

HOME GUARD:

MISSOURI RESERVE FORCE:

Called to active duty does not
furnish grounds for forfeiture
of county office.

May 6, 1942

Hon. D. D. Thomas, Jr.
Prosecuting Attorney
Carrollton, Missouri

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FILE
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Dear Sir:

Under date of April 29, 1942, you wrote this office
requesting an opinion, as follows:

"May I ask your opinion on the
proposition of whether or not a
County official, who, as a member
of the Home Guard, and who is called
for active service either within or
without the State, forfeits his
office, as a result of such member-
ship and service?"

The Home Guard, or Missouri Reserve Force, is organized
under authority of Sections 15019 and 15020, R. S. Mo. 1939,
and Article XIII of the Constitution of Missouri.

Inasmuch as the Home Guard is an authorized force of
the State and there is no prohibition against a county offi-
cial being a member of the force, that would constitute no
ground for forfeiture of the county office.

The grounds for forfeiture of office are set out in
Section 12828, Article 3, Chapter 83, R. S. Mo. 1939, which
reads as follows:

"Any person elected or appointed to
any county, city, town or township
office in this state, except such

officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner hereinafter provided."

Also, in this connection, it is desired to call to your attention Section 18, Article II of the Constitution, which reads as follows:

"That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging."

Your letter does not state facts sufficient to constitute a case upon which a forfeiture of office could be adjudged under the above statutory and constitutional provisions.

CONCLUSION

A situation might arise where a county officer who was a member of the Home Guard and called to active duty would

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forfeit his office. But it is the conclusion of the writer that a county officer, who is a member of the Home Guard or Reserve Force, does not automatically forfeit his county office solely by reason of a call to active duty as a member of the State's authorized military force.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

WOJ:CP

APPROVED:

ROY MCKITTRICK
Attorney-General