

June 19, 1953

Brigadier General Frank E. Fraser, NG AZ  
The Adjutant General  
State of Arizona  
Military Department  
747 West Van Buren Street  
Phoenix, Arizona

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**ARIZONA ATTORNEY GENERAL**

RE: Comment upon the Proposed Bill to Amend the  
Universal Military Training and Service Act,  
As Amended, with Special Emphasis Placed upon  
Section J on Page Eight (8) of Proposed Bill.

Dear General Fraser:

I have received your letter dated June 3, 1953 in which you request a comment from this office in regard to a proposed bill which will amend the Universal Military Training and Service Act, as amended.

The following is the comment of this office on said amendment with special emphasis applied to Section J thereof. We have not commented in any great detail upon the other phases of the amendment outside of Section J, because we feel, as you set forth in your letter, that Section J is the only pertinent part which would affect the State.

Section J of the proposed bill to amend the Universal Training and Service Act, as amended (62 Stat. 604) provides:

"(J) The Governor of a State or Territory, or the Commanding General of the District of Columbia National Guard, may at any time in his discretion requisition from the President the number of persons domiciled within such State, Territory, or the District of Columbia subject to the provisions of this paragraph who may be necessary to provide and maintain the authorized strengths of the units of the National Guard and Air National Guard within his State, Territory, of the District of Columbia. Such requisitions may specify the number of persons desired by geographical areas based on the location of National Guard and Air National Guard units within the State, Territory, or the District of Columbia. The President shall, pursuant to such personnel requisitions, select and order persons subject to the provisions of this

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paragraph to report for induction into the National Guard or Air National Guard for the appropriate State, Territory, or the District of Columbia."

Apparently it is the intent of the above cited section to permit the Governor of the State or Territory, at his discretion, to requisition from the President of the United States a number of persons domiciled within the State, and eligible under the provisions of this amendment, necessary to maintain the authorized strength of the National Guard and Air National Guard units. And upon the receipt of said requisition the President shall select and order such persons to report for induction into the National Guard and Air National Guard units of the State.

This requisition is solely within the discretion of the Governor, but once the requisition is made the President of the United States must comply with said requisition and the induction of said persons into the National Guard and Air National Guard units becomes involuntary.

When Arizona was a territory the National Guard was a voluntary organization (Revised Statutes of Arizona Territory 1901, Sections 3124 through 3200) and only when the voluntary organization proved inadequate to enable the executive department of the Territory to execute the laws, suppress insurrections or impel invasions, could the Governor conscript persons to serve in the National Guard (Revised Statutes of Arizona Territory 1901, Section 3180).

The Constitution of the State of Arizona has adopted the National Guard as it existed under the laws of the Territory of Arizona, or as the Legislature may further prescribe (Constitution of Arizona, Article 16, Section 2). The Legislature has not deemed it advisable to change or alter the voluntary character of the National Guard unless the Governor proclaims the existence of an emergency and determines that the National Guard does not possess sufficient force to meet such an emergency, then the Governor can, by proclamation, order persons into the service of the National Guard and Air National Guard units (Session Laws of 1952, First Regular Session, Chapter 95, Article 1, Section 4).

The National Guard and Air National Guard of the State of Arizona can be mobilized only after the Governor of the State has proclaimed an emergency, and when the President of the United States directs mobilization of the National Guard and Air National Guard into the Armed Forces of the United States. However, if the President of the United States directs mobilization of the Nation-

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al Guard and Air National Guard they become under the control of the Government of the United States, and are not subject to State control (Session Laws of 1952, First Regular Session, Chapter 95, Article 4).

The Bill of Rights of the Constitution of Arizona subordinates the military power to the civil power of the State and forbids a standing army in the time of peace (Constitution of Arizona, Article 2, Sections 20, 27). If the Governor, as the Commander-in-Chief of the National Guard and Air National Guard, had the power to conscript persons into the military service in the time of peace when no real emergency threatens the State and the welfare of its citizens, such power might be held in violation of the sections of the Bill of Rights, supra.

Therefore, it is the conclusion of this office that it has been the intention of both the Territorial Legislature and the State Legislature that the National Guard and its component units be a voluntary organization in the time of peace, and that the voluntary nature of the said organization and its component parts can be disturbed only when there is the existence of a dire emergency which threatens the State and the general welfare of its citizens. Any attempt to change the voluntary character and nature of the National Guard and its component units is within the province of the Legislature, and should the Legislature enact a Statute permitting the citizens of Arizona to be inducted into the National Guard or Air National Guard in the time of peace, such Statute would invite careful study and scrutiny as to its constitutionality.

If we can be of any further service to you, or if you feel that this does not meet the request of your letter, please do not hesitate to call upon us at your convenience.

Very truly yours,

STEPHEN P. MOORHEAD  
Assistant to the  
Attorney General

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