

NATIONAL GUARD: There is no law, state or federal, which prohibits  
ENLISTED MEN: the discharge of a civilian employee, other than  
an employee of the United States, for the sole  
reason of his attendance at a National Guard En-  
campment undergoing federal training.

September 7, 1939

Honorable Lewis M. Means  
Adjutant General  
Jefferson City, Missouri



Dear Sir:

We received your letter dated September 2, 1939,  
in which, in the following terms, you request our opinion:

"Is there any law, State or Federal,  
which prohibits the discharge of a  
civilian employee for the sole reason  
of his attendance at a National Guard  
Encampment undergoing Federal Train-  
ing?"

The provisions of the Act of June 3, 1916, 39 Stat.  
203 C. 134, Section 80, 32 U.S.C.A. Section 75, are as  
follows:

"All officers and employees of the  
United States and of the District of  
Columbia who shall be members of the  
National Guard shall be entitled to  
leave of absence from their respective  
duties, without loss of pay, time, or  
efficiency rating on all days during  
which they shall be engaged in field  
or coast-defense training ordered or  
authorized under the provisions of this  
title."

The above quoted Act of Congress does prohibit the discharge of an employee of the United States, for the reason stated in your letter dated September 2.

After a diligent search, we fail to find any law, or any decisions, State or Federal, which prohibits the discharge of an employee other than an employee of the United States for the sole reason of his attendance at a National Guard Encampment undergoing federal training.

However, in this connection, we invite your attention to the following provisions of R. S. 1929, Section 4588, 3 Mo. Stat. Ann., page 2026:

"Whenever any employe of any corporation doing business in this state shall be discharged or voluntarily quit the service of such corporation, it shall be the duty of the superintendent or manager of said corporation, upon the request of such employe (if such employe shall have been in the service of said corporation for a period of at least ninety days), to issue to such employe a letter, duly signed by such superintendent or manager, setting forth the nature and character of service rendered by such employe to such corporation and the duration thereof, and truly stating for what cause, if any, such employe has quit such service; and if any such superintendent or manager shall fail or refuse to issue such letter to such employe when so requested by such employe, such superintendent or manager shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any sum not exceeding five hundred dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment."

Under the above quoted Act of the Missouri Legislature,

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an employe may recover damages from an employer private corporation which, upon request, refuses to issue the letter of dismissal provided for by said Act. Cheek vs. Prudential Insurance Company of America (Sup) 192 S. W. 387.

CONCLUSION

It is our opinion, therefore, that there is no law, State or Federal, which prohibits the discharge of a civilian employe, other than an employe of the United States, for the sole reason of his attendance at a National Guard Encampment undergoing federal training.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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