

NATIONAL GUARD:  
MILITARY COUNCIL:  
MEDALS:

Awards and medals may be granted  
only to those prescribed in Laws  
of Missouri, 1931, page 262.

May 3, 1938

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Honorable Lewis M. Means,  
Adjutant General,  
Jefferson City, Missouri.

Dear Sir:

This is in reply to yours of the 28th of April, 1938,  
requesting an official opinion from this department based  
upon the following letter:

"On May 21, 1931, the Missouri Legis-  
lature enacted certain legislation  
authorizing the Governor under certain  
conditions to award medals; first,  
for conspicuous service; second, for  
meritorious military service; and  
third, for long service. In the years  
since this enactment medals of each  
nature have been awarded.

On January 21, 1938, the Military  
Council, Missouri National Guard, voted  
and authorized the Military Council to  
provide a suitable medal which should  
be awarded by them to certain officers  
for faithful and efficient service over  
a long period of years.

An opinion is desired, in view of the  
fact that formerly a legislative enact-  
ment was made authorizing the award of  
certain medals, whether or not under  
the Missouri law the Military Council  
has the authority to present a medal  
for faithful and efficient service over  
a long period of years."

The Military Council of Missouri was created by virtue of the provisions of Section 13824, R.S. Mo. 1929, which is as follows:

"There shall be a military council, to consist of the commanding general of the national guard, the adjutant-general of the state, the colonels commanding regiments of the national guard and the colonels of organized regiments of the reserve military forces of the state. The commanding general shall be the president of the council, which council, except as herein otherwise provided, shall sustain the same relation to the military forces of the state and the governor as the general staff of the army sustains to the United States army and the president. The military council shall formulate plans for the organization, instruction, equipment and maintenance of the military forces of the state, provide for encampment and all other field and armory instruction and make allotments of funds and supplies appropriated or furnished for the support, equipment and maintenance of the military forces of the state. All appropriations made for military purposes shall be apportioned and expended by the council. Vouchers and accounts covering the expenditure of funds and appropriations for the support of such forces shall be audited and paid only when fully itemized, certified and approved by the executive officer of the council. Such council shall meet quarterly at such time and place as the members shall designate. Special meetings may be called by the governor or the president of the council. A majority of the members of the council on

duty within the state shall constitute a quorum for the transaction of its business. The council shall elect an executive officer, who shall keep full and detailed records of its proceedings, allotments and expenditures, and a statement of vouchers and accounts audited and approved shall be furnished each member quarterly. The salary of the executive officer shall be fixed by the council, to be paid from funds appropriated for the support of the military forces of the state, and such salary shall be in addition to any other compensation received by such officer from either the state or federal government."

The powers and duties of the Military Council are set out in the foregoing section. In addition to the powers and duties of the Military Council as set out in said Section 13824, supra, the lawmakers, by virtue of the provisions of an act of the legislature found at page 262, Laws of Missouri, 1931, have authorized the Military Council and governor to award certain badges and medals for military service to those who are qualified. Section one, page 262, Laws of Missouri, 1931, of said act provides as follows:

"The governor is hereby authorized to present, in the name of the state of Missouri, a conspicuous service medal, which shall be of suitable design, as may be determined by the governor, to individuals designated by him who have done and performed distinguished and conspicuous service or services which reflect honorably and creditably upon the state of Missouri."

Section two of said act provides in part as follows:

"The governor is hereby authorized, upon recommendation of the military council of the Missouri National Guard, to present, in the name of the State of Missouri, a meritorious service medal, which shall be of suitable design, as may be determined by the governor to individuals who have done and performed valorous or meritorious military service which reflects honorably and creditably upon the state of Missouri."\* \* \* \* \*

Section three of said act provides in part as follows:

"Any person who is now or may hereafter become a member of the Missouri National Guard, and who has served at least ten years as such, may be designated by the adjutant general of Missouri, with the approval of the governor, as entitled to a medal for long and faithful service to be known as a 'long-service medal,' provided such service need not be continuous and service rendered in any of the military forces of the United States as a result of or in connection with membership in the Missouri National Guard shall be considered a part of such service."\* \* \* \* \*

Medals awarded under this act are awarded in the name of the State of Missouri.

In our research on this question we fail to find wherein the lawmakers have by any other act authorized the award of any other military badges.

The Military Council has only such powers and duties as are conferred upon it by the statutes.

Volume 59 Corpus Juris, page 111, Section 118, provides in part as follows:

"\* \* \* 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 upon them. But executive and administrative officers, boards, departments, and commissions have no powers beyond those granted by express provision or necessary implication."

In the case of the State of Missouri v. The Bank of the State of Missouri, 45 Mo. 529, the Court held:

"The agency being conferred by statute and growing out of it, must be ascertained from the statute, and cannot be varied or enlarged."

The powers and duties of the Military Council being conferred by statute cannot be varied or enlarged.

From a reading of chapter 33 of Title 10, U.S.C.A. on the awarding of military decorations and badges to those in the regular army, it is very evident that congress has reserved to itself the power to designate those to whom medals and other badges may be awarded and those who shall award such medals and badges.

The legislature of Missouri has the same relation to the national guard and its officers as does the national congress to the regular army, and from a reading of the statutes on this subject, it is evident that the legislature has intended to reserve to itself all such authority except what it has designated by the statute.

Hon. Lewis M. Means

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CONCLUSION

From the foregoing, this office is of the opinion that the Military Council of Missouri is without authority to present medals in the name of the State of Missouri to certain officers for faithful and efficient service over a long period of years.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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