



OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

JOHN C. DANFORTH
ATTORNEY GENERAL

June 26, 1973

OPINION LETTER NO. 48

Major General Charles M. Kiefner
Adjutant General
1717 Industrial Drive
Jefferson City, Missouri 65101

Dear General Kiefner:

This is in response to a request of your predecessor for an opinion from this office in part as follows:

"May the cost of life insurance for individual Guardsmen, ordered to active State duty pursuant to Section 41.480 RSMo, for coverage only during such duty, be considered 'an expense incident to emergency duties performed by the National Guard when ordered out by the Governor' and therefore chargeable to the appropriation authorized the Governor by Section 4.020 of the Conference Committee Substitute for House Bill #1004, 76th General Assembly.

"If not, is the cost properly chargeable to an existent State appropriation or is new legislation required?"

The military forces of this state is governed by Chapter 41, RSMo. It provides for the organization and government of the state militia and National Guard.

We assume life insurance to which you refer means life insurance on the life of the individual member of the state militia which is payable to his beneficiary or for the benefit of his estate. We find no statute authorizing the purchase of life insurance as suggested.

Major General Charles M. Kiefner

The militia of the state, which includes the Adjutant General and his office, constitutes the military of the executive department of the state government, under the direct control of the Governor. The organized militia consists of the National Guard and air forces of the United States that are allocated to the state and accepted by the state and members of the state militia organized by the state.

Section 41.430, RSMo, provides that the officers, warrant and flight officers of the organized militia on active duty in the service of the state shall receive as compensation the same pay, longevity and allowances as are or may be provided for officers of like grade and branch of service in the armed forces of the United States. It also provides that enlisted personnel of the organized militia when ordered to active duty by the Governor shall receive as compensation the same pay, longevity, rations and quarters as may be provided for enlisted personnel of like grades and branches of service in the armed forces of the United States, or \$14 a day, whichever is greater. (This amount has been increased to \$19 a day by House Bill No. 499, 77th General Assembly, approved by the Governor on June 15, 1973.) In other words, their compensation as such is provided for by statute.

The organized military forces as provided for in Chapter 41, RSMo, is an administrative agency of the state and has only such powers as are expressly given by statute. State ex rel. Kelly v. Hackmann, 205 S.W. 161, 164-165 (Mo. banc 1918).

It is our opinion that since the compensation to be paid members of the military forces of the state is determined by statute the amount as provided for by statute is the maximum and no additional compensation can be paid. We have held absent such a statute when the amount of compensation to be paid a public employee for services rendered is not determined by statute but is within the discretion of the employing agency, insurance may be purchased as part of the compensation to be paid the employee by agreement. However, this rule does not apply to the question now under consideration due to the fact that the amount of compensation is determined by statute.

It is the opinion of this office that public funds may not be used to pay the premiums for life insurance on the life of members of the state militia while serving on active duty during an emergency.

Yours very truly,



JOHN C. DANFORTH
Attorney General