

RESERVE MILITARY FORCE:
/SKELETAL BASIS:

The State of Missouri may organize and maintain and pay the expenses of such maintenance of a cadre reserve military force without the consent of Congress or authorization by the Federal Government.



May 20, 1954

Honorable A. D. Sheppard
Adjutant General of Missouri
State Office Building
Jefferson City, Missouri

Dear General Sheppard:

This will be the opinion you requested by letter from this office asking whether the State of Missouri may organize and maintain a reserve Military Force on a cadre basis without the consent of Congress and, whether the state may equip members of such cadre military organization. Your letter contains informative matter, including reference to the National Defense Act, Section 10 of Article I of the Constitution of the United States, a brief statement of the organization and maintenance of a Home Guard in the First World War, a State Guard during the existence of the Korean Emergency, but which, however, was never perfected, a statement outlining the purpose for which such cadre force would be organized and maintained, the relationship of such force to the National Guard in State Emergency Plans, the responsibility of undertaking a military mission on behalf of this state when and after other duly authorized military organizations are inducted into Federal service, and to act in case of Emergency when there is no other available military organization within the state to perform such services. We deem it unnecessary to quote such parts of your letter here. However, such references and suggestions will be considered in the preparation of this opinion. That part of your letter requesting the opinion and identifying the subject to be considered, reads as follows:

"1. Your opinion is requested as to whether the State of Missouri may organize and maintain a Reserve Military Force on a cadre basis without the consent of Congress or authorization of the Federal Government and pay and equip the members of such a skeletal military organization."

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Your letter cites as statutory authority in this state for the organization and maintenance of a reserve military force Section 41.760, (Laws Mo. 1951, p. 654) 1953 Cum. Supp., p. 42. Said Section 41.760 reads as follows:

"When the organized militia, including the national guard and air national guard are absent from the state in federal service, or when for any reason the strength of the same is not adequate to furnish a force sufficient to execute the laws, suppress insurrections, repel invasion, suppress lawlessness and provide emergency relief to distressed areas in the event of earthquake, flood, tornado, or other actual or threatened enemy attack or public catastrophe creating conditions of distress or hazard to public health and safety beyond the capacity of local or established agencies, the governor shall have the power, when authorized by the federal government, to organize from the unorganized militia of Missouri, a reserve military force for duty within or without the state. Such force shall consist of such organized troops, auxiliary troops, staff corps and departments as he may deem necessary. He shall prescribe the strength and composition of the various units of the same, and the qualifications of its members. The governor shall have the power to grant discharges therefrom for any reason deemed by him sufficient."

Section 41.760, supra, is positive and clear in providing that when the emergencies or dangers, or any of them, noted in the said section, are threatened, or exist within this state, the Governor shall have the power when authorized by the Federal Government, to organize from the unorganized militia of Missouri a reserve military force for duty within or without this state. It is made equally clear and plain in your letter requesting an opinion that it is not the purpose here to organize a military force as if for service or action at this time, but to organize and maintain a force on a cadre or skeletal basis before the National Guard has been inducted into federal service and before state military forces have been organized, which cadre could be quickly expanded with Federal authority into an effective force. We find nothing in said Section 41.670 or elsewhere in state or federal statutes prohibiting the organization and maintenance of such a cadre military force. Your letter refers us to Section 10 of Article I of the Federal Constitution which denies the states certain powers. In the third paragraph of said Section 10 it is provided that "no state shall, without the consent of Congress * * *keep troops * * *in time of peace."

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We believe the organization, maintenance and equipment of a cadre of a reserve military force by the Governor of this state would, in no sense, amount to keeping "troops" within the state in time of peace without the consent of Congress, so as to be a violation of said Section 10, Article I, of the Federal Constitution.

The keeping of "troops" by the state implies that they are presently active, or potentially active in military service. The term "troops" is defined in 64 C.J., page 1313, thus:

"In a military sense, it is said that the word has an established meaning, as the designation of a body, or muster of soldiers; an army; soldiers collectively. The term is one that conveys to the mind the idea of an armed body of soldiers, whose sole occupation is war or service, answering to the regular army, although it has been said that the term is not confined to land forces but may include men and officers in every branch."

The Supreme Court of the United States in *United States v. Union Pac. R.R. Co.*, 249 U.S. 354, l.c. 356, defined "troops" as follows:

"In 1850 the word 'troops' had (and it has ever since had) an established meaning;--namely, 'soldiers collectively,--a body of soldiers.'
* * *"

The question of whether a state militia constituted "troops" within the meaning of Section 10, of Article I of the Federal Constitution prohibiting the states from keeping "troops" in time of peace, was before the Supreme Court of the State of Illinois in *Peter J. Dunne v. The People of the State of Illinois*, 94 Ill. Rep. 120. The Supreme Court of that state held that the militia was not to be considered "troops" within the meaning of the word "troops" as contained in said Section 10 of said Article I of the Federal Constitution. The court so holding, l.c. 138, said:

"* * *Such an organization, no matter by what name it may be designated, comes within no definition of 'troops,' as that word is used in the constitution. The word 'troops' conveys to the mind the idea of an armed body of soldiers, whose sole occupation is war or service, answering to the regular army. The organization of the active militia of the State bears no likeness to such a body of men. It is simply a domestic force as distinguished from regular 'troops,' and is only liable to be called into service

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when the exigencies of the State make it necessary. * * *

We believe it is clear that under the terms of Section 10 of Article I of the Constitution of the United States, and Section 41.760, (Laws Mo. 1951, page 654) 1953 Cum. Supp., page 42, RSMo. 1949, the organization and maintenance of a reserve military force by the Governor of this state on a cadre basis is not prohibited by federal or state laws and does not require the consent of Congress and does not, in the opinion of this office, violate the provisions of the Federal Constitution which provide that a state shall not keep troops in time of peace without the consent of Congress.

The organization and maintenance of a cadre military reserve force as proposed here, according to statements in your letter requesting an opinion is so that it may be quickly expanded, with federal authority, into an effective force. The need for a state military reserve force may arise if and when the State National Guard may be inducted into Federal Service, and in the absence of such a cadre force the state would find itself without an organized military reserve force. It is apparent that the organization and maintenance of such a cadre military force would not constitute the keeping of "troops" in the state without the consent of Congress within the meaning of the Constitutional provision here noted and discussed.

CONCLUSION

It is, therefore, considering the premises, the opinion of this office that the State of Missouri may organize and maintain a reserve military force on a cadre basis without the consent of Congress or authorization of the Federal Government, and pay and equip the members of such skeletal military organization.

This opinion, which I hereby approve, was written by my assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON
Attorney General

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