

**OPINION**  
**43-24**

April 10, 1943      (OPINION)

APPROPRIATIONS

RE: In General

This is in reply to your inquiry this morning relative to the following situation.

House Bill 99 passed by the last Legislative session appropriated \$45,000.00 to the North Dakota State Guard for the purpose of providing equipment and proper maintenance, as prescribed in chapter 230 of the Session Laws of 1941, and to meet other requirements prescribed by the Federal statutes for the biennium ending June 30, 1945.

\$20,000.00 of this appropriation is a regular fund and \$25,000.00 is an emergency fund. No expenditure can be made from the emergency fund except when approved by the Governor.

Chapter 230 of the Session Laws of 1941 referred to in House Bill 99 is an Act providing for the organization, equipment, maintenance, and use of the North Dakota State Guard and providing rules and regulations governing the same. Section 2 thereof reads as follows:

"ORGANIZATION, EQUIPMENT, AND MAINTENANCE.) The Governor is hereby authorized to prescribe rules and regulations not inconsistent with this Act and in conformity with regulations prescribed by the Secretary of War, governing the enlistment, organization, equipment, administration, pay, training, and discipline of such force all of which, so far as practicable, shall conform to the regulations governing the National Guard of the State. Units of such force shall be organized only at places to which National Guard units are allocated. The total strength of such force shall not exceed one half the allotted strength of the National Guard of the State on June 1, 1940."

Reading House Bill 99 of the 1943 Laws and chapter 230 of the Laws of 1941 together, it seems clear that the funds provided by said House Bill 99 are to be disbursed in accordance with the provisions of said chapter 230 of the Laws of 1941, and section 2 of said chapter 230 provides that rules and regulations shall be in conformity with the regulations governing the National Guard of the State.

The National Guard is governed chapter 221 of the Session Laws of 1941, known as the "Military Code" and section 15 of said chapter 221 makes provision for the appointment of a paymaster general whose duty it is from time to time to file with the State Auditor a written requisition approved by the Adjutant General for such amount of money standing to

the credit of the National Guard on the books of the State Auditor or State Treasurer, as may be deemed necessary to draw in order to pay indebtedness incurred or about to be incurred. It provides further, that immediately upon the filing in the office of said requisition, the State Auditor shall draw a warrant on the State Treasurer for the amount named in said requisition, and cause the same to be paid to the Paymaster General. From such funds so made available to him, the paymaster general shall make such payments for and on behalf of the National Guard as the law and regulations permit upon payrolls, vouchers, or other statements of account.

Since, under the provisions of House Bill 99 the disbursement of the funds appropriated thereby, are to be made in accordance with chapter 230 of the Session Laws of 1941 in accordance with the Military Code to which we have referred, it is my opinion that the duties imposed upon the paymaster general as provided in the Military Code gives to such paymaster general the authority to make requisitions upon the State Auditor for funds to be disbursed under House Bill 99, provided, however, the disbursements made from the Emergency Fund must first be approved by the Governor.

You state that the North Dakota State Guard upon order of the Governor assisted in furnishing relief during the recent flood at Fargo, and that certain expenditures were incurred in connection with the assistance thus rendered, and you inquire whether the expenditures thus incurred may be paid out of the Emergency Fund provided in House Bill 99.

It is my opinion that the situation created at Fargo by reason of the flood, was an emergency and that expenses incurred by the North Dakota State Guard are a proper charge against the Emergency Fund provided for in House Bill 99.

I am further of the opinion that the paymaster general should make a requisition upon the State Auditor for the funds necessary to defray such expenses and may disburse the same in accordance with the provisions of the Military Code, being section 15 of chapter 221, 1941. The requisition, however, should be approved by the Governor of the State, since it is drawn upon the Emergency Fund, as provided in said House Bill 99.

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Attorney General