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OPINION LETTER NO. 30-87

Richard C. Rice
Director, Department of Public Safety
Post Office Box 749
Jefferson City, Missouri 65102-0749



Dear Mr. Rice:

This opinion is in response to your question asking:

Aside from Section 41.480, RSMo, is there authority under current state law, and specifically under Section 41.470, RSMo, for the Governor to place members of the Missouri National Guard on state active duty to assist in observation and reporting of wild and cultivated marijuana fields within the State of Missouri in support of state and local law/drug enforcement agencies?

The source of the authority and power of state government and of its agencies, such as the militia or national guard, must be found in the state constitution, state statutes or in the necessary implications therefrom.

Generally speaking, state officers, boards, commissions, and departments have such powers as may have been delegated to them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed on them. These powers cannot be varied or enlarged by usage or by administrative construction. Executive and administrative officers, boards, departments, and commissions have no powers beyond those granted by express provision or necessary implication. [footnotes omitted]. 81A C.J.S. States Section 120, p. 542.

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Article III, Section 46 of the Missouri Constitution provides:

Section 46. Militia. The general assembly shall provide for the organization, equipment, regulations and functions of an adequate militia, and shall conform the same as nearly as practicable to the regulations for the government of the armed forces of the United States.

Article I, Section 24 of the Missouri Constitution provides in part:

In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare:

* * *

Section 24. Subordination of military to civil power -- quartering soldiers. That the military shall be always in strict subordination to the civil power; . . .

Article IV, Section 6 of the Missouri Constitution provides:

Section 6. Commander in chief of militia -- authority. The governor shall be the commander in chief of the militia, except when it is called into the service of the United States, and may call out the militia to execute the laws, suppress actual and prevent threatened insurrection, and repel invasion.

Pursuant to Article III, Section 46 of the Missouri Constitution, the General Assembly has provided as the source of authority for the "functions" of the National Guard Sections 41.010 to 41.790, RSMo 1986. Section 41.010 provides:

41.010. Title of law -- purpose. -- It is the intent of this chapter, which shall hereafter be known as the "Missouri Military Code", to provide for the state militia and for the organization, equipment, regulations and functions thereof to conform

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as nearly as practicable to the laws and regulations for the formation and government of the armed forces of the United States.

Therefore, we have reviewed Chapter 41, RSMo, searching for a source of authority for the National Guard to act as described in your question. As requested, we do not opine whether Section 41.480 resolves your question. An examination of the remaining sections of Chapter 41, including the provisions of Section 41.470, reveals no authority for the National Guard to perform the functions described in your question.

It is the opinion of this office that, excluding any consideration of Section 41.480, there is no authority under current state law for the Governor to place members of the Missouri National Guard on state active duty to assist in observation and reporting of wild and cultivated marijuana fields within the State of Missouri in support of state and local law/drug enforcement agencies.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General