabetically arranged and consecutively numbered, of all militiamen living in their respective districts, with the age, occupation, and postoffice address of each. One of said lists shall be filed with the county auditor, and one with the clerk of the town, village, or city in which the assessor resides; and no compensation shall be allowed for any services of an assessor until he has filed with such clerk an affidavit showing full compliance on his part with the foregoing requirements. ('21 c. 506 § 7)

2402. List to adjutant general—Each auditor shall add to the list so filed with him the names of all militiamen omitted, and erase the names of those shown to be improperly enrolled, giving notice of such changes to the proper clerks. On or before October 1st in such year, he shall transmit to the adjutant general a certified copy of the rolls so filed and corrected. In addition thereto, or in lieu thereof, the adjutant general may require of the auditor a statement showing the number so enrolled in each town, village, and city of his county. ('21 c. 506 § 8)

2403. Householder shall disclose names—Every householder shall disclose, upon the application of assessors and enumerators authorized to make such enrollment, the names of all militiamen residing in his house; and every person, upon like application, shall give his name, age, and address. Every person who shall wilfully refuse such information, or give false answers to the proper inquiries of any such enrolling officer, and every enrolling officer who shall neglect any duty imposed by this chapter, shall be deemed guilty of a misdemeanor. ('21 c. 506 § 9)

2404. Governor may call out militia—The governor, whenever he shall deem it necessary to call out the enrolled militia for military duty, may require the mayors of the several municipalities and the chairmen of the several town boards to appoint a time and place for the assembling of such militia; and they shall forthwith give notice, by public proclamation, or by written or oral notice to each person, of such assem-

blage. At the appointed time and place they shall accept volunteers to the number designated by the governor's order, supplying any deficiency by draft. The names of the militiamen so accepted or drafted shall be forwarded to the governor forthwith. The governor may prescribe and enforce uniform rules for the conduct of drafts, appoint all officers necessary therefor, and fix the amount of their pay, not exceeding the rate of pay prescribed for the national guard or volunteers in the federal service. ('21 c. 506 § 10)

2405. Service for three years—The men whose names are so forwarded shall be mustered at once into the service of the state for such period as the governor shall direct, not exceeding three years. They shall be organized as prescribed for existing organizations of the national guard. Such new organizations shall be officered, equipped, trained, and commanded according to the laws governing the national guard. ('21 c. 506 § 11)

2406. Deserter—Every enrolled militiaman who fails, without reasonable excuse, to appear at the appointed time and place of assemblage, or being accepted as a volunteer or duly drafted, fails to report for muster as lawfully required, shall be considered and treated as a deserter. ('21 c. 506 § 12)

2407. Governor to be commander-in-chief of military forces—Use of—Rules and regulations for—Staff—Adjutant general—The Governor shall be the commander-in-chief of the military forces, except so much thereof as may be in the actual service of the United States, and may employ the same for the defense or relief of the state, the enforcement of its law, and the protection of life and property therein. He shall make and publish regulations, not inconsistent with law, and enforce all the provisions of this chapter. He may appoint a staff, consisting of an adjutant general and six aides-de-camp of field grade who shall be detailed from the National Guard. ('21, c. 506, § 13; amended '27, c. 339, § 1)

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2408. Adjutant general — Appointment — Qualifications—There shall be an adjutant general of the state who shall be appointed by the Governor, forthwith upon the taking effect of this Act, who shall be a staff officer, who at time of appointment shall be a commissioned officer of the National Guard of this state, with not less than ten years' military service in the armed forces of this state or of the United States, at least three of which shall have been commissioned and who shall have reached the grade of a field officer. He shall hold office as provided in Section 110, Act of Congress approved June 4, 1920, as amended, and shall not be removed from office, except as provided by the military laws of this state. ('21, c. 506, § 14; amended '27, c. 339, § 2)

2409. Minnesota national guard—The Minnesota national guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years, organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years. The term, "national guard," shall apply only to the militia organized as a land force. The number of officers and enlisted men of the national guard shall be fixed from time to time and organized so as to meet the minimum requirements of the federal laws. ('21 c. 506 § 15)

2410. Organization—The organization of the national guard, including the composition of all units thereof, shall be such as is or may hereafter be prescribed for this state by federal law. ('21 c. 506 § 16)

2411. Location of units—The location of units including headquarters shall, when not otherwise prescribed by Federal law, be fixed by the Governor on the recommendation of the adjutant general. ('21, c. 506, § 17; amended '27, c. 339, § 3)

2412. National guard reserve—A national guard reserve shall be organized and maintained under such rules and regulations as may be prescribed in accordance with the federal law. ('21 c. 506 § 18)

2413. Officers and enlisted men—The number and grades of officers and enlisted men in the staff corps and departments shall be as prescribed by federal law, but in case of war, invasion, insurrection, riot or imminent danger of either, the governor may temporarily increase such force to meet such emergency. All officers of staff corps and departments appointed shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the national guard. ('21 c. 506 § 19)

2414. Officers of staff corps and departments—Enlisted men—The officers of the state staff corps and departments shall be selected and appointed by the adjutant general, and commissioned by the Governor. The enlisted men shall be recruited and warranted by their respective chiefs. ('21, c. 506, § 20; amended '27, c. 339, § 4)

2415. Military board—[Repealed.]

This section (Laws 1921, c. 506, § 21), is repealed by Laws 1925, c. 363, § 2, and by Laws 1927, c. 339, § 15.

2415-1. Powers of military board and Board of Armory Supervisors vested in adjutant general—That the authority conferred and the duties imposed upon the Military Board and the Board of Armory Supervisors under the military code as amended by this Act and prior Acts hereby are transferred to, vested in and imposed upon the adjutant general. This section shall take effect and be in force from and after the passage of this Act. ('27, c. 339, § 16)

2416. Qualifications of officers—Officers of the national guard shall not be commissioned as such unless they shall have been selected from the classes of persons having the qualifications prescribed by federal law and shall have taken and subscribed to the oath of office prescribed by congress. ('21 c. 506 § 22)

2417. Line and field officers—Line officers and field officers below the grade of colonel in the regiments and lesser separate organizations shall be selected and appointed by the commanders thereof respectively. Officers above the grade of lieutenant colonel shall be selected and appointed by the Governor upon the recommendation of the adjutant general. ('21, c. 506, § 23; amended '27, c. 339, § 5)

2418. Examinations—Any person hereafter appointed and commissioned an officer of the national guard shall successfully pass such tests as to his physical, moral and professional fitness as shall be prescribed by federal law. The examination to determine such qualifications for commissions shall be as prescribed by federal law. Officers shall be commissioned by the governor, and the commission shall designate the arm, staff corps or department, and, in the case of line officers, the regiment in which they are appointed. Officers will be assigned or reassigned to duty in the various regiments or lesser separate organizations by the immediate commander thereof. ('21 c. 506 § 24)

2419. Commissions may be vacated—At any time the moral character, capacity, and general fitness for the service of any national guard officer may be determined by an efficiency board as provided by federal law. Commissions of officers of the national guard may be vacated, upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Officers of said guard rendered surplus by the disbandment of their organizations shall be disposed of as provided by federal law. Officers may, upon their own application, be placed in the reserve as may be authorized by federal law. ('21 c. 506 § 25)

2420. Officers may resign—Commissioned officers may resign in such manner and under such circumstances as may be prescribed by federal regulations. ('21 c. 506 § 26)

2421. Discharges for enlisted men—An enlisted man discharged from service in the national guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed by federal law and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the federal authorities may prescribe. ('21 c. 506 § 27)

2422. Dishonorable discharges—A dishonorable discharge from service in the national guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein and disqualification for any military office under the state. The names of all persons dishonorably discharged shall be published in orders by the adjutant general quarterly and a complete list thereof shall be kept posted in all the armories. No person so discharged shall be admitted to any armory or other meeting place of the guard or to the immediate vicinity of any encampment, drill or parade of troops. All commanding officers are hereby required to enforce these prohibitions. ('21 c. 506 § 28)

2423. Retirement of commissioned officers—Commissions of National Guard officers shall be vacated as provided by federal law. Any commissioned officer of the national guard who resigns or is retired and who has served or shall have served as such officer for a period of not less than ten years and any commissioned officer of the national guard who has been honorably discharged from the army of the United States after serving therein for a period of ninety days or more during any war and who shall have served as such officer of the national guard for a period of not less than five years and any commissioned officer of the national guard who has become, or who shall hereafter become disabled and thereby incapable of performing the duties of his office, may, upon his retirement upon his own request in writing, stating the grounds therefor and by order of the commander-in-chief, have his name placed on a roll in the office of the adjutant general to be known as the "roll of retired officers," and shall thereby be entitled to wear when not in conflict with federal law on state or other occasions of ceremony, the uniform of the rank last held by him. The commander-in-chief may, by general order, provide a suitable mark of distinction for all officers and enlisted men who have served in the national guard for an aggregate period of ten, fifteen and twenty years, respectively and for like service hereafter. ('21 c. 506 § 29)

2424. Exempt from jury duty—Owing to liability to call for military duty during his term of service every officer and enlisted man of the national guard shall be exempt from duty as juror and if honorably discharged after five years of service he shall be forever exempt. No member of the guard shall be arrested, or served with any summons, order, warrant or other civil process after having been ordered to any duty or while going to, attending or returning from any place to which he is required to go for military duty; but nothing herein shall prevent his arrest by order of a military officer or for a felony or breach of the peace committed while not in the actual performance of his duty. And the articles of equipment personally owned by such members shall be exempt from seizure or sale for debt. ('21 c. 506 § 30)

2425. State and municipal officers and employes not to lose pay while engaged in drill—All officers and employes of the state or subdivision or municipality thereof who shall be members of the national guard shall be entitled to leave of absence from their respective duties without loss of pay, status, or efficiency rating, on all days during which they shall be engaged in drills or parades during business hours ordered by proper authority or for field or coast-defense training or active service ordered or authorized under the provisions of state law. ('21 c. 506 § 31)

2426. Not liable for acts performed under orders—The commanding officer of any of the military forces engaged in the suppression of an insurrection, the dispersion of a mob or the enforcement of the laws shall exercise his discretion as to the propriety of firing upon or otherwise attacking any mob or other unlawful assembly; and, if he exercises his honest judgment thereon, he shall not be liable in either a civil or a criminal action for any act done while on such duty. But no officer, under any pretense or in compliance with any order, shall direct or permit his men, or any of them, to fire blank cartridges upon any mob or unlawful assemblage, under penalty of dishonorable dismissal from the service. No officer or enlisted man shall be held liable in either a civil or a criminal action, for any act done under lawful orders and in the performance of his duty. ('21 c. 506 § 32)

2427. Governor to appoint counsel—If a suit or proceeding shall be commenced in any court by any person against any officer of the military forces for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or against any soldier acting under the authority or order of any such officer, or by virtue of any warrant, issued by him pursuant to law, it shall be the duty of the governor, upon the recommendation of the attorney-general, to appoint counsel to defend such person. The costs and expenses of any such defense shall be paid out of the appropriation for the maintenance of the National Guard. ('21 c. 506 § 33)

2428. Security for costs—Any person bringing an action or proceeding against a military officer of the state for any act done in the course of his official duty, or against any person acting under the order or authority of such officer, shall give security for the costs, disbursements and reasonable attorney's fees incurred by the state or defendant in defending the same, in the same manner and subject to the same regulations, so far as applicable, as in the case of a non-resident plaintiff. And if the plaintiff fails to recover, such attorney's fees may be taxes with the costs and disbursements and judgment therefor be entered against him and his sureties on the bond. ('21 c. 506 § 34)

2429. Not to be discriminated against—No person shall discriminate against any officer or enlisted man of the military forces of the state because of his membership therein. No person shall prohibit or refuse

entrance to any officer or enlisted man of the army or navy of the United States, or of the military forces of this state, into any public entertainment or place of amusement because such officer or enlisted man is wearing the uniform of the organization to which he belongs. No employer or officer or agent of any corporation, company, or firm or other person shall discharge any person from employment because of being an officer or enlisted man of the military forces of the state, or hinder or prevent him from performing any military service he may be called upon to perform by proper authority, or dissuade any person from enlistment in the said national guard by threat or injury to him, in case he shall so enlist, in respect to his employment, trade, or business. Any person violating any of the provisions of this act shall be deemed guilty of a gross misdemeanor. ('21 c. 506 § 35)

2430. Disabled members to receive relief—If any officer or enlisted man of the National Guard is wounded, or otherwise disabled, while doing duty as a member of the military force, he shall receive from the commonwealth just and reasonable relief, in amount to be determined by the adjutant general and approved by the Governor. All such payments under this or the next following section shall be made from the appropriation for the maintenance of the National Guard. ('21, c. 506, § 36; amended '27, c. 339, § 6)

2431. Same—Compensation—How paid—(1) Compensation, payable quarterly may be paid to either the dependent widow, minor children or parent of any member of the military forces who may die from disease contracted or injuries received, or who may be killed while in active service, under orders of the Governor.

(2) All claims for compensation under this section shall be acted on by the adjutant general. In all cases arising under this section, the amount allowed and the duration of the payment shall be that provided by the Workmen's Compensation law as now or hereafter in force based on the guardsman's usual earning in civil life. ('21, c. 506, § 37; amended '27, c. 339, § 7)

2432. Service in U. S. army shall be considered service in guard—Service by any person in the United States volunteers, or in the United States army or navy, in the time of war, insurrection, or rebellion, shall be considered as continuous service in the national guard for any and all purposes regarding privileges and exemptions provided by law for members of the national guard by enlistment or commission; Provided, that continuous service for an officer shall include only the time he was commissioned as such. ('21 c. 506 § 38)

2433. Company to be corporate body—(1) Each company, when such organization is federally recognized, shall, without any further proceeding other than the filing with the secretary of state of a certificate by the adjutant general to that effect constitute a corporate body to be known by the name by which such company is officially designated under the military laws and regulations of the state, and shall possess all the powers necessary and convenient to accomplish the objects and perform the duties prescribed by law.

(2) The members of such military company in good standing and no others shall constitute the members of such corporation, and shall elect three trustees who together with the commanding officer shall manage and administer the civil business of such corporation. The commanding officer shall be ex-officio president, and the trustees shall elect one of their number vice president, one treasurer, and one secretary.

(3) Each such company may take by purchase, devise, gift, or otherwise and hold, so long as such company is an existing company and a part of the national guard, any property, real or personal. All such property shall be in the custody and control of the trustees hereinbefore provided for.

(4) Such companies may sell, exchange or otherwise dispose of property so acquired, with the written approval of the regimental commander.

(5) Whenever any such company shall be disbanded by proper authority such corporation shall cease to exist, and all property belonging to it shall become the property of the state of Minnesota, and shall be devoted to such military uses as the military board shall determine.

(6) Nothing in this section shall limit the authority vested in the officers of the company by state or federal law. ('21 c. 506 § 39)

2434. Affairs to be administered according to U. S. army rules—The military affairs of the company shall be administered as provided for in army or national guard regulations, subject to such exceptions as may be made by this act or regulations made by the governor not inconsistent with federal law. ('21 c. 506 § 40)

2435. Corporations to continue—All corporations heretofore formed under the military code, shall continue as such, but their organization, powers, duties, and by-laws shall be conformed to the provisions of this act. ('21 c. 506 § 41)

2436. Shall be armed and uniformed—The national guard of the United States shall be uniformed, armed and equipped as provided by federal law. Such uniforms, arms and equipment shall be procured and issued by the proper officers as the needs of the service may require and shall be accounted for as the regulations may prescribe. ('21 c. 506 § 42)

2437. Supplies—How issued—Arms, accoutrements, ammunition and stores shall be issued to the proper officers of each organization, upon requisition as prescribed by federal law. The governor may require of the accountable officers, such bonds as he deems necessary, not to exceed $5,000, for securing the care and safety of property so issued and shall allow them sufficient money to insure such property against fire when so required by the federal government. He may also allow them sufficient money to establish and maintain regimental depots, approved by him and to pay for the transportation, handling and care of such property which allowance shall be paid out of the moneys appropriated for the purchase of supplies for the guard. The adjutant general, with the approval of the governor, shall obtain and pay for, out of the annual military appropriation, an adequate indemnity bond covering all of the officers of the national guard responsible for moneys and military property. ('21 c. 506 § 43)

2438. Officers to distribute—The commanding officer of a company receiving clothing or equipment for the use of his command shall distribute the same to the members of his command, taking receipts and requiring the return of each article at such time and place as he shall direct. Every person failing to return articles of military property issued to him, the responsibility for which he has not been relieved by proper military authority, shall forfeit not to exceed double the price of the article withheld, which forfeiture the commanding officer may withhold from pay due from the state or may recover in a civil action. All sums so collected shall be paid into the "military fund" of each company

and used for replacement of military property charged to the organization. ('21 c. 506 § 44)

2439. Arms and accoutrements issued—The adjutant general, in his discretion, may issue to any camp of the military organization known as the "Sons of Veterans U. S. A.," and other organizations composed of veterans of any war, arms and accoutrements owned by the state and not in use. Some member of the organization shall give bond to the state in the sum of at least twenty dollars for each rifle, conditioned for the return in good order, on demand, of all property so issued. No such issue shall be made, except on requisition of the commanding officer of such organization. Any member of such organization who shall wilfully destroy or injure military property so issued or shall withhold the same for more than five days after its return has been requested, shall be guilty of a misdemeanor. ('21 c. 506 § 45)

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2440. Adjutant general—Chief of staff—Office—Reports—Seal—Powers and duties—The adjutant general shall be the chief of staff to the commander-in-chief and the administrative head of the military department. He shall have an office in the capitol and keep it open during the usual business hours. He shall have custody of all military records, correspondence, and other military documents. He shall be the medium of military correspondence with the governor and perform all other duties pertaining to his office prescribed by law. He shall make an annual report to the governor, at such time as the governor may require, of all the transactions of his department, setting forth the number, strength and condition of the national guard, and such other matters as he may deem important. He shall make and transmit to the Federal government the returns required by the laws of the United States and submit to the governor a duly certified copy thereof. He shall, whenever necessary, cause the military code, orders and regulations of the state to be printed and the several organizations of the national guard. He shall cause to be prepared and issued all necessary books, blanks and notices required to carry into full effect the provisions of this title. All such books and blanks shall be and remain the property of the state. The seal now used in the office of the adjutant general shall be the seal of his office, and shall be delivered by him to his successor. All orders issued from his office shall be authenticated with his seal. The adjutant general shall attest all commissions issued to military officers. He will superintend the preparation of all returns and reports required by the United States from the state on military matters. In the absence or inability to perform his duties as adjutant general, the next senior officer in the adjutant general's department, or in his absence the senior officer of the national guard, shall perform the duties prescribed for the adjutant general. And in addition to all other duties imposed upon the adjutant general by law or by the lawful directions of the governor, he shall act as the agent of all residents of the state having claims against the United States for pensions, bounty, or back pay, arising out of or by reason of any war or Federal service and prosecute such claims without charge, and shall make and preserve, by counties, as a part of the war records collection, a permanent registry of the graves of all persons who shall have served in the military or naval forces of the United States and whose mortal remains may rest in Minnesota. ('21, c. 506, § 46; amended '27, c. 102)

2441. To keep records—The adjutant general shall keep compiled, from the original muster rolls in his office, and such additional sources as he can command, a complete alphabetical list of the Minnesota volunteers in the Civil War and shall compile and maintain individual records of every Minnesota resident who served or participated in the Civil War, Spanish-American War, Philippine War, Mexican Border service, Indian Wars, and the World War, and shall include therein the military history of each man, as may be obtainable. For the purpose of collecting the data herein provided for, the adjutant general may expend not to exceed five thousand dollars ($5,000) from the appropriation for the maintenance of the National Guard for the fiscal years 1919-1920 and 1920-1921, provided that none of this money shall be used for salaries. Thereafter, the records shall be placed in suitable metal boxes for safe-keeping, and the compilation so made shall be used in their place for all practical purposes. ('21 c. 506 § 47)

2441-1. Muster rolls legalized—That all muster rolls and rosters of any company of any Minnesota militia heretofore filed in the office of the adjutant general of the State of Minnesota, and purporting to be verified by the sole survivors of such company, or sworn to by them to have been copied by them from a military account book prepared and kept by the colonel of such regiment, are hereby declared to be legal and valid in all respects and for all purposes, and legally filed, and to be regular and legal muster rolls on file in the archives of the State of Minnesota. ('25, c. 109)

2442. Governor to appoint disbursing officers—The governor, pursuant to federal authority, shall appoint, designate, or detail subject to the approval of the secretary of war, the adjutant general, or an officer of the national guard who shall be regarded as property and disbursing officer for the United States. He shall receipt and account for all funds and property belonging to the United States in possession of the national guard of this state and shall make such returns and reports concerning the same as may be required by the secretary of war. He shall render, through the war department, such accounts of federal funds intrusted to him for disbursement as may be required by the treasury department. Before entering upon the performance of his duties as property and disbursing officer he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the secretary of war, for the faithful performance of his duties and for the safe-keeping and proper disposition of the federal property and funds intrusted to his care. The said property and disbursing officer may also be the quartermaster of the state. ('21 c. 506 § 48)

2443. Quartermaster and property officer—Bond—The senior officer of the quarter-master corps may be the quartermaster and property officer of the state and as such shall have charge of and be accountable for, under the adjutant general, all the state military property and shall make such property returns and reports on the same as the Governor may direct. He shall be under bond to the state to such amount as the Governor may deem necessary. ('21, c. 506, § 49; amended '27, c. 339, § 8)

2444. Officers to have powers and duties of U. S. officers—In addition to the powers and duties prescribed in this chapter, all officers of the guard shall have the same powers and perform the same duties as officers of similar rank and position in the army of the United States in so far as may be authorized by federal law. They are authorized to administer oaths in

all matters connected with the service. ('21 c. 506 § 50)

2445. Discipline—The discipline (which includes training) of the national guard shall conform to the system which is now or may hereafter be prescribed by the congress of the United States. ('21 c. 506 § 51)

2446. Drills—Each organization shall assemble for drill and instruction, including indoor target practice and participate in encampments, maneuvers and other exercises, including outdoor target practice at such times and places and for such periods as may be prescribed by the governor in accordance with the requirements of the federal law. ('21 c. 506 § 52)

2447. Military camps—The governor may establish special camps for advanced instructions in rifle and gun practice to be attended by officers and men who have attained a prescribed standard of marksmanship and who are selected for the purpose under suitable rules. From the participants who develop unusual proficiency therein, rifle and gun teams may be formed, which, with the approval of the adjutant general, may compete with like teams in national interstate or state competitions under rules approved by him. The pay and allowance of officers while attending such practice or competition shall be at the rate prescribed for actual service. In order to make it possible for enlisted men of the national guard to attend interstate and national rifle competitions, the state military board may pay to such enlisted men detailed as members of any such team the same pay as is allowed for second lieutenants of the national guard for duty at encampments. But no more than five thousand dollars shall be expended in any one year for all the purposes of this section. ('21 c. 506 § 53)

2448. Guard may be ordered to camp each year—The commander-in-chief may order the national guard into camp each year for such period as he may direct. He may, in his discretion, order such organization as he may deem proper, to parade for purposes of drill, review, or escort duty and prescribe all regulations and requirements therefor. The commander-in-chief shall also provide for the participation of the national guard, or any portion thereof, in encampments or field maneuvers at such places as may be designated by the war department pursuant to any act of congress; and in such case the officers and the enlisted men attending the same shall receive, in addition to the pay and subsistence provided by the federal laws and regulations, the difference between such federal pay and state pay as provided by the military code for active service. ('21 c. 506 § 54)

2449. Inspection—Whenever so ordered by the governor, the inspecting officer shall inspect every branch of the service and report the results thereof, giving the number of troops present, the condition of their arms, accoutrements and clothing, their proficiency in drill and such other information as may be required of or deemed proper by him. There shall be at least one inspection annually, at such time and place as the governor shall designate at which the several organizations shall be exercised by their several commanders and be carefully counted by the inspection officer. A roll of each company, certified by the commander thereof, shall be furnished prior to the inspection, showing the number of drills and other exercises in which each member has participated during the preceding twelve months. The forms and mode of inspection shall be prescribed by the adjutant general and all directions given by him in reference to the inspection shall be obeyed by the several officers of the guard. ('21 c. 506 § 55)

2450. Camp grounds and military reservations—The adjutant general shall have charge of the camp grounds and military reservations of the state, keeping in repair all state buildings, and other improvements thereon, including water pipes laid by the state on highways leading thereto and of all military property connected with said grounds. He may make such further improvements thereon as the good of the service requires. Private property may be acquired by condemnation, upon the application of the adjutant general, for camp ground, rifle range and other military purposes. All damages, cost and expense incurred in condemning such property shall be paid by the state treasurer, upon certificate of the adjutant general and warrant of the State Auditor, from any unexpended balance of the military fund after meeting the demands of the National Guard. ('21, c. 506, § 56; amended '27, c. 339, § 9)

2451. Offenders may be punished—Any person who interrupts, molests or insults by abusive words or behavior, or obstructs any officer or soldier of the national guard while on duty, either parade, drill meeting for military improvement or other military duty may be immediately put and kept under guard until said duty is concluded, by the officer in command. Such officer may turn him over to any peace officer of the city or place where such drill parade or meeting is being held and such peace officer shall thereupon deliver such offender for examination and trial before any court having jurisdiction. Any person violating the provisions of this section shall be guilty of a misdemeanor. ('21 c. 506 § 57)

2452. Military forces not to be restricted by traffic regulations—The military forces of the United States, organizations of the National Guard, the adjutant general and general officers thereof with official insignia displayed, while on any authorized duty, shall not be restricted by state or municipal traffic regulations, and shall have the right of way on any street or highway through which they may pass against all except carriers of the United States mail, fire engines and police vehicles. ('21, c. 506, § 58; amended '27, c. 339, § 10)

2453. Pay of enlisted men for active duty—When called into active service by the governor, each enlisted man of the national guard shall be paid by the state the sum of fifty cents per day in addition to the pay and allowance provided by this act for encampments and maneuvers, together with subsistence. In all such cases the pay rolls and expense bills shall be audited by the state auditor, attorney general and adjutant general, and paid upon their certificate out of the general revenue fund, and the necessary sum is hereby appropriated. ('21 c. 506 § 59)

2454. Pay of officers—Every commissioned officer of the national guard not salaried as such, shall receive from the state, while engaged in any service ordered by the governor, pay and allowance at the rate or allowed by law to officers of similar rank and length of service in the United States army.

The necessary military expenses of brigades, regiments, separate battallions, companies, batteries or separate detachment, including clerk hire, office supplies, postage and other actual outlay, shall be paid by the adjutant general out of the national guard maintenance fund on vouchers duly sworn to by the commanding officer or the officer charged with the payment of such expenses, such expenses in no event to exceed five hundred dollars a year for each brigade headquarters, two thousand dollars per year for each regimental headquarters, five hundred dollars for each

battallion headquarters not a part of a regiment with headquarters within the state, and one hundred dollars for incidental expenses of each company, battery or detachment. Provided, however, that all disbursements under this section shall be kept as prescribed by the commander in chief in orders of regulations and shall be examined annually by the public examiner.

Where the officers of the national guard are convened by the governor at an annual meeting of instruction, other than camp or active service, or where they are detailed under orders from regimental headquarters for the purpose of holding a quarterly inspection outside of their own station, they shall be allowed for traveling and incidental expenses, the sum of three dollars per day, not to exceed two days, in addition to transportation. ('21 c. 506 § 60)

2455. Organizations to receive state aid—The state shall pay annually to the organizations hereinafter specified seven dollars for each officer and enlisted man reported by the inspecting officer as present and fully uniformed and equipped (so far as equipment has been issued) at the annual inspection authorized by section 55 and held after January 1, 1921; but no such payment shall be made on account of any company whose number present or satisfactorily accounted for as absent with leave, on furlough or sick on medical officers certificate, was below 60 per cent, of the officers and enlisted men, or which has received federal recognition within thirty days before the inspection, nor on account of any officer or man, enlisted within thirty days before the inspection, nor on account of any company which has had less than the minimum number of drills required by federal law. All such payments shall be paid to the immediate commander of each headquarters or company on his requisition, approved by the adjutant general. Such money shall be known as the military fund and shall be used only for the necessary military expenses of the organization. Any balance shall be paid over by the officer receiving it to his successor. Receipts and disbursements of the military fund shall be kept as prescribed by the commander-in-chief in orders or regulations and shall be audited annually by the public examiner. ('21 c. 506 § 61)

2456. Camp pay for enlisted men—For each day's attendance at an encampment, or maneuver ordered by the governor, or required by federal law, including the time necessarily consumed in travel, the enlisted men of the national guard shall receive pay at the rate now or hereafter provided for enlisted men of similar grade, rating and term of enlistment in the regular army of the United States, and in addition thereto the sum of one dollar per day besides transportation, shelter and subsistence. But when any part of the pay or allowances above authorized is paid by the federal government, the state shall only pay to each man the difference between what he receives from the government and the pay authorized by this section. The value of articles issued to any member of a company or battery and not returned in good order on demand, and legal fines or forfeitures may be deducted from the member's state pay by his commanding officer. Provided, that such payment shall be made only to the men present in full uniform and on duty at least one-third of the period of the camp or maneuver. ('21 c. 506 § 62)

2457. Pay of company clerks and certain non-commissioned officers—There may be paid to each company clerk, and to the non-commissioned officer in each company, who is directly responsible for the care and custody of the quartermaster's and ordinance property issued to each organization, and the chief mechanic of each battery of field artillery the sum of ten dollars per month upon the certificate of his commanding officer that he has faithfully performed the duties of his office and accounted for all property entrusted to his care. Such payments shall be made quarterly upon vouchers approved by the adjutant general. Provided, however, that where two or more organizations are stationed in the same city and the regimental commander deems it for the best interest of the service, two or more allotments for the pay under this section may be combined and paid to one or more men, designated by the regimental commander, whose duty in the care of public property shall be correspondingly increased. ('21, c. 506, § 63; amended '27, c. 339, § 11)

2458. Horse hire and expense—The payment of hire of horses, including forage and care, for such officers and enlisted men as are required to be mounted, and for such horses or mules as may be required for artillery, machine-gun companies, wagon transportation, and other authorized purposes, when in active service, including camps of instruction, and for practice marches, parades, maneuvers, and other exercises when ordered by the governor as commander-in-chief, shall be paid by the adjutant general out of the funds appropriated for the maintenance of the national guard. ('21 c. 506 § 64)

2459. Payments to be made to adjutant general—All pay and allowances provided for in this act shall be made to the adjutant general by auditor's warrant issued upon his requisition, approved by the governor, or by like warrant to the officers entitled thereto upon their requisition approved by the adjutant general. The adjutant general, shall immediately pay and distribute the same to and among the several officers and commands entitled thereto; and the receipt of the commanding officer of a regiment, for the aggregate due to the various organizations, officers, and men thereof shall discharge him from liability. Any officer receiving such payments from the adjutant general shall be responsible for their proper distribution or use. ('21 c. 506 § 65)

2460. Pay and allowances of adjutant general—Assistant adjutant general — Employees — The adjutant general shall receive the pay and allowances of his grade as provided by the Act of Congress approved June 10, 1922. The adjutant general may employ the following office help at the cost of the state in salary not to exceed the following: One accountant at eighteen hundred dollars a year; one order clerk at eighteen hundred dollars a year; one property clerk at twelve hundred dollars a year; one secretary at fifteen hundred dollars a year. He may appoint an assistant at a salary of not to exceed three thousand dollars a year and a custodian of military camps and reservations at a salary of not to exceed one thousand dollars a year. The quartermaster shall receive a yearly salary of twenty-four hundred dollars. All salaries and compensations herein referred to shall be paid by the state semi-monthly. In case of war, riot, insurrection or other emergency or when authorized by the Governor, such additional help as is necessary, may be temporarily employed, same to be paid from the amount appropriated for the maintenance of the National Guard. ('21, c. 506, § 66; amended '27, c. 339, § 12)

2461. Certain acts to be felonies—Any officer or soldier who shall refuse to account for and to surrender up any moneys or any uniforms or equipment or other military property for which he is responsible or accountable, or who shall appropriate the same to his

own use, or who shall knowingly make a false pay roll or sign a false certificate which is the basis for the payment of moneys under this act, or who shall aid or abet another in any of said acts, shall be guilty of a felony and punished as the criminal laws of the state may direct. ('21 c. 506 § 67)

2462. Appropriations—Not to lapse—Disbursements from—Special fund—Investment by State Board of Investment—The appropriations made for the purpose of carrying out the provisions of this Act shall not lapse at the end of any fiscal year; but all unexpended balances shall be added to the appropriations made for the ensuing year. All disbursements from such appropriations shall be made upon auditor's warrants issued upon vouchers approved by the adjutant general. Provided, however, that all unexpended balances of the military department may be placed in a special fund and invested by the State Board of Investment, the principal and interest thereof, at the discretion of the adjutant general, to be used for the procurement, necessary installations and maintenance of a military reservation. ('21, c. 506, § 68; amended '27, c. 339, § 13)

2463. Courtsmartial—Courtsmartial in the national guard shall be prescribed by federal law. ('21 c. 506 § 69)

2464. Forms, practice and procedure—The forms, practice and procedure of courts of inquiry, and courtsmartial shall conform to the procedure of similar courts in the army of the United States. ('21 c. 506 § 70)

2465. Articles of war to govern when—Whenever any portion of the national guard shall be on "active service" as defined by section 3 of this act, the articles of war governing the army of the United States, as now or hereafter in effect, shall be in force and regarded as a part of this act, so far as said force is concerned, until said forces shall be relieved from said duty; except that confinement in the penitentiary shall be in the penitentiary of this state, and provided that offenses committed while on active duty may be tried and punished by a court-martial lawfully appointed, after this active duty has terminated, and if found guilty the accused shall be punished according to articles of war and the rules and regulations governing the United States army, but within the limits prescribed by federal law for courts-martial in the national guard; and provided, also, that in any case when the offense charged is also made an offense by the civil law of this state, the officer whose duty it is to approve the charge may, in his discretion, order the person charged to be turned over to the civil authorities for trial; provided, further, that if such offense is committed upon a military reservation of the United States within this state, the accused may be turned over for trial to the civil authorities of the county or city in which the accused is a legal resident, unless otherwise provided by federal law. ('21 c. 506 § 71)

2466. Military offenses, how punished—At such times as organizations, officers and men of the national guard shall be "on duty" as referred in section 3 of this act, or when ordered on duty as therein defined, the provisions of this act relating to "military offenses" shall be in force, and all such offenses shall be tried and punished by court-martial as provided by law for "national guard not in the service of the United States," as defined by section 3 of this act, provided that "charges and specifications" shall be laid in the form prescribed for the United States army, except that the charges shall be brought under the appropriate section and clause of this act with reference as well to the corresponding article of war, as herein indicated; but nothing in the above shall be construed as enlarging the punishments authorized for "national guard not in the service of the United States;" provided, that men committing offenses against the laws of the state while "on duty," or while within the armories within the state, shall be promptly arrested by the military authorities, and turned over to the civil authorities of the county or city in which the offense was committed. ('21 c. 506 § 72)

Section 3 is § 2397, herein.

2467. Military offenses defined—The following delinquencies, as defined by the articles of war referred to, are hereby declared to be military offenses, and the delinquents will be punished as provided by law as court-martial shall direct:

1. Fraudulent enlistment. (A. W. 54)
2. Making fraudulent enlistment by officer (A. W. 55)
3. Making false muster. (A. W. 56)
4. Making a false return or omission to render return (A. W. 57)
5. Absence without leave. (A. W. 61)
6. Insult or disrespect towards national or state officials. (A. W. 62)
7. Disrespect towards superior officer in the execution of his office. (A. W. 63)
8. Assaulting or disobeying superior officer in the execution of his office. (A. W. 64)
9. Insubordinate conduct towards a non-commissioned officer in the execution of his office. (A. W. 65)
10. Mutiny or sedition. (A. W. 66)
11. Releasing prisoner without proper authority. (A. W. 73)
12. Drunkenness on duty. (A. W. 85)
13. Conduct unbecoming an officer and a gentleman. (A. W. 95)
14. Conduct to the prejudice of good order and military discipline. (A. W. 96)
15. Any other violation of the laws, regulations or orders governing the military forces consistent with this act. (A. W. 96) ('21 c. 506 § 73)

2468. Wearing uniform while not on duty—Any member of the national guard who shall wear the uniform or equipment while not on duty without permission from competent authority shall be punished as a court-martial shall direct. ('21 c. 506 § 74)

2469. Desertion—Desertion in the military forces shall be as defined in the regulations made by the federal government for the government of the national guard. But if any soldier is known to have removed from the state, and, through ignorance or neglect, has failed to apply for discharge, his discharge may be requested by his immediate commanding officer. ('21 c. 506 § 75)

2470. Disposing of property—Every person, whether a member of the military forces or not, who shall wilfully sell or dispose of or buy or receive any arms, equipment or accoutrements issued by the United States or the state for the use of the military forces, or refuse to deliver or pay for the same upon lawful demand shall be guilty of a misdemeanor. ('21 c. 506 § 76)

2471. To be turned over to superior officer—Whenever any felony is committed by any officer or soldier of the military forces while on duty, he shall be turned over by his superior officers to the proper civil authorities of the county or municipality in which the offense occurred for punishment for such crime, but such

trial and punishment by the civil authorities shall not preclude trial and additional punishment or dismissal from the service by court-martial for any military offense resulting from the commission of said crime. ('21 c. 506 § 77)

2472. To be furnished transportation—Members of general and special courts-martial and courts of inquiry shall be allowed transportation in kind, and per diem pay as per military grade for time actually employed in the duties assigned them. Transportation in kind shall be furnished to all prosecutors, prisoners, witnesses, sheriffs, and constables, to and from the place or places designated for the meetings of said courts. The per diem pay of military and civilian witnesses shall be the same as in civil courts of law, and shall be paid by the adjutant general out of the appropriation for the maintenance of the national guard. ('21 c. 506 § 78)

2473. Powers of court-martial—All court-martial of the national guard including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentence of confinement shall not exceed one day for each dollar of fine authorized. ('21 c. 506 § 79)

2474. Penalties—Whenever the national guard, or any part thereof, is on active duty, all military courts may, in lieu of or in addition to any of the fines and penalties provided in this act, sentence offenders to confinement in any guard house or other place of confinement to be designated by the reviewing authority, for a period not to exceed the limit of such service, encampment or duty. ('21 c. 506 § 80)

2475. Sentences to be approved by governor—No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial, shall be executed until approved by the governor. ('21 c. 506 § 81)

2476. Fines—Disposition of—The proceeds of all fines in summary, general and special court martial cases shall be paid to the adjutant general and paid into the maintenance fund of the National Guard, and all costs of prosecution shall be paid out of the same fund. ('21, c. 506, § 82; amended '27, c. 339, § 14)

2477. Powers of presidents of courts-martial—Presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpœnas and subpœnas duces tecum and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. All military courts shall have power to administer oaths; to hear and determine cases; and, when satisfied of the guilt of the accused, to adjudge the punishment to be inflicted and, when approved, to enforce the sentence as hereinafter provided. ('21 c. 506 § 83)

2478. No action shall be maintained—No action or proceeding shall be maintained against any officer by whom a military court is ordered or against any member of a military court, officer or agent acting under its authority or reviewing its proceedings, on account of the imposition of a fine or penalty or for the execution of a sentence on any person. ('21 c. 506 § 84)

2479. Charges—How preferred—Charges shall be preferred in writing by a commissioned officer, and shall contain the name of the offense charged, and a reference to the particular section of the military code and corresponding articles of war claimed to have been violated. ('21 c. 506 § 85)

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2480. Officers and men may be arrested when—When on active service, officers and men who have committed offenses in violation of the articles of war may be immediately placed in arrest, and, if enlisted men, in confinement, at the discretion of their commanding officer; provided, however, that at the time of such arrest a general statement of the charges to be preferred shall be made, and that charges and specifications as provided by law shall be filed within thirty-six hours of the arrest or confinement, otherwise the arrest or confinement shall cease.

For offenses committed by officers and enlisted men while on duty, or when ordered to duty, they may not be placed in arrest or confinement prior to trial, unless the offense is one involving a serious lapse of military discipline, or a violation of the criminal laws of the state, and in the judgment of the officer preferring the charge the arrest before trial is necessary to preserve discipline or to secure the presence of the prisoner for trial. ('21 c. 506 § 86)

2481. Accused shall be summoned—Upon approval of the charges and specifications, a copy thereof, together with a summons signed by the presiding officer of the court or the commanding officer of the accused, and requiring said accused to appear before said court at the time and place therein designated, and answer the charges thereto annexed, shall be served upon him, by delivering to him, or leaving at his last known place of abode or business, a true copy thereof, or by mailing the same to him at least five days before the date set for his appearance. The appearance of the accused shall waive any irregularity in the service of such papers. ('21 c. 506 § 87)

2482. Default in appearance—Upon proof of service of such summons or of mailing the same, and default of the appearance of such accused at the time and place designated for trial, the president or officer of the court shall issue his warrant for the arrest of the delinquent, directed to the sheriff or any constable of the county, who shall forthwith execute said warrant and make proper return thereof, and produce to the said court the body of the accused, if within said county, and retain the custody thereof until the conclusion of the trial, unless sooner discharged by the order of the court. The court, in its discretion, may also appoint some other suitable person to execute said warrant. ('21 c. 506 § 88)

2483. Disturbing court—Any person who shall be guilty of disorderly, contemptuous or insolent behavior, or use any insulting or contemptuous or indecorous language or expressions to or before any military court, or any member of any of such courts in open court, intending to interrupt the proceedings or to impair the authority of such court, may be committed to the jail of the county in which said court shall sit, by warrant under the hand of the president of such court. The warrant shall be directed to the sheriff, or any constable or marshal of any such county, or any marshal of the court, and shall briefly state the offense adjudged to have been committed, and shall command the officer to whom it is directed to take the body of such person and commit him to the jail of the county, there to remain without bail in close confinement for a time to be limited, not exceeding five days. Such officer shall obey such warrant and keep the person committed thereby until the expiration of the time mentioned in the warrant, or until the offender shall

be discharged by due course of law, unless sooner discharged by a judge of the court of record in the same manner and under the same rules as in cases of imprisonment under process of contempt from a civil court of record. ('21 c. 506 § 89)

2484. President to be of highest rank—The president of every military court shall be the member of the court highest in grade and rank. Whenever any military court consists of one person, he shall be deemed the president thereof within the meaning of this chapter. In the absence of the president of any military court, the senior officer shall preside, with all the powers of president. All the members of such court shall, when on duty, be in uniform. The court may sit without regard to hours and may adjourn from time to time, as may be necessary for the transaction of business. Any vacancy in any military court may be filled by the officer who ordered the court, or his successor in command. ('21 c. 506 § 90)

2485. Proceedings not to be vitiated by irregularity—The proceedings of military courts shall not be vitiated by reason of mere irregularity, want of form or other technical defect, unless it is affirmatively made to appear, upon review or appeal, that the accused has been denied a fair hearing and has been materially injured thereby. In all cases where the sentence of a military court has been approved by the reviewing authority, the jurisdiction of said court and the legality of all its proceedings shall be presumed and on approval of such sentence, or in any civil proceedings, the burden of rebutting such presumption by competent evidence shall rest with the appellant or contestant in any such appeal or civil proceedings. ('21 c. 506 § 91)

2486. Courts not bound by technical rules—Military courts are not bound by technical rule of evidence prevailing in civil tribunals and may depart therefrom when in their opinion the exigencies of the case, the best interests of the service or the ends of justice demand it. Copies of all general and special orders may be received in evidence when attested by the signature of any officer having custody of an official copy of such order; and in case a written copy of such order cannot be procured without delay or inconvenience, oral testimony as to its contents may be received and all military courts may take judicial notice of the signature and handwriting of any commissioned officer of the national guard. ('21 c. 506 § 92)

2487. Offenders may be committed to jail—In default of payments of any fine, forfeiture, or costs, imposed by any military court after approval of sentence by the reviewing authority, the offender shall be committed to any county jail designated by said court for a period equal to one day for each dollar of fine imposed and unpaid. ('21 c. 506 § 93)

2488. Accused to receive copy of order—Form of order—A copy of the order approving the sentence shall be handed to the accused or mailed to his last known address, and if the fine and costs imposed by the court are not paid to the presiding officer, judge advocate or other officer authorized to receive the same, within five days after the time specified in the order, the president or other officer of the court shall issue his warrant of commitment of such delinquent offender, commanding the sheriff or any constable to whom such warrant is delivered to forthwith take the body of said offender and convey him to the common jail of the county designated in said warrant, there to remain confined during the term of said sentence as set forth in said commitment or until sooner discharged by competent authority and to make a due return of his doing thereon. Such warrant of commitment may be substantially in the following form:

The State of Minnesota:

To the sheriff or any constable and to the keeper of the common jail of the county of .....

Greeting:

Whereas ..... of (company or battery) ..... (regiment) of Minnesota national guard, has been duly tried by ..... court-martial organized according to law and upon such trial was found guilty of ..... (charge), and was, on the ..... day of ....., 19...., duly sentenced to .....(sentence)..... and said sentence having been approved by competent authority and said offender having failed to pay said fine:

Now, therefore, you, the said sheriff or constable, are hereby commanded by authority of the state of Minnesota, to forthwith take the body of the offender hereinbefore named and convey him to the common jail of your county and deliver him to the keeper thereof and said keeper is hereby commanded to receive the said offender into his custody within said jail and to keep him in confinement therein for the period of ..... days from the date of receipt or until sooner discharged by competent authority; and each of said officers is further required to forthwith make due return of this warrant and of his doings thereunder.

Dated at ..... this day of ....., 19...

.....

.....

Presiding at said court.

('21 c. 506 § 94)

2489. Prisoners to be kept in county jails—The keepers and wardens of all county jails are required to receive and confine all military offenders when delivered by such sheriff or constable, under the proper certificate of commitment of a military court, for and during the term of sentence as set forth in said commitment. ('21 c. 506 § 95)

2490. Officers shall be guilty of misdemeanors when—Any sheriff, constable, jailer, marshal or other civil officer named in this act, who shall neglect or refuse to obey, execute or return the lawful warrant or other process of a military court, or make a false return thereon, shall be guilty of a misdemeanor, and in addition to the penalties attaching thereto, shall forfeit fifty dollars for each offense or neglect of duty, the same to be recovered in a civil action against such officer and his official sureties by the adjutant general for the benefit of the maintenance fund of the national guard. ('21 c. 506 § 96)

2491. Compensation of civil officers—Civil officers and guardsmen executing the warrants or process of a military court shall receive, as compensation therefor, the fees allowed by law for like service in the civil courts, the same to be taxed by such court, and, in summary court cases, paid out of the military fund of the company of which the accused is a member. All fees and expenses of trial in general and special courts-martial cases and the fees of jailers in all cases for the keep of prisoners shall be paid by the adjutant general out of the funds appropriated for the maintenance of the national guard. But no fees shall be allowed or paid to such officers unless an itemized statement thereof is endorsed on and forthwith returned with such warrant or process to the court issuing the same. ('21 c. 506 § 97)

2492. Courts of inquiry—Court of inquiry, to consist of one or more officers, may, and on the request of the officer involved shall, be instituted by the governor

for the purpose of investigating the conduct of any officer, or any accusation or imputation against him, or any acts made the subject of military complaint. Such court of inquiry shall, without delay, report a statement of facts, and, when required, the evidence adduced and an opinion thereon to the governor, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into. ('21 c. 506 § 98)

2493. County armory commission—Whenever a company or other unit of the national guard shall be located in any county, wherein no armory has otherwise been provided for its use, the commanding officer of such company or unit, or if more than one unit is stationed at such place, then the senior officer of the units at such station, the chairman of the county board, and the county treasurer shall constitute an armory commission, with power, in their discretion, to purchase, erect, or rent a suitable building, and to furnish and keep the same in repair for use as such armory, all at the cost of such county. ('21 c. 506 § 99)

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2494. City or village armory commission—Whenever a company or other unit of the guard shall be located in any city or village wherein no suitable armory has been provided for its use, the commanding officer of such company or unit, or if more than one unit is stationed at such place, then the senior resident line officer of the national guard organization having at least one company permanently quartered at such station, the mayor or the president of the village council, and the city or village treasurer shall constitute an armory commission, with power, in its discretion, to purchase, erect, or rent a suitable building as such armory, and to furnish and keep the same in repair, all at the cost of the city or village. ('21 c. 506 § 100)

2495. Expenditures, how paid—All expenditures under Sections 99 and 100 of this act shall be paid as other charges against the county or municipality are paid, upon itemized vouchers approved by at least two members of the armory commission; and all sums so expended, or estimated in advance by the commission as necessary for the purpose, shall be included in the tax levy and collected with the other county or municipal taxes; provided, that, in cities of the first class, no such armory shall be erected or otherwise required or provided unless the same be recommended by the armory commission to the council, and such recommendation be approved. ('21 c. 506 § 101)

Sections 99 and 100 are §§ 2493, 2494, herein.

2496. Cities may issue bonds—The council of any city of the first class which has not already issued bonds for the acquisition of an armory may issue and sell, in its discretion, the bonds of such city for the cost of such armory, in such amount as may be necessary, notwithstanding any charter or other limitation upon the total of its bonded indebtedness, or upon the powers of the council in reference thereto. Said bonds shall be in such denominations, and payable at such places, and at such times not exceeding thirty years from the date of issue, as the council may determine, with interest not exceeding six per cent per annum, payable semi-annually, according to interest coupons attached. ('21 c. 506 § 102)

2497. Cities of 1st class may issue bonds for repairing armories—Any city in this state, now or hereafter having over 50,000 inhabitants not operating under a home rule charter and not governed under a charter adopted pursuant to section 36, article 4, of the state constitution, may by resolution adopted by the affirmative vote of not less than a majority of all the members elect of its city council issue and sell bonds of such city to the amount of $100,000 in par value for the purpose of repairing and enlarging armories, and the bonds provided for in this section may be issued and sold notwithstanding any charter provision of such city or any laws of this state limiting the amount of indebtedness of any such city.

No bonds shall be issued by any such city for the purposes above mentioned to run for a longer time than thirty years, nor bearing a rate of interest greater than four per cent per annum, but the place of payment of the principal and interest thereon and the denominations in which the same shall be issued shall be such as may be determined upon by the city council and such bonds may be in the form of coupon bonds or registered certificates so-called. All such bonds shall be signed by the mayor and attested by the city clerk and countersigned by the comptroller of such city and shall be sealed with the seal of the city, except that the signatures on the coupons attached to such bonds, if any, may be lithographed thereon. Said bonds shall not be sold for less than ninety-five per cent of their par value and accrued interest thereon and shall be sold to the highest responsible bidder therefor, upon at least two weeks' published notice of the sale of such bonds. The full faith and credit of such city shall be pledged at all times for the payment of all bonds issued under this section and the interest thereon, and such city shall each year levy sufficient taxes to pay annual interest on such bonds and provide a sinking fund sufficient for the redemption of said bonds at maturity. ('21 c. 506 § 103)

2498. Cities of fourth class may issue bonds—Any city in the state of Minnesota which, according to the last federal census, has a population of not less than ten thousand people and not more than twenty thousand people, is hereby authorized to issue the bonds of such city for the construction, completion and equipment of a public armory building in said city, said bonds to be in such denominations, payable at such times and at such rate of interest, and sold upon such terms as may be determined by a majority vote of the city council, city commission or other governing body of such city. Provided, however, that the aggregate of the face value of the bonds which shall be issued by virtue of the provisions of this section shall not exceed the sum of seventy-five thousand dollars.

Before any bonds are issued under the provisions of this section by any such city, there shall be adopted by the city council, city commission, or other governing body of such city, a resolution certifying the purpose for which such bonds are required, the amount thereof necessary to be issued, the rate of interest the same shall bear, and the terms upon which said bonds shall be sold, and thereafter said city council, city commission, or other governing body, shall submit the question of the issue of said bonds and the sale thereof, pursuant to said resolution, to the legal voters of said city, either at a special election called for that purpose pursuant to the charter of said city, or at any general election held in said city, and if a majority of the legal voters of said city voting on said proposition vote in favor of the issuance of said bonds, then the council, city commission or other governing body of said city shall have full power and authority to issue and sell the same for the purpose specified in said resolution, and not otherwise. But if a majority of the legal voters of said city voting on said question should vote not to issue and sell said bonds, then the proposition shall be deemed rejected.

Said election shall be conducted as are other special elections in said city, unless the proposition shall be submitted at a general city election, but in either case the proposition shall be plainly submitted upon the city election ballot by the use of appropriate language, in conformity with the so-called Australian election ballot law of this state. Said vote shall be returned and canvassed as at other elections in said city. ('21 c. 506 § 104)

2499. Other cities and villages may issue bonds for armories—In like manner and as specified in Section 104 hereof, any other city or village or town not already provided with a suitable armory, and having authority to erect or otherwise acquire the same for the use of the guard, may issue and sell its bonds for the necessary cost thereof, to run not more than thirty years, at a rate of interest not exceeding six per cent, payable semi-annually. But no bonds shall be issued under this section that would increase the municipal indebtedness beyond the total limited by law. ('21 c. 506 § 105)

Section 104 is § 2498, herein.

2499-1. Payment by county boards to cities of fourth class of unpaid portion of purchase price of sites for armories—That in all cases wherein subsequent to April 1, 1921, the owners of lots or parcels of land situated in any city of the fourth class have conveyed the same to the State of Minnesota and a state armory has been constructed thereon pursuant to the provisions of Chapter 506, Laws 1921, and such city has contributed and paid not less than $2,000 to the said owners as part of the agreed purchase price thereof, with the implied understanding that the county board would appropriate and pay the balance of the purchase price as a memorial to the soldiers and sailors of all wars, the county board of any such county hereby is authorized to appropriate and expend from the county funds and to pay to the grantors in such conveyance the amount of the unpaid portion of said purchase price as so agreed upon, with interest thereon at six per cent per annum from the date of delivery of said conveyance to the state; provided, however, that the total amount so appropriated, expended and paid shall not exceed $3,500. ('25, c. 28)

2499-2. Use by cities of armory funds for other purposes—Any city in this state, however organized, in which there has heretofore been bond issues or tax levies made for the construction of a public armory building in such city, which armory building has not been constructed, and the moneys received from such bonds issued or taxes levied remain unexpended, upon a unanimous vote of the city council such funds or any or all thereof may be invested by such city council or used and expended by it for any public purpose within such city. ('27, c. 146)

2500. Cities and villages may accept donations—Any city, village, county, or town may accept any grant or donation of real or personal property for the purposes of an armory, or for the improvement or repair thereof, and may meet and fulfill any reasonable condition of such grant or donation not inconsistent with the proper use of the property for armory purposes; and they may enter into a contract for the leasing of property for such purposes for any term not exceeding twenty years. ('21 c. 506 § 106)

2501. Military board to be board of armory supervisors—[Repealed.]

This section (Laws 1921, c. 506, § 107) is repealed by Laws 1925, c. 363, § 2, and by Laws 1927, c. 339, § 15. See, also § 2415-1, herein.

2502. State to assist in building armories—To every company of the Minnesota national guard, now or hereafter organized, which shall have first caused to be deposited with the state treasurer at least the sum of one thousand dollars as evidence of good faith, and shall have conveyed or caused to be conveyed to the state of Minnesota, by good and sufficient deed of warranty, and free of encumbrances, other than the reservation of mineral rights, the title to a site for an armory, which site shall have first been approved by said board of armory supervisors, or in the case of the contemplated purchase of an existing armory or other suitable building, upon the payment of an amount equal of the value of the site there is hereby appropriated the sum of twenty-five thousand dollars, which together with the said deposit, shall be used for the purpose of buying, building, erecting and equipping an armory building on said site; provided, that two or more organizations stationed in one or more cities or villages may combine the appropriations available for each under this act, and erect a joint armory on a common site situated wholly in either or partly in each such city or village, if the board of armory supervisors shall deem it expedient; provided, further, that in case two or more organizations entitled thereto have heretofore, or may hereafter, combine, and shall have become entitled to such joint appropriations and to erect a joint armory, on a common site, and such site has been duly conveyed to the state of Minnesota, and thereafter any additional organization is, or additional organizations are, regularly formed and stationed in any city or village wherein any organization has so joined in such common site and armory, and it shall be desirable and practicable, and said board shall deem it expedient, to have such new organization join in such common armory, said board may allow such new organization to join with such other organizations in such common armory, on such common site, and may allow an additional appropriation for such armory on account of such new organization so joining therein, on the furnishing by such new organization of the sum of one thousand dollars ($1,000) as hereinbefore provided for, without the necessity of furnishing an additional site to the state of Minnesota; and provided, further, that said board shall designate as near equally as possible from the several military organizations of the national guard which of them shall receive aid in any one year, taking into consideration the proficiency of the organization asking for aid and its needs, and giving preference to organizations not already provided with a suitable armory.

Any city or village, or two or more cities or villages jointly, in which an armory has been heretofore, is now or may hereafter be erected or authorized under the provisions of this act, may acquire and convey to the state of Minnesota, a site, and raise and appropriate money and funds in the aid of the construction, repair or improvement thereof, and to that end may issue bonds payable not more than thirty years after their issue and bearing interest at a rate not exceeding six per cent per annum, and may deposit such money and funds and the proceeds of the sale of such bonds with the state treasurer to the credit of the proper construction fund, and may make such further provisions for the maintenance and improvement of such armory as may be deemed necessary; provided, that whenever bonds have been heretofore issued by any city or village for any of the foregoing purposes, and the validity of such bonds is not now in question in the courts, the same are hereby validated and hereby declared to be legal obligations of any city or village

issuing the same; and provided further, that whenever the board deems it expedient, and in furtherance of the purposes of this act, it may purchase and finish armories already built or partly built, deducting, however, from the purchase price, the appraised value of the site. ('21 c. 506 § 108)

2503. State treasurer to keep accounts—Warrants—Certificates of indebtedness—The state treasurer shall keep a separate account with each company or battery which shall avail itself of the provisions of this act, credit the same with the amount of money deposited by such organization, together with the appropriation made under the provisions of this act; and all bills for the construction or purchase of armories shall, after being approved by the said board, be paid out of said account or fund, and charged to the proper organization, upon warrant of the state auditor. And the state auditor shall issue his warrant upon said fund upon certificate of said board.

When any certificates of indebtedness heretofore issued pursuant to law shall mature, the state auditor shall draw his warrant upon the state treasurer and the state treasurer shall pay upon said warrant the amount due upon any such certificate of indebtedness, said warrants to be drawn in favor of and to order of the person or persons holding such certificates at the time the same are presented for payment. ('21, c. 506, § 109; amended '25, c. 363, § 1)

2504. Refundment to be credited to armory fund—All money returned and repaid to the state treasury from armory property sold, damaged or destroyed, or otherwise, shall be credited to a general armory fund and may be expended for the building and construction or the purchase of armories for military organizations not having armory accommodations under the provisions and limitations of this act. ('21 c. 506 § 110)

2505. Adjutant general to take possession of unused armories—Whenever any such military organization which has availed itself of the provisions of this act and has received the appropriation provided herein, shall be called or drafted into the federal service, or shall be mustered out of the service of this state, and it shall appear probable that no new military organization will be organized in the city or village in which the armory is located, and there is no other military organization occupying said armory, the adjutant general shall immediately take possession and close the same, and not permit its use for other than military purposes, but the said board shall have the authority and they are hereby expressly empowered to sell, transfer and convey said property to the municipality in which the same is located, for public purposes, upon the repayment to the state for credit to the general armory fund, of the appropriation expended thereon, without interest; provided, that if such municipality shall not purchase said property the said board shall then be authorized to sell, transfer and convey the same to any individual, firm or corporation, repaying to the state at least the full appropriation expended therefor; and, provided further, that if the said armory cannot be sold in this manner, the military board may lease the armory to the municipality for public purposes at an annual rental which shall not be less than 10 per cent of the amount invested by the state in such armory; and, provided further, that the state board of armory supervisors subject to the approval of the governor is hereby authorized and empowered to sell, transfer and convey on behalf of the state any state armory site and buildings which in the judgment of the board is unsuitable for military purposes or which has been condemned by the state fire marshal or the state insurance commissioner. The moneys so received from the sale of such armories shall be paid into the state treasury and by the treasurer accredited to the general armory fund. ('21 c. 506 § 111)

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2506. Control of new armory to vest in commanding officer or armory board—Upon the completion of any new armory building or the purchase of any armory building and property, the control and use of said armory shall vest in the armory board or commanding officer of such armory as provided by this act. Provided, that the proceeds of rentals and other revenue derived from such armories may be devoted and applied by the armory board or commanding officer controlling the same, to the maintenance, extension, improvement and equipment thereof. ('21 c. 506 § 112)

2507. Joint armory and municipal buildings may be erected—Whenever a company of the national guard shall be located in a city or village wherein no suitable armory has been provided for its use, an armory may be constructed for use jointly by such company or battery and by the citizens of such community. The mayor or president of the council of such city or village and the commanding officer of the company or other unit stationed at such place, or if there be more than one company, then the senior officer of the troops of such station shall constitute a joint armory commission, with power to purchase, erect or rent a suitable site or building for such armory and to furnish and keep the same in repair. ('21 c. 506 § 113)

2508. May receive state aid—Whenever such joint armory commission shall have deposited with the state treasurer at least one thousand dollars as evidence of good faith and shall have caused to be conveyed to the state of Minnesota by warranty deed, free of encumbrances, the title to the site for an armory, which site shall have been first approved by the board of armory supervisors, such joint armory commission shall be entitled to receive the same amount of state aid as is prescribed by law for other armories, which state aid shall be paid to such joint armory commission in the manner prescribed by this act for state armories.

The board of armory supervisors shall designate the place needed for drill hall, office, locker rooms, storage and rifle range, and the immediate control of the portions of the armory so designated shall be vested in the commanding officer of the organization quartered therein, and such portion of such armory shall be subject to the laws of this state relating to armories. The control of the other portions of such armory shall be vested in the municipal authorities.

The general control of the building as a whole shall be vested in a committee consisting of two persons, one the commanding officer of the military organization in control of a portion of the armory and the other appointed by the municipality upon such terms as may be agreed upon, provided, any agreement for general control of such armory shall be first approved by the state board of armory supervisors. In case such an agreement is made, the state shall furnish the regular appropriation provided for armory maintenance and all other expenses of keeping up the building shall be paid by the municipality. ('21 c. 506 § 114)

2509. Commanding officer to have charge—Each armory occupied by a single company shall be under the immediate charge of the commanding officer of the organization quartered therein. If more than one company is quartered in any armory, the control thereof shall be vested in an armory board to be constituted

as follows: If more than one company of the same regiment is quartered therein, the board shall consist of the senior resident field officer, and if no field officer resides at such place, then of the several company commanders; if companies of more than one regiment or lesser separate organizations are quartered in a single armory, the senior resident line officer of each regiment or lesser separate organization shall constitute the armory board; provided, however, that each member of the armory board shall have one vote for each company of his organization located in such armory; and provided further, that each brigade commander shall be ex-officio a member of the armory board at the place where he has his headquarters, and he shall have one vote; and, provided further, that organizations of the naval militia when occupying armories jointly with organization of the national guard shall for the purposes of this section have the same status as corresponding organization commanders in the national guard. A record of their actions shall be kept, and all resolutions offered, whether seconded or not shall be put to vote, and the result recorded. In case of a tie, the adjutant general, upon the request of any member, shall decide, subject to an appeal to the governor. The governor may make and alter rules and regulations for the government of all officers and persons having charge of armories, arsenals, or other military property in this state. ('21 c. 506 § 115)

2510. Senior officer to have control of drill hall—The senior officer in command of any company or companies assembling at an armory for drill shall have control of the drill hall during such occupancy, subject to the rules prescribed for its use, and the orders of his superior. And any person who intrudes contrary to his orders, or who interrupts, molests, or insults any troops so assembled, or who refuses to leave the premises when properly requested so to do, shall be guilty of a misdemeanor. But nothing in this section shall prevent reasonable inspection of the premises by the proper municipal officer, or by the lessor thereof in accordance with the terms of the lease. ('21 c. 506 § 116)

2511. Armorers—Janitor—The officer or armory board in charge of any armory, as provided for in section 115, may appoint an armorer, who under his directions, shall have charge of the armory or place where the uniforms, arms, accoutrements, and other property of the command are kept. When necessary, the officer or officers in control of the armory may appoint a janitor thereof, and, if it be heated by steam, an engineer. The duties of all such appointees shall be prescribed by the officers appointing them, who shall also fix their compensation, not to exceed three dollars per day for time necessarily spent in the performance of such duties, and may dismiss any of them at pleasure. Such compensation shall be paid monthly by the town, county, city or village, as the case may be, upon vouchers approved by the appointing officers. Provided, however, that in cities where the armory has been erected or otherwise acquired without state aid and is exclusively owned by the municipality, armorers, janitors and engineers, and if deemed necessary, a superintendent of such armory shall be appointed, and their compensation shall be fixed by the armory commission mentioned in Section 99. ('21 c. 506 § 117)

Sections 99 and 115 are §§ 2493, 2509, herein.

2512. Penalties for injuring property of armory—Every person who shall wilfully injure any armory or arsenal, or any property therein lawfully kept or deposited, and every person who shall introduce any spirituous, vinous, or malt liquor into any such armory or arsenal, except for medicinal purposes, upon the prescription of a medical officer of the guard, shall be guilty of a misdemeanor, the minimum punishment whereof shall be a fine of twenty-five dollars, or imprisonment for ten days in the county jail. ('21 c. 506 § 118)

2513. State aid for maintenance—There shall be paid annually to the officer or armory board in charge of each armory for the maintenance and equipping of the same the sum of two hundred fifty dollars for each company or other unit quartered therein; provided, the county, city, or village in which the armory is located shall appropriate at least an equal amount annually. ('21 c. 506 § 119)

2514. Certain leases ratified—In all cases where a company of the national guard, located in a city or village in which there is an armory, has heretofore entered into a lease, pursuant to a written or oral agreement with a tenant in common in certain property used in part for armory purposes to purchase the interest of such tenant in common in such property at an agreed sum plus a lease of a portion of such premises for a fixed term, and the lease so entered into purports for a valuable consideration to demise a portion of such armory premises for a term of fifteen years or less to such tenant in common, subject to cancellation on six months' notice and the payment of a certain sum by the lessee, and also purports to obligate the lessor to keep in repair certain portions of the property so leased, and in default thereof to authorize the lessee to make such repairs and to collect the amount thereof from the lessor, together with five per cent interest thereon, and in default of the repayment of such amount by the lessor to extend the terms of the lease for such period as the amount expended by the lessee for repairs will purchase at the agreed monthly rental, and also where the interest of such tenants in common has been duly conveyed in pursuant of such agreement to the state of Minnesota as an armory site, together with the buildings thereon in consideration of the sum agreed upon, and the other terms of such agreement have been carried out, then, and in that case, such lease is hereby ratified and confirmed, and the same, together with all covenants and agreements contained therein, is hereby made valid and of full force and effect from the date of its execution to the same extent as if it had been duly executed by such parties under authority of law. ('21 c. 506 § 120)

2515. To apply to naval militia—All of the provisions of this act relating to armories shall be construed to include and apply to any division of naval militia now or hereafter organized in this state. ('21 c. 506 § 121)

2516. Armories may be used by patriotic societies and Military Service Men's organizations—The use of armories for the regular meetings or functions of those patriotic societies or recognized Military Service Men's organizations holding charters from Congress or incorporated in this state shall be granted by the armory board or officer in charge of any armory at such times and under such circumstances as not to interfere with the use of the armory for military purposes by the company or companies quartered therein subject to the armory rules and regulations as are in force governing the use of such armories. ('21, c. 506, § 122; amended '27, c. 414)

2517. Laws repealed—Chapter 118, Laws 1915, Chapters 368 and 400, Laws 1917, Chapters 135, 250, 2517[2] 31 — 398 33 — 332

379, 418, 507 and 525, Laws 1919, and all acts and parts of acts inconsistent with this act are hereby repealed. ('21 c. 506 § 123)

2517-1. Governor as trustee of funds of certain Guard organizations—That the Governor hereby is authorized to receive such funds as trustee, and to distribute them for the benefit of the National Guard and veterans' associations of this state, in such manner as his judgment shall dictate. ('27, c. 20)

Explanatory note—Laws 1927, c. 20 has the following preamble:- "Whereas, it has been duly made known to the proper authorities of this state that the Secretary of War of the United States has in his possession, as trustee, certain moneys known as "other funds" which had been collected for their own use and benefit by certain National Guard organizations that were broken up as units for as the result of service in the World War, and have not been reconstituted; and,

"Whereas, it further appears that the Secretary of War, as trustee, desires to turn over to a substitute trustee, duly authorized by this state, such portion of the said funds as equitably belongs to the National Guard of this state; therefore,

"Be it enacted by the Legislature of the State of Minnesota:"

NAVAL MILITIA

2518. Naval militia—There shall be allowed in addition to the land military forces of the state now authorized by law a naval force to be known as the Minnesota naval militia. ('99 c. 355; amended '05 c. 34 § 1) [2471]

Historical—1899 c. 355 was amended, to read as set forth in sections 1 to 17 thereof, by 1905 c. 34. 1899 c. 355 was repealed by § 9453; its provisions being incorporated in R. L. §§ 1150-1153. So far as the provisions of 1905 c. 34 differ from said sections, they are to be construed as amendatory or supplemental, and their effect is to supersede said sections.

1911 c. 85, made an annual appropriation for the naval **militia.**

For appropriation for support of naval militia see Laws 1925, c. 422, § 30; Laws 1927, c. 439, § 12.

2519. Commanders-in-chief — Regulations — Powers—The governor shall be commander-in-chief of the naval militia, except when it is called into the service of the United States. He shall make and publish through the adjutant general regulations for the government of the naval militia and shall have all the powers necessary to carry into full effect the provisions of this act. ('99 c. 355; amended '05 c. 34 § 1) [2472]

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2520. Naval militia not to exceed eight companies—The naval militia shall consist of one battalion not to exceed eight divisions or companies. ('99 c. 355; amended '05 c. 34 § 1; '09 c. 389 § 1; '15 c. 353 § 1) [2473]

2521. Composition of militia under jurisdiction of secretary of navy—The naval militia shall be composed of such officers, warrant officers, petty officers and enlisted men as the secretary of the navy shall prescribe for a battalion and for a division of the naval militia. ('99 c. 355; amended '05 c. 34 § 1; '15 c. 353 § 2) [2474]

2522. Governor to fix the number of warrant officers, etc.—For the purpose of conforming the naval militia more closely to the organization of the Naval Militia of the United States as the same may be, from time to time, prescribed by the secretary of the navy and not otherwise, the governor may fix the number and grade of officers, warrant officers, petty officers and enlisted men therein. ('99 c. 355; amended '05 c. 34 § 1; '15 c. 353 § 3) [2475]

2523. Battalion commander—[Repealed.]

This section is repealed by Laws 1927, c. 314, § 4

2524. Line officers—Line and staff officers below the grade of captain shall be selected and appointed by the commanding officer and commissioned by the Governor. Officers above the grade of Commander shall be selected and appointed by the Governor upon the recommendation of the adjutant general. ('99, c. 355; amended '05, c. 34, § 1; '27, c. 314, § 1) [2477]

2525. Petty officers—Petty officers shall be appointed by the battalion commander upon the recommendation of their commanding officer. ('99 c. 355; amended '05 c. 34 § 1) [2478]

2526. Term of service—Enlistments—Men between the ages of eighteen and forty-five years shall be mustered in for the term of four years unless sooner discharged by competent authority. Every recruit shall sign an enlistment paper, the form of which shall be prescribed by the adjutant general, and which shall contain an oath of allegiance to the state and the United States. ('99, c. 355; amended '05, c. 34, § 1; '27, c. 314, § 2) [2479]

2527. Officers, how commissioned—Officers shall be commissioned by the governor with rank from date of their election or appointment subject to such examination as may be prescribed by the governor. ('99 c. 355; amended '05 c. 34 § 1) [2480]

2528. Examining board—The governor may appoint an examining board to consist of not less than two or more than five commissioned officers of the naval militia, one of whom may be an officer of the United States navy, whose duty it shall be to determine the qualifications of candidates for commission, and to inquire into the capability of any subordinate officer who may be sent before such board by his superior officer with the approval of the governor. ('99 c. 355; amended '05 c. 34 § 1) [2481]

2529. Discipline—When not otherwise provided for the government and discipline of the Minnesota naval militia shall be controlled by the provisions of the military code relating to the government and discipline of the national guard so far as the same may be applicable to the naval forces. The naval forces shall be subject to the articles and regulations for the government of the United States navy to the same extent as members of the national guard are subject to the articles of war and regulations of the United States army. ('99 c. 355; amended '05 c. 34 § 1) [2482]

2530. Annual cruise—The governor shall order the naval militia on a tour of duty or cruise each year, within or without the state, for such period as he may direct, such annual cruise not to consume more than 2 weeks in any one year. ('99 c. 355; amended '05 c. 34 § 1) [2483]

2531. Pay and allowances—For each day's service in complete uniform at the annual tour of duty or service, when ordered by the Governor, there shall be paid to each officer, warrant officer, petty officer, enlisted man or seaman the same pay and allowances as are prescribed by Federal law for like grades in the United States Navy. Provided that there may be allowed annually to the battalion commander and staff and to each division or company of the naval militia the same inspection allowance and the same allowance for incidental expenses as is now paid commanding officers and men of the Minnesota National Guard, said allowances to be paid under the same regulations as govern the payment of the like allowances to a regiment or company of infantry of the Minnesota National Guard. ('99, c. 355; amended '05, c. 34, § 1; '09, c. 389, § 1; '27, c. 314, § 3) [2484]

2532. Purchase of supplies—The governor, the adjutant general, and the commanding officer of the naval militia are hereby appointed commissioners for the purpose of purchasing the clothing which may be necessary for the uniforming of the naval militia. Cloth-

ing, ordnance and other stores for the naval militia shall be purchased in the manner prescribed by the military code for the purchase of stores for the national guard. ('99 c. 355; amended '05 c. 34 § 1) [2485]

2533. Other duties—Armory—The naval militia shall perform such other duty as may be required by the governor. The word, "armory," as used in the military code, shall be held to include any vessel, anchored, moored or secured to land, or any boat, boathouse or dock, used for the purpose of instruction, drill or defense. ('99 c. 355; amended '05 c. 34 §,1) [2486]

2534. Exemptions—The exemptions and privileges granted by law to the officers and enlisted men of the national guard are extended to the members of the naval militia. ('99 c. 355; amended '05 c. 34 § 1) [2487]

WAR RECORDS

2535. Minnesota war records commission established—There is hereby established the Minnesota war records commission to be composed of the president of the Minnesota Historical Society, the chairman of the department of history of the University of Minnesota, the adjutant general of the state, the state superintendent of education, and five other citizens of the state to be appointed by the governor. As soon as may be after the passage of this act the commission shall meet at the call of the president of the Minnesota Historical Society and shall organize by electing a chairman from its membership and by appointing a secretary, who shall be the executive officer of the commission. The members of the commission shall not receive any compensation for their services as such, but shall be reimbursed for their actual and necessary expenses in the performance of their official duties. ('19 c. 284 § 1)

Explanatory note—Commission as agency of state government. See § 53-47, herein. Commission discontinued and records, etc., transferred to State Historical Society, see § 2535-1, herein.

2535-1. Minnesota War Records Commission discontinued—The Minnesota War Records Commission is hereby discontinued and said Commission shall turn over all material, records, documents and papers in its possession to said Historical Society. ('25, c. 423, § 11)

2536.—Duties of war records commission—It shall be the duty of the said Minnesota war records commission to provide for the collection and preservation in state and local war records collections of all available material relating to Minnesota's participation in the Spanish-American War, the Phillipino Rebellion and the world war; to procure, in co-operation with the adjutant general of the state, transcripts or abstracts of all available records of the United States war and navy departments relating to the services of citizens or residents of Minnesota or to the history of military or naval units composed largely of Minnesota men; and to provide for the compilation and preservation in the state war records collection of individual records of the service during said wars of all citizens or residents of Minnesota in the military or naval forces of the state or of the United States or of any of the governments associated with the United States in said wars, also of all citizens or residents of Minnesota engaged in non-military forms of war service with the armed forces of the United States or of the associated nations or conspicuously engaged in civilian war work. ('19 c. 284 § 2; amended '21 c. 496 § 2)

2537. Permanent records—It shall be the further duty of the said commission to provide for the preparation and publication, as a permanent memorial record, of a comprehensive documentary and narrative history of the part played by the state in the Spanish-American War, the Phillipino Rebellion and the world war, including conditions and events within the state relating to or affected by said wars; and also for the preparation and publication of a condensed narrative of Minnesota's part in said wars suitable for distribution to the soldiers and sailors from the state in recognition of their services to the commonwealth, and the preparation and publication of such permanent memorial record and such narrative history as pertains to the Spanish-American war and Phillipino Rebellion shall be first completed. ('19 c. 284 § 3; amended '21 c. 496 § 3)

2538. Distribution of history—Of the comprehensive history provided for in section three of this act eight hundred sets shall be available for distribution to public, college, and school libraries, institutions, and officials of the state under such rules and regulations as the said commission may prescribe, and two hundred sets shall be deposited with the Minnesota Historical Society to be available for exchange with libraries and institutions outside the state. All the publications herein provided for may be sold by the said commission at such price, not less than the cost of printing and binding, as it may determine; provided, that the proceeds from such sales shall be turned into the state treasury. ('19 c. 284 § 4; amended '21 c. 496 § 4)

2539. Records to be deposited in library of State Historical Society—The state war records collection assembled by the said commission shall be deposited in the library of the Minnesota Historical Society, and the said society is hereby designated as the official custodian of the collection; provided that the transcripts from the records of the United States war and navy departments relating to the services of individual soldiers and sailors shall be filed in the office of the adjutant general, although copies thereof may be made for the state war records collection. ('19 c. 284 § 5)

2540. Authorized to appoint agents, etc.—The said commission shall have power to appoint such field agents, writers, editors, indexers, and other employees as may be necessary for carrying out the purposes of this act, and shall fix the compensation thereof; provided, no obligations shall be incurred in excess of the sum appropriated for the purpose of carrying out the provisions of this act. ('19 c. 284 § 6)

2541. Report of commission—On or before February 1, 1921, and biennially thereafter, the said commission shall present a report to the governor containing a statement of the progress of its work, together with plans and recommendations for the continuation and completion of the work, which report shall be transmitted by the governor to the legislature. ('19 c. 284 § 7; amended '21 c. 496 § 5)

1940 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

Edited by

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SAINT PAUL, MINNESOTA

1940

2394-96. Same—consideration and determination of report by tax commission.—Upon the receipt by the Minnesota Tax Commission of the report provided for in Section 5 of this act, it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of tax due from such income or annuity recipient, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, and on or before the first day of May of each year file the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided. (July 24, 1937, Sp. Ses., c. 91, §6.)

2394-97. Same—penalty for failure to make report—assessment by tax commission.—If any person subject to the tax provided by this act shall fail to make the report provided for in Section 5 of this act, at the time and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten percent of the tax so imposed to be added to and collected with such tax. The tax commission shall in such case determine the amount of the annuity or income paid or payable to such person, and shall fix the tax due thereon from such person together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person receiving such payment. (July 24, 1937, Sp. Ses., c. 91, §7.)

2394-98. Same—date of payment—penalty for nonpayment.—Such tax shall be due and payable to the state treasurer on the first day of June 1938, and annually thereafter on the first day of June, and if not paid on or before that date, a penalty of ten percent shall immediately accrue thereon. (July 24, 1937, Sp. Ses., c. 91, §8.)

2394-99. Same—withholding of tax by educational institution—liability on failure to withhold.—Every educational institution making such income or annuity payments which are subject to tax hereunder and upon which the tax has not been paid, shall at the time the payments are made, withhold and deduct therefrom the amount of the tax due thereon, and shall pay the same to the state treasurer. Failure to withhold the tax and to make payment at the time and in the manner hereinbefore required shall render the educational institution liable for the amount of the tax with interest at the rate of 12% per annum from the time the tax should have been paid, to be recovered in an action by the attorney general for and in behalf of the state. (July 24, 1937, Sp. Ses., c. 91, §9.)

2394-100. Same—draft on delinquent—evidence.—On or before the tenth day of June in each year the state auditor shall make his draft upon the person delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection. The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due from the person against whom the same is drawn. (July 24, 1937, Sp. Ses., c. 91, §10.)

2394-101. Same—Notice to taxpayer—action by attorney general—interest—lien of judgment—sale of property.—The state treasurer within ten days after the receipt of the draft mentioned in Section 10 of this act shall notify by mail the persons designated therein of the amount thereof, and if not paid within thirty days after presentation shall deliver the same to the attorney general, whose duty it shall be to bring an action thereon in the district court of the county wherein is the taxable status of the annuity or income, for the amount of such draft, together with interest and costs of the proceeding. Such tax shall draw interest at the rate of 12% per annum, commencing 30 days after the same falls due; and the judgment of the court when so obtained and properly docketed shall be a lien upon all right, title, and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed; and said lien shall continue without limitation with interest at the rate of one percent per month and the said property may be sold in satisfaction of such judgment in the manner provided by law. (July 24, 1937, Sp. Ses., c. 91, §11.)

2394-102. Same—false report—perjury.—Any person who for the purpose of evading the payment of the tax herein provided or any part thereof, makes any false return or report, shall in addition to the tax provided by this act, pay a penalty of 50 percent of the amount of said tax; and any person who shall knowingly make under oath any false report or return required by this act, shall be guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law. (July 24, 1937, Sp. Ses., c. 91, §12.)

2394-103. Same—examination of books and papers—refusal as misdemeanor.—All books, contracts, deeds, instruments, correspondence and memoranda relating to or used in connection with the conveyance of any real property as set forth in section 1 of this act, shall upon request of the Minnesota Tax Commission be open to its inspection or examination. If any person shall neglect or refuse on request of the Minnesota Tax Commission access to the papers and books aforesaid, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished therefor as provided by law. (July 24, 1937, Sp. Ses., c. 91, §13.)

2394-104. Same—refund of tax erroneously collected—disposition of proceeds.—Out of the proceeds of the taxes imposed hereby, including penalties and interest, the Commission shall refund any tax erroneously paid or collected, and shall reimburse the revenue fund or any other fund of the state of its proper proportion of the expense of administering this act. The balance of the proceeds of any such taxes shall be paid to the county treasurer of the county wherein the annuity or income taxed has a taxable status, and shall by him be placed to the credit of the proper funds and distributed as in the case of general taxes collected. (July 24, 1937, Sp. Ses., c. 91, §14.)

Sec. 15 of Act July 24, 1937, cited, provides that the act shall take effect from its passage.

CHAPTER 12
Military Code

MILITIA

2399. Militia—Constitution—Officers and personnel—Exemptions.—The militia shall consist of all able-bodied male citizens of the state and all other able-bodied males, resident therein, who have or shall have declared their intention to become citizens of the United States, when so authorized by federal law, who shall be 18 or more years of age, and, except

as hereinafter provided, not more than 45 years of age, and said militia shall be divided into three classes, the national guard, the naval militia, and the unorganized militia.

The officers, judicial and executive, of the government of the United States and of the states; persons in the military or naval service of the United States; custom house clerks, persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals, and navy yards of the United States; pilots and mariners actually employed in the sea service of any citizen or merchant within the United States, shall all be exempt from militia duty without regard to age, and all persons who because of religious beliefs shall claim exemption from military service if the conscientious holding of such belief by such person shall be established under such regulations as the President of the United States shall prescribe, shall be exempt from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President of the United States shall declare to be noncombatant. (As amended Apr. 8, 1939, c. 175, §1.)

2404. Governor may call out militia.

Where mob was threatening irreparable injury to manufacturing plant and civil authorities were inadequate, mayor of Minneapolis was justified in requesting governor to send troops, and it was his duty to do so. Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp384.

Governor and adjutant general were justified in sending troops to aid in preservation of law and order in Minneapolis, and it was their duty to take that course, where mobs were threatening violence and damage to property and civil authorities were inadequate. Id.

Governor, adjutant general, and mayor of city had right to place troops at and about manufacturing plant to prevent loss of life and destruction of property by a mob, and it was their duty to do so where civil authorities were inadequate. Id.

Governor, adjutant general, and mayor of Minneapolis, as a means of suppressing mob violence, had no right to use national guard to deprive manufacturer of its right to possess its own property, or to prevent it from using its property in the conduct of its lawful business. Id.

2405. Service—Duration—Organization—Age.—The men whose names are so forwarded shall be mustered at once into the service of the state for such period as the governor shall direct, not exceeding three years. They shall be organized as prescribed for existing organizations of the national guard. Such new organizations shall be officered, equipped, trained, and commanded according to the laws governing the national guard, provided however that the age limit for initial appointment as an officer shall not apply. (As amended Apr. 8, 1939, c. 175, §2).

2407. Governor to be commander-in-chief.

See notes under Const. Art. 5, §4.

Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp 384.

To Justify a court in finding, where lawlessness and violence have made presence of troops necessary, that commander in chief of troops is violating his oath and prostituting his office to a purpose which has no relation to restoration of law and order, there must be clear and convincing proof. Powers M. Co. v. O., (USDC-Minn), 7FSupp865. See Dun. Dig. 6118.

2408. Adjutant General—Appointment—Qualifications.—There shall be an adjutant general of the state who shall be appointed by the Governor, who shall be a staff officer, who at time of appointment shall be a commissioned officer of the National Guard of this state, with not less than ten years' military service in the armed forces of this state or of the United States, at least three of which shall have been commissioned and who shall have reached the grade of a field officer. He shall hold office as provided in Section 110, Act of Congress approved June 4, 1920, as amended, and shall not be removed from office except as provided by the military laws of this state. (As amended Apr. 8, 1939, c. 175, §3.)

Adjutant general is a soldier and bound to follow the orders of his commander-in-chief. Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp384.

2409. Minnesota National Guard.

One who signed the enlistment contract and thereafter attended drill and received pay therefor, acquired the status of a soldier, although he may not have taken the enlistment oath. 174M82, 218NW542.

2412. Inactive guard.—The Inactive National Guard shall be organized and maintained under such rules and regulations as may be prescribed in accordance with federal law. (As amended Apr. 8, 1939, c. 175, §4.)

2413. Number and grades of officers and enlisted men—Increase—Retired officers—Age limit of officers.—The number and grades of officers and enlisted men in the staff corps and departments shall be as prescribed by federal law, but in case of war, invasion, insurrection, riot or imminent danger of either, the governor may temporarily increase such force to meet such emergency and retired officers, who are physically qualified, may be assigned to such duty. All officers of staff corps and departments appointed shall have had previous military experience and shall hold their positions until they shall have reached the age of 64 years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the national guard. (As amended Apr. 8, 1939, c. 175, §5.)

2417. Selection of line and field officers.—Line officers and field officers below the grade of colonel in the regiments and lesser separate organizations shall be selected and recommended by the commanders thereof respectively. Officers above the grade of lieutenant colonel shall be selected and appointed by the Governor upon the recommendation of the adjutant general. (As amended Apr. 8, 1939, c. 175, §6.)

2418. Examination of officers—Brevet of retired or resigned officers—Assignment of retired officers to active duty—Assignment to active duty in the army.—Subdivision A. Any person hereinafter appointed, promoted and commissioned an officer of the national guard shall successfully pass such tests as to his physical, moral and professional fitness as shall be prescribed by federal law. The examination to determine such qualifications for commissions shall be as prescribed by federal law. Officers shall be commissioned by the governor, and the commission shall designate the arm, staff corps or department in which they are appointed. Officers will be assigned to regiments or lesser separate organizations by the adjutant general. They will be assigned to duty within the regiment or lesser organization by the immediate commander thereof.

General and field officers of the national guard, who have, after ten years active service, resigned or retired for physical disability or otherwise, may in the discretion of the commander-in-chief, on the recommendation of the adjutant general, be commissioned by brevet, in the next higher grade than that held by them at the time of their resignation or retirement, but not however above the grade of major general. Said brevet rank shall be considered strictly honorary and shall confer no privilege of precedence or command, nor pay and emoluments. Brevet officers may however wear the uniform of their brevet grade on occasions of ceremony.

The commander-in-chief may assign officers on the retired list, with their consent, to active duty in recruiting, upon courts martial, courts of inquiry and boards, to staff duty not involving service with troops, or in charge of a military reservation left temporarily without officers. Such officers while so assigned shall receive the full pay and allowances of their grades at time of retirement.

Subdivision B. When congress shall have declared a national emergency or shall have authorized the use of armed land forces of the United States for any

purpose requiring the use of troops in excess of those of the regular army, and the President has ordered into the active military service of the United States, to serve therein for the period of the war or emergency, any or all units and members of the national guard of this state, all forces so ordered into the active military service of the United States shall from the date thereof stand relieved from duty in the national guard of this state so long as they shall remain in the active military service of the United States, when so provided by federal law. Upon being relieved from such duty in the military service of the United States, all such individuals and units shall revert to their National Guard status. (As amended Apr. 8, 1939, c. 175, §7.)

2425. State and Municipal officers and employees not to lose pay while engaged in drill.—All officers and employees of the state or subdivision or municipality thereof who shall be members of the national guard or of the Officers Reserve Corps of the United States shall be entitled to a military leave of absence from their respective duties without loss of pay, status, vacation, or efficiency rating, on all days during which they shall be engaged in drills or parades during business hours ordered by proper authority or for field or coast-defense training or active service ordered or authorized under the provisions of state or federal law, or active duty ordered or authorized by state law; provided in the case of officers of the Officers Reserve Corps of the United States such leaves of absence shall not exceed 14 days in any calendar year. (As amended Apr. 8, 1939, c. 175, §8.)

Applicable to state naval militia. Op. Atty. Gen., June 18, 1929.

Statute does not apply to members of officers' reserve corps. Op. Atty. Gen. (310h), Feb. 28, 1939.

City under civil service ordinance cannot require employees who are members of National Guard or Naval Militia to take their vacations at the same time that they are engaged in military training. Id.

2437. Supplies—How issued.

Bathing suits were properly issued to national guard stationed at State Fair Grounds were there were no bathing facilities and local authorities would not permit use of bathing beaches without bathing suits. Op. Atty. Gen. (2a), Nov. 16, 1934.

Under Laws 1931, c. 223, §3, adjutant general may pay part of costs of moving high tension lines crossing Camp Ripley and maintained by a private utility under an easement in perpetuity. Op. Atty. Gen. (2c), Dec. 16, 1936.

2438. Officers to distribute.

Applicable to naval militia. Op. Atty. Gen., Nov. 13, 1929.

2440. Adjutant general—Chief of staff—Office—Reports—Seal—Powers and duties.

Correction. The seventh sentence of this section, as it appears in the 1927 edition, erroneously omits the words "and distributed to the commissioned officers." In the enactment the sentence reads: "He shall, whenever necessary, cause the military code, orders and regulations of the state to be printed and distributed to the commissioned officers and the several organizations of the national guard."

2447. Military camps.

Act authorizing governor and state auditor to convey on behalf of state real estate known as Camp Lakeview. Laws 1931, c. 54.

Laws 1931, c. 223, makes an appropriation for acquisition of land for a field training center at Camp Ripley.

2450. Camp grounds and military reservations.—The adjutant general shall have charge of the camp grounds and military reservations of the state and shall be responsible for the protection and safety thereof, and shall promulgate regulations for the maintenance of order thereon for the enforcement of traffic rules and for all other lawful regulations as may be ordered for the operation, care and preservation of existing facilities and installations on all state military reservations. He shall keep in repair all state buildings, and other improvements thereon, including water pipes laid by the state on highways leading thereto and of all military property connected with said grounds. He may make such further improvements thereon as the good of the service requires. Private property may be acquired by condemnation, upon the application of the adjutant general, for camp ground, rifle range and other military purposes. All damages, cost and expense incurred in condemning such property shall be paid by the state treasurer, upon certificates of the adjutant general and warrant of the State Auditor, from any unexpended balance of the military fund after meeting the demands of the National Guard. (As amended Apr. 8, 1939, c. 175, §9.)

Subject to §53-16 adjutant general has power to pay part of costs of moving of high tension line crossing Camp Ripley under an easement in perpetuity. Op. Atty. Gen. (2c), Dec. 16, 1936.

Adjutant general has authority to enter into contract for electric power to be supplied to camp for ten years. Op. Atty. Gen. (2c), Dec. 16, 1936.

Adjutant general may make arrangements with federal government for furnishing light and power for use by regular army and National Guard at Camp Ripley. Op. Atty. Gen. (2c), Apr. 3, 1937.

2454. Pay of officers.—Every commissioned officer of the national guard not salaried as such, shall receive from the state, while engaged in any service ordered by the governor, pay and allowance at the rate or allowed by law to officers of similar rank and length of service in the United States Army.

The necessary military expenses of divisions, brigades, regiments, separate battalions, companies, batteries or separate detachment, including clerk hire, office supplies, postage and other actual outlay, shall be paid by the adjutant general out of the national guard maintenance fund on vouchers duly sworn to by the commanding officer or the officer charged with the payment of such expenses, such expenses in no event to exceed $500.00 a year for each brigade headquarters, $2000.00 per year for each division headquarters and each regimental headquarters, $500.00 for each battalion headquarters not a part of a regiment with headquarters within the state, and $100.00 for incidental expenses of each company, battery or detachment. Provided, however, that all disbursements under this section shall be kept as prescribed by the commander in chief in orders or regulations and shall be examined annually by the public examiner.

Where the officers of the national guard are convened by the governor at an annual meeting of instruction, other than camp or active service, or where they are detailed under orders from regimental headquarters for the purpose of holding a quarterly inspection outside of their own station, they shall be allowed for traveling and incidental expenses, the sum of three dollars per day, not to exceed two days, in addition to transportation. (As amended Apr. 8, 1939, c. 175, §10.)

2460. Pay and allowance of Adjutant General—Assistant Adjutant General—Employees.—The adjutant general shall receive the pay and allowances of his grade as provided by the Act of Congress approved June 10, 1922. He may appoint an assistant adjutant general, a state quartermaster, and such administrative and clerical assistants as may be authorized by law, all at salaries which shall be currently fixed by law. In case of war, riot, insurrection or other emergency or when authorized by the Governor, such additional help as is necessary, may be temporarily employed, same to be paid from the amount appropriated for the maintenance of the National Guard. (As amended Apr. 8, 1939, c. 175, §11.)

2463. Courts-martial.

Where one was convicted by summary court-martial and habeas corpus issued and he was subsequently arrested under §2480 and sought to be relieved under a second writ of habeas corpus served the same day, military authorities did not lose jurisdiction by refraining from taking further action during the pendency of the habeas corpus proceeding. 174M82, 218NW542.

The only questions reviewable by habeas corpus are whether the military court has jurisdiction and power to impose the penalty inflicted. 174M82, 218NW542.

2466. Military offenses, how punished.
The fact that one was a member of the naval reserve at the time of enlistment in the National Guard did not render the enlistment void nor relieve him from liability for violations of military law. 174M82, 218NW542.

2469. Desertion.
Laws 1937, c. 232, amends this section and not §§2569-1 to 2569-7. Op. Atty. Gen. (122b-3), Oct. 27, 1937.

2480. Officers and men may be arrested, when.
Where one was convicted by summary court-martial and habeas corpus issued and he was subsequently arrested under §2480 and sought to be relieved under a second writ of habeas corpus served the same day, military authorities did not lose jurisdiction by refraining from taking further action during the pendency of the habeas corpus proceeding. 174M82, 218NW542.

2494. City or village armory commission.
Owatonna Armory may pay portion of expenses incurred in applying tarvia on street, if it so desires, but city may not enforce payment of assessment therefor. Op. Atty. Gen., May 18, 1932.

2505. Adjutant general to take possession of unused armories.
National Guard Armory at Pine River assigned to Village of Pine River. Laws 1939, c. 371.

2508. May receive state aid.
There is no statutory limitation upon what city may appropriate for maintenance and upkeep, but it must be a reasonable amount. Op. Atty. Gen. (59a-51), July 18, 1939.

2513. State aid for maintenance.
See §2517-6, post.

2517-2. Armory construction authorized.—In any municipality now or hereafter having an armory which at the time shall have been condemned by lawful authority as unfit or unsafe for use for armory or military purposes, or which shall have been determined by the adjutant general to be unfit, unsafe, or inadequate for armory or military purposes, in which municipality there shall at the time be stationed twenty or more units of the national guard and naval militia, a new armory may be constructed and the cost thereof may be paid as hereinafter provided. (Act Apr. 25, 1931, c. 398, §1; Apr. 20, 1933, c. 332, §2.)

Sec. 1 of Act Apr. 20, 1933, cited, amends the title of Laws 1931, c. 398, to read as follows:
"An act relating to armories."

2517-3. Armory building commission created.—(a) For the purposes herein provided there shall be created a corporation to be known as the Armory Building Commission of such city. The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely:. the adjutant general, the state auditor, the state treasurer, the senior in rank of the officers of the headquarters, organizations, or units of the national guard and naval militia stationed in such city, the mayor of such city, and two other representatives of such city chosen by the governing body thereof from their own number or otherwise, who shall serve at the pleasure of such governing body; provided, that in case of the failure of the governing body of such city to choose either or both of such representatives within thirty days after written notice to do so, given by the adjutant general to the presiding officer of such governing body, the other members aforesaid shall compose such commission and corporation; provided further, that if such senior officer of the national guard and naval militia is also an incumbent of any of the other offices aforesaid, the next officer in rank shall serve as a member of such commission and corporation.

(b) Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such city of the conditions specified in Section 1 of this act, naming the persons authorized to compose such commission and corporation as aforesaid, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than three, shall have power to act as such commission and corporation and to elect such temporary acting officers as may be necessary during the existence of the vacancy.

(c) The adjutant general shall be chairman, the state auditor shall be secretary, and the state treasurer shall be treasurer of such corporation. The treasurer shall give a bond to the corporation, with corporate surety approved by the chairman and secretary, to be filed with the secretary, in the sum of $50,000.00. The premium on such bond shall be paid by the corporation. Such corporation shall issue no stock. No officer or member of such corporation shall have any personal share or interest in any funds or property of the corporation, or be subject to any personal liability on account of any liability of the corporation. (Act Apr. 25, 1931, c. 398, §2; Apr. 20, 1933, c. 332, §2.)

2517-4. Powers of corporation.—Such corporation, subject to the conditions and limitations herein prescribed, shall possess all the powers as a body corporate necessary and convenient to accomplish the objects and perform the duties prescribed by this act, including the following, which, however, shall not be construed as a limitation upon the general powers hereby conferred, to-wit:

(a) To acquire by lease, purchase, gift, or condemnation proceedings all necessary right, title, and interest in and to the lands required for a site for such new armory and all other real or personal property required for the purposes contemplated by this act, and to hold and dispose of the same, subject to the conditions and limitations herein prescribed; provided, that any such real or personal property or interest therein may be so acquired or accepted subject to any condition which may be imposed thereon by the grantor or donor and agreed to by such corporation not inconsistent with the proper use of such property by the state for armory or military purposes as herein provided.

(b) To exercise the right of eminent domain in the manner provided by Mason's Minnesota Statutes of 1927, Chapter 41, for the purpose of acquiring any property which such corporation is herein authorized to acquire by condemnation; provided, that the corporation may take possession of any such property so to be acquired at any time after the filing of the petition describing the same in condemnation proceedings; provided further, that this shall not preclude the corporation from abandoning the condemnation of any such property in any case where possession thereof has not been taken.

(c) To construct and equip a new armory in such city upon a site to be secured as herein provided, at a total cost of such corporation for site, building, and equipment not exceeding $1,500,000.00, to pay therefor out of the funds obtained as hereinafter provided, and to hold, manage, and dispose of such armory, equipment, and site as hereinafter provided.

(d) To sue and be sued.

(e) To contract and be contracted with in any matter connected with any purpose or activity within the powers of such corporation as herein specified; provided, that no officer or member of such corporation shall be personally interested, directly or indirectly, in any contract in which such corporation is interested.

(f) To employ any and all professional or nonprofessional services and all agents, employees, workmen and servants necessary and proper for the purposes and activities of such corporation as authorized or contemplated by this act and to pay for the same out of any portion of the income of the corporation available for such purposes or activities; provided, that the officers and members of such corporation shall receive no compensation therefrom, but may receive

their reasonable and necessary expenses incurred in connection with the performance of their duties.

(g) To borrow money and issue bonds for the purposes and in the manner and within the limitations herein specified, and to pledge any and all property and income of such corporation acquired or received as herein provided to secure the payment of such bonds, subject to the conditions and limitations herein prescribed, and to redeem any such bonds if so provided therein or in the mortgage or trust deed accompanying the same.

(h) To use for the following purposes any available moneys received by such corporation from any source as herein provided in excess of those required for the payment of the cost of such armory and for the payment of any bonds issued by the corporation and interest thereon according to the terms of such bonds or of any mortgage or trust deed accompanying the same, to-wit:

(1) to pay the necessary incidental expenses of carrying on the business and activities of the corporation as herein authorized;

(2) to pay the cost of operating, maintaining, repairing, and improving such new armory;

(3) if any further such excess moneys remain, to purchase upon the open market at or above or below the face or par value thereof any bonds issued by the corporation as herein authorized; provided, that any bonds so purchased shall thereupon be cancelled.

(i) To adopt and use a corporate seal.

(j) To adopt all needful by-laws, rules and regulations for the conduct of the business and affairs of such corporation and for the management and use of such armory while under the ownership and control of such corporation as herein provided, not inconsistent with the use of such armory by the state for armory or military purposes. (Act Apr. 25, 1931, c. 398, §3; Apr. 20, 1933, c. 332, §3.)

2517-5. City shall provide site.—(a) Any such city desiring to have such new armory constructed hereunder may provide a site therefor as hereinafter provided.

(b) If any such city shall desire to have such new armory constructed on the site of the existing armory, and if such site is approved by the adjutant general as suitable for such new armory, such city may convey by way of gift or sale to such corporation all right, title, and interest owned by such city in such existing armory and the lands whereon the same is situated and all adjoining lands required for constructing such new armory. Thereupon, in case any such lands or interests therein are owned or controlled by the board of park commissioners of such city or by any other governmental agency therein except the state or such city, such board of other agency may convey the same by way of gift or sale to such corporation. Such corporation may wreck and remove such existing armory and may sell all or any part thereof and may use any proceeds received therefrom for any authorized purpose or activity of the corporation hereunder.

(c) If such city shall not desire to have such new armory constructed on the site of the existing armory, or if such site shall not be approved by the adjutant general as herein provided, such city desiring to have such new armory constructed may secure by purchase, gift, or condemnation, and may convey to such corporation another site for such new armory approved as suitable therefor by the adjutant general. In case such site or any part thereof or interest therein is owned or controlled by the board of park commissioners of such city or by any other governmental agency therein except the state or such city, such board or other agency may convey the same by way of gift or sale to such corporation without charge.

(d) In case any person or corporation except such city or board of park commissioners or other governmental agency hereinbefore referred to shall own any lands required for such site, whether provided under subdivision (b) or subdivision (c) of this section, or any interest in any such lands which would interfere with the use thereof by the state for armory or military purposes, such city or such board of park commissioners or other governmental agency may acquire such lands or interest by purchase, gift, or condemnation and may convey the same by way of gift or sale to such corporation; provided, that notwithstanding any such outstanding ownership or interest, such corporation may, in its discretion, with the approval of the adjutant general accept a conveyance of such lands and interests in lands for such site as may be owned or controlled by such city, board of park commissioners, or other governmental agency, and may acquire by purchase, gift, or condemnation any further lands or interests in lands that may be required for such site.

(e) The governing body of such city and such board of park commissioners and any other governmental agency concerned shall have power to exercise the right of eminent domain in the manner provided by Mason's Minnesota Statutes of 1927, Chapter 41, for the purpose of acquiring any lands or interests in lands authorized to be acquired as aforesaid.

(f) In the event that the state of Minnesota shall own any lands or interest in lands included in the site of such existing armory and required for the site for such new armory, such lands or interest therein shall be leased by the state to such corporation for a period of not exceeding 40 years for the purposes contemplated by this act, without any consideration other than the use of such property by the state for armory or military purposes as herein provided and the provisions hereof for the conveyance to the state of the new armory building and the site thereof. The adjutant general shall have power to execute such lease to such corporation in the name of the state. Provided, that such corporation shall have no power to mortgage or encumber any lands or interest so leased to it by the state except to the extent of such leasehold interest and subject to the conditions and limitations herein prescribed.

(g) In case any land acquired for armory site purposes hereunder has been donated to such corporation by such city or by any other governmental agency except the state, and in case such land or any part thereof shall thereafter not be used or shall cease to be used for armory purposes for a continuous period of more than five years, not including the period of any war or other emergency in which the armed forces of the state may be engaged, the title to such unused land or part thereof shall thereupon pass, revert and be vested as follows: An undivided one-half thereof in the state and an undivided one-half thereof in such city or other governmental agency which donated the same, subject to any encumbrances that may have been lawfully placed thereon by such corporation or otherwise. (Act Apr. 25, 1931, c. 398, §4; Apr. 20, 1933, c. 332, §4.)

2517-6. Funds for construction of armory—tax levy.—(a) The funds to be used by such corporation for the purposes of this act may be obtained as hereinafter provided.

(b) Such city desiring to have such new armory constructed hereunder may by resolution of its governing body irrevocably provide for levying and collecting annually for a specified period, not exceeding 40 years, a tax upon all taxable property therein of such amount as such governing body may determine, not exceeding five-tenths of a mill. The proceeds of such levy as collected shall be paid to such corporation for the purposes herein prescribed. Such city shall have power to make such tax levies and payments and to bind itself thereto by such resolution of its governing body. The provisions of such resolution may be made conditional upon the giving of an agreement by the adjutant general as authorized in subdivision (d) of this section. The obliga-

tions of such city to levy, collect, and pay over such taxes shall not be deemed or construed to constitute an indebtedness of such city within the meaning of any provision of law or of its charter limiting its total or net indebtedness, and such taxes may be levied and collected without regard to any statutory or charter provision limiting the amount or rate of taxes which such city is otherwise authorized to levy. The payment of the proceeds of such taxes up to an amount equal to the sum of $250 per year, or such other amount as may hereafter be prescribed by law, for each company or other unit of the national guard or naval militia stationed in such city shall be deemed sufficient appropriation and payment by such city to authorize the payments to be made by the state annually for armory maintenance and equipment under the provisions of Mason's Minnesota Statutes of 1927, Section 2513, and acts amendatory thereof or supplemental thereto, such payments to be made to such corporation and applied as herein provided. (As amended Apr. 20, 1933, c. 332, §5.)

(c) The annual payments by the state for armory maintenance and equipment authorized by Mason's Minnesota Statutes of 1927, Section 2513, and acts amendatory thereof or supplemental thereto, shall be paid to such corporation and applied as herein provided. (As amended, Apr. 20, 1933, c. 332, §5.)

(d) In addition to the payments by the state under subdivision (c) of this section, the adjutant general is hereby authorized to pay to such corporation out of any moneys which may from time to time be appropriated to and for his department and not appropriated or set apart for any other specific purpose a sum not more than $41,000 per year, and may bind himself and his successors in office by agreement with such corporation to make such payments in a specified amount or amounts out of such appropriations for a period of not more than forty years.

(e) Upon completion of such new armory such corporation shall lease the same to the state through the adjutant general, until such armory and site shall be conveyed to the state as hereinafter provided. Such lease shall be made upon such terms and conditions as shall secure to the state the full and complete use of such armory for armory and military purposes so far as may be required for the headquarters, organizations, and units of the national guard and naval militia stationed in such city, and upon such other terms and conditions not inconsistent therewith as may be agreed upon; provided, that except for such use of such property for armory and military purposes which shall be secured to the state as aforesaid, such lease shall be subject to any incumbrance placed upon the property to secure the payment of any bonds issued as herein provided. No further consideration for such lease shall be required than the payments to be made by the state as provided by subdivisions (c) and (d) and this section. Otherwise, and so far as it is not inconsistent with the terms and conditions of such lease to the state and so far as will not interfere with the use by the state of such property for armory or military purposes, such corporation may lease, rent, or otherwise make use of such new armory building or any part thereof for such purposes and upon such terms as such corporation may deem proper, and may use the rents and profits therefrom for the purposes herein provided. (Act Apr. 25, 1931, c. 398, §5; Apr. 20, 1933, c. 332, §5; Jan. 13, 1936, Ex. Ses., c. 12, §1.)

2517-7. Corporation may issue bonds.—(a) In anticipation of the receipt of such corporation of the tax proceeds, appropriations, rents, and profits specified in Section 5 hereof, and of income from any other source, and for the purpose of securing funds as needed for payment of the cost of such new armory and other purposes herein authorized, such corporation is hereby authorized to issue its bonds in an aggregate principal amount not exceeding $1,500,000.00, bearing interest at a rate not to exceed five per cent per annum, payable semi-annually.

(b) Such bonds shall be of such date, denominations, place of payment, form, and details as may be determined by such corporation not inconsistent with the provisions of this act. Such bonds shall mature serially, the first installment to fall due in not more than five years and the last in not more than forty years from their date, and no annual maturing installment shall exceed by two and one-half times the amount of the smallest annual maturing installment; provided, that the amount of such installments of principal may be such that the increase thereof from year to year shall approximately equal the decrease from year to year in the interest on the bonds remaining unpaid.

(c) Such bonds shall be signed by the adjutant general, attested by the state auditor, and countersigned by the state treasurer, in their respective positions as chairman, secretary, and treasurer ex officio of such corporation, and the interest coupons to be thereto attached shall be executed and authenticated by the printed, engraved, or lithographed facsimile signatures of such chairman and secretary.

(d) Such bonds shall be sold by such corporation upon such notice and upon such terms and at such times as the corporation shall deem best. Such bonds shall not be deemed or construed to be debts of the State of Minnesota or of the municipality in which such armory is situated, nor to impose any personal liability upon any member of such corporation, but shall be payable solely out of the income to be received by such corporation as specified in this act. Bonds legally issued pursuant to this act may be purchased by the State board of Investment for the Permanent School Fund, Permanent University Fund, Swamp Land Fund, Internal Improvement Land Fund, or any other trust fund of the State of Minnesota, or for any other fund administered by such board, and shall be deemed authorized securities within the provisions of Mason's Minnesota Statutes of 1927, Section 7714, and laws amendatory thereof and supplemental thereto, and shall be proper for the investment of capital, surplus or deposits of any savings bank or trust company, and for the investment of funds of any insurance company, and for the investment of any sinking funds held by any public or municipal corporation, and may be pledged by any bank or trust company as security for the deposit of public moneys therein in lieu of surety bonds. Such bonds shall be deemed and treated as instrumentalities of a public governmental agency, and as such shall be exempt from taxation. (Act Apr. 25, 1931, c. 398, §6; Apr. 20, 1933, c. 332, §6.)

2517-8. May give mortgage on armory and site.—To secure the prompt and full payment of such bonds and interest thereon such corporation may mortgage such armory building and/or the site thereof, and may pledge the income or any part thereof receivable by such corporation under this act to any trustee under such provisions that upon default in the payment of the principal or of interest on any such bonds all of such bonds may be declared due and payable, and such mortgage foreclosed in like manner as other mortgages are foreclosed in this state, subject to the provisions of this act. The purchaser at any sale upon such foreclosure shall acquire the right of possession and the right to operate such building under such terms and conditions as may be specified in said mortgage and not inconsistent with the use of the property by the state for armory and military purposes, such possession and right of operation to continue until the full principal and interest on such bonds or the amount bid upon such foreclosure sale shall have been paid out of the net rents and profits received from such operation or out of moneys otherwise provided as set forth in Section 5 [§2517-6] hereof. Such mortgage or deed of trust may contain any other provisions not inconsistent with the provisions of

this act or with the use of such building by the state for armory or military purposes as are customarily included for the benefit and protection of the parties to such instruments, including provisions for the insurance thereof, appointment of a receiver in the event of a default by the mortgagor, exemption of the members of such corporation from any personal liability, and other such provisions. Nothing contained in such mortgage shall be deemed or construed to constitute a liability of the State of Minnesota or of such city or any department, board or commission thereof, nor to impose any personal liability upon any member of such corporation. Such mortgage or deed of trust may be recorded in the office of the appropriate register of deeds without the payment of any mortgage registry tax. (Act Apr. 25, 1931, c. 398, §7.)

2517-9. Property to be conveyed to state.—Upon payment of all indebtedness incurred by such corporation hereunder, including the full principal and interest of all bonds issued by such corporation as herein provided, such corporation shall transfer and convey such armory building and the site thereof to the State of Minnesota for military purposes, and shall pay over to the state any unexpended moneys then held by such corporation, which moneys shall be appropriated to the adjutant general for the maintenance, repair, and improvement of such armory. (Act Apr. 25, 1931, c. 398, §8.)

2517-10. Limit of indebtedness.—Such corporation shall never be subject to an indebtedness in excess of $1,500,000.00, nor shall it incur any indebtedness except as authorized herein. (Act Apr. 25, 1931, c. 398, §9; Apr. 20, 1933, c. 332, §7.)

2517-11. Books to be examined by state comptroller.—The books and affairs of such corporation shall be subject to examination by the state comptroller. (Act Apr. 25, 1931, c. 398, §10.)

2517-12. Provisions separable.—This act shall be held unconstitutional only in the event that some major provisions thereof are found unconstitutional and invalid which would make the act unworkable. Should any minor provisions of this act be held unconstitutional it shall in no way affect or invalidate any other provision or part thereof. (Act Apr. 25, 1931, c. 398, §11.)

2517-13. Construction in municipalities having national guard units—definition—Application of act.—(a) In any municipality of this state in which there shall at the time be stationed one or more units of the national guard or naval militia, and in which the adjutant general shall deem it necessary or expedient to contruct an armory, an armory may be constructed and the cost thereof may be paid as hereinafter provided. The term "municipality" as used herein shall include cities of every class, villages, and boroughs. The provisions of this section and the following sections of this act shall be construed as supplemental to the preceding sections, and not as repealing or superseding the same or any part thereof.

(b) Whenever the adjutant general shall deem it necessary or expedient that an armory be constructed upon a state military camping ground to be used principally by any unit or units of the national guard stationed at a municipality in the vicinity thereof such armory may be constructed and the cost thereof may be paid in the manner hereinafter provided for the construction of armories in municipalities, and the annual payments hereafter to be made by the state for the maintenance and equipment of such armory, as authorized by Mason's Minnesota Statutes of 1927, Section 2513, and acts amendatory thereof and supplemental thereto, shall be payable to the Minnesota state armory building commission without the necessity of like appropriations by such municipality or any other party so long as any bonds issued for the construction of such armory shall be outstanding. (Laws 1931, c. 398, §12; as added by Act Apr. 20, 1933, c. 332, §8; Jan. 13, 1936, Ex. Ses., c. 12, §2.)

2517-14. Corporation created—Commission.—(a) For the purpose of constructing armories as provided by Section 12 of this act, there shall be created a corporation to be known as the "Minnesota State Armory Building Commission." The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely: The adjutant general and the general officers of the line of the national guard of the state. The adjutant general shall be chairman of such commission. Such commission shall elect a secretary and treasurer from the members thereof other than the adjutant general. The officers of such commission shall have like powers and duties as are vested in or imposed upon the corresponding officers of the commission referred to in Section 2 of this act.

(b) Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such municipality of the conditions specified in Section 12 of this act, naming the persons authorized to compose such commission and corporation as provided in this section, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than two, shall have power to act and to elect such temporary acting officers as may be necessary during the existence of the vacancy. In case at any time there shall not be at least two qualified officers of the national guard in addition to the adjutant general eligible to serve ex officio as members of such commission as provided by subdivision (a) of this Section, the adjutant general may appoint a member or members of such commission from the colonels of the line of the national guard of the state so as to provide not more than two members of such commission in addition to himself. The membership of the member last so appointed shall automatically terminate upon the appointment and qualification of an officer of the national guard eligible to serve ex officio as a member of such commission as provided by Subdivision (a) of this section, providing the total membership of such commission be not thereby reduced to less than three. All officers of the national guard eligible to be members of such commission as provided by Subdivision (a) of this section shall automatically become such members forthwith upon their appointment and qualification as such officers. In case of a vacancy in the office of adjutant general, or in case of the incapacity of the adjutant general to act as a member and chairman of such commission, the officer who is appointed or authorized according to law to exercise the powers of the adjutant general for the time being shall, during the existence of such vacancy or incapacity, act as a member and chairman of such commission and have all the powers and duties herein vested in or imposed upon the adjutant general as a member and chairman of such commission. The adjutant general shall certify to the secretary of state all changes in the membership of the commission, but failure on his part so to do shall not affect the authority of any new member of the commission or the validity of any act of the commission after accession of a new member. (Added as §13 to Laws 1931, c. 398, by Act Apr. 20, 1933, c. 332, §8; Mar. 11, 1935, c. 40, §1.)

Minnesota armory building commission is a public corporation. Op. Atty. Gen., Mar. 24, 1934.

2517-15. Same—powers of corporation and municipalities—laws applicable—definitions—limitation on cost—indebtedness.—For the purpose of constructing armories as provided in Section 12 of this act, the corporation referred to in Section 13 of this act shall have like powers and privileges and be subject to like

duties and obligations as are by this act vested in or imposed upon the corporation referred to in Section 2 of this act. Every municipality in which an armory may be constructed as provided in Section 12 of this act, and every governing body of and every other governmental agency in every such municipality, shall have like powers and privileges and be subject to like duties and obligations as are by this act vested in or imposed upon the respective cities, governing bodies, and other governmental agencies referred to in Sections 1 to 11 of this act, inclusive. All the provisions of this act relating to the construction of armories in the cities referred to in Section 1 of this act and to all other matters connected therewith, shall, so far as applicable, and not otherwise provided herein, apply to the construction of armories in the municipalities referred to in Section 12 of this act to all other matters connected therewith, and for such purposes the term "city" as used in Sections 1 to 11, inclusive, of this act shall be construed to refer to the municipalities referred to in Section 12 of this act, and the terms "commission" and "corporation" as used in Sections 1 to 11, inclusive, of this act, shall be construed to refer to the commission and corporation referred to in Section 13 of this act; provided, however, as follows:

(a) The total cost to the corporation of each armory constructed as provided in Section 12 of this act, including the site, building, and equipment, shall not exceed $75,000.00 for each unit of the national guard or naval militia to be quartered therein, and the total amount of bonds issued on account of each such armory shall not exceed the amount of such cost.

(b) The adjutant general may pay under the provisions of subdivision (d) of Section 5 of this act on account of each armory constructed as provided by Section 12 of this act an amount not exceeding $2,000.00 per year for each unit of the national guard or naval militia quartered in such armory.

(c) The corporation created under Section 13 of this act shall never be subject to an indebtedness on account of any armory constructed as provided by Section 12 of this act in excess of the cost of such armory as provided by this section, nor to a total indebtedness in excess of the aggregate cost of all armories so constructed.

(d) The treasurer of the corporation created under Section 13 of this act shall give a bond to the corporation in such sum and with such surety as the corporation may determine, conditioned in like manner as the bonds of treasurers of public bodies, to be approved and filed as the corporation may determine.

(e) The corporation created under Section 13 of this act may designate one or more state or national banks as depositories of its funds, and may provide, upon such conditions as the corporation may determine, that the treasurer of the corporation shall be exempt from personal liability for loss of funds deposited in any such depository due to the insolvency or other acts or omissions of such depository. (Laws 1931, c. 398, §14; Laws 1933, c. 332, §8; Mar. 11, 1935, c. 40, §2.)

Act Apr. 20, 1933, cited, adds sections 12, 13 and 14 to Act 1931, c. 398. The enacting part provides that the words "this act" shall be deemed to refer to the amended act as amended.

Commisison cannot borow from one fund to finance a different armory. Op. Atty. Gen. (310b), Mar. 2, 1936.

NAVAL MILITIA

2520. Naval Militia not to exceed eight companies.—The Naval Militia shall consist of not to exceed eight divisions or companies and a squadron of air service, organized into such number of battalions as the tactical situation may require. ('99, c. 355; '05, c. 34, §1; '09, c. 389, §1; G. S. '13, §2473; '15, c. 353, §1; Apr. 23, 1929, c. 296.)

(e) The corporation created under Section 13 of this act may designate one or more state or national banks as depositories of its funds, and may provide, upon such conditions as the corporation may determine, that the treasurer of the corporation shall be exempt from personal liability for loss of funds deposited in any such depository due to the insolvency or other acts or omissions of such depository. (Added as §14, Laws 1931, c. 398, by Act Apr. 20, 1933, c. 332, §8; Mar. 11, 1935, c. 40, §2.)

WAR RECORDS

2535-1. Minnesota War Records Commission discontinued.

Op. Atty. Gen. (523g-17), May 2, 1934; note under § 4326(g)(1).

CHAPTER 13

Roads

GENERAL HIGHWAY ACT

2542. Scope of act.

175M583, 222NW385; note under §2554.

U. S. v. Wheeler Tp. (CCA8), 66F(2d)977.

A village approving plans of construction by state highway commissioner of a trunk highway upon a village street and authorizing a change of grade according to such plan, makes itself liable for the damage caused abutting property by such change, in the absence of assumption of such liability by the state. 178M144, 226 NW398.

Followed in Foss v. M., 178M430, 227NW357.

State cannot reimburse county out of trunk highway fund amount expended for right of way for new road built by county and later designated and taken over by state as trunk highway. State v. Babcock, 186M132, 242NW474. See Dun. Dig. 8452.

There is no statutory provision by which one town can compel another to maintain its half of a town line road where there has been no agreement for the division of the road for purpose of maintenance, the only remedy being application to the county board under §2607. Op. Atty. Gen., June 27, 1930.

Where "state rural highway" was established and constructed under Laws 1911, ch. 254, and was later designated as a temporary trunk highway and was turned back to county by state under §2554(4)(a) the highway could not revert to its former status of "state rural highway" but became a county road that could not be turned over to town to be maintained by it, except pursuant to §2582. Op. Atty. Gen. (377a-15), Nov. 7, 1935.

3. "County roads."

Order that portion of road within county should be set aside by the county for "opening and maintenance" simply had the effect of imposing upon the county the duty of opening the road, and upon the towns through which the road passes the duty of maintaining same. Op. Atty. Gen., Mar. 27, 1931.

4. "Town roads."

Petitioner for whose primary benefit a cartway is established cannot treat it as a strictly private way, and cannot keep the public off it. Op. Atty. Gen., June 10, 1931.

Town board has control over all town roads, including bridge culverts. Op. Atty. Gen., June 13, 1933.

2543. "Road" and "Highway" defined.

Op. Atty. Gen., July 19, 1930; note under §2552.

Includes part of interstate bridge. Op. Atty. Gen., Apr. 11, 1929.

Where road extending into two counties over bridge across river, forming boundary between counties, was designated as a state aid road by both counties, each county is chargeable for the maintenance of that portion of the bridge within its territorial limits and no more, though county may expend money, if it desires, in the maintenance of bridge or road in another county. Op. Atty. Gen., Aug. 18, 1930.

Cartways may not be established between two parcels of land where it would not connect with a public road. Op. Atty. Gen. (377b-1), Sept. 28, 1934.

Commissioner of highways may install lights on trunk highways at intersections in cities and villages and pay for cost out of highway funds. Op. Atty. Gen. (229e-3), Feb. 3, 1937.