

MILITARY FORCES: Provision for compensation for members of Reserve Military Force does not apply to National Guard.

May 31, 1949



Brig. General John A. Harris
Adjutant General
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Inclosed herewith please find copy of a letter dated 2 May 1949 addressed to me by Brigadier General W. W. Kratz, Commanding General, 71st Fighter Wing, Missouri National Guard. Also please find inclosed a report on the accident mentioned in General Kratz's letter, and an opinion prepared by Lieutenant Colonel A. R. Troxell, JAGC, NGUS.

"For your further information, the writer brought this matter to the attention of the Military Council of Missouri at its regular quarterly meeting held on 7 May 1949, at which meeting this subject was discussed. The Military Council requested the Adjutant General to obtain an opinion from the Attorney General of Missouri on whether the Statutes of Missouri, as recorded in Laws of Missouri 1943, Page 647, Section 4; and in Laws of Missouri 1943, Section 15022.11, Chapter 121, Act. 1, Section 2, apply to members of the Missouri National Guard or whether these sections are applicable only to members of the Missouri Reserve Military Forces.

"Your cooperation in supplying this opinion will be very much appreciated."

The letter from Brig. General Kratz, to which you refer, concerns a fatal accident which occurred to Lt. Alan E. Bleist, a member of the Missouri National Guard. The accident occurred while he was participating in an aerial gunnery mission as a part of a scheduled training program.

Section 15019, R. S. Mo. 1939, provides that when the national guard is absent from the state in federal service the Governor shall have power to organize from the unorganized militia of the state a reserve military force for duty in this state. Pursuant to this statutory provision, an executive order was issued by the Governor of Missouri on September 10, 1940, calling upon the Adjutant General to organize a reserve protective force for duty within the state during the absence of the Missouri National Guard.

An act of the Legislature, found in Laws of 1943, page 644, Section 15022.1, Mo. R.S.A., required the reserve military force to be maintained in a state of preparedness with the same status of the national guard when on active duty under the provisions of Chapter 121, R. S. Mo. 1939.

Section 4 of an act, found in Laws of 1943, page 647, Section 15022.11, Mo. R.S.A., provided:

"During the period of emergency hereinafter set forth the following provision of law shall be in force pertaining to the Reserve Military Force of this State.

"Any member of the Reserve Military Force, who, while engaged in the performance of his lawfully ordered duties as a member of the Reserve Military Force, shall suffer injury or death or incur or contract any disability or disease, in the course of such duty, shall be entitled to receive such compensation therefor as may be determined by the Military Council of this State provided said member of his personal representative takes appropriate steps to enforce his claim hereunder prior to a date one year following the expiration of this Act. The Military Council shall have, and there is hereby vested in it, full power and authority to adopt, promulgate, amend, and rescind all rules which it deems necessary or advisable in connection with the determination of such

claims. The compensation provided for hereunder shall not exceed Three Thousand Dollars (\$3000.00) on any one claim and shall be paid out of funds appropriated for the use of the Reserve Military Force. The decision of the Military Council shall be final in every case. The provisions hereof shall not be construed to give to any member of the Reserve Military Force a cause of action against the State of Missouri, but his right to compensation, if any, shall be governed solely hereby."

Section 7 of that act, Section 15022.14, Mo. R.S.A., provided, in part:

"The period of emergency referred to herein shall extend and this Act shall remain in full force and effect for a period from the date on which this Act becomes a law until twelve (12) months after the competent Federal authorities shall proclaim that the present state of war between the United States and Germany, Japan, and Italy has terminated unless sooner repealed. * * *"

Deactivation of the Reserve Military Force of Missouri was completed on March 31, 1947, and there is no longer in existence any active military organization known as such.

The above-quoted section, providing for compensation in the event of death, clearly refers only to members of the reserve military force. At the time of the adoption of that act that was a well-known and clearly definable organization. No mention is made in the act of members of the national guard. Therefore, there appears to be no way in which compensation could be paid under that section by reason of injury to or death of a member of that organization.

Conclusion.

Therefore, it is the opinion of this department that Section 4 of an act, found in Laws of 1943, page 647, Section 15022.11, Mo. R.S.A., providing for the payment of compensation for injury

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or death to members of the reserve military force, does not apply to members of the Missouri National Guard.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RRW:ml