WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1949

ENROLLED

SENATE BILL No. 108

(By Mr. Mitchell)

PASSED February 24, 1949

In Effect July 1, 1949

Passage
AN ACT to amend and reenact article one, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the national guard.

Be it enacted by the Legislature of West Virginia:

That article one, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. Reorganization of National Guard.—The governor of this state is authorized to reorganize the national guard of West Virginia under the provisions of the National Defense Act of June third, nineteen hundred and sixteen, and amendments thereto. He is authorized to appoint an adjutant general under whose direc-
Enr. S. B. No. 108]

Sec. 2. Commander-in-Chief; Appointment of Officers.

The governor shall be commander-in-chief of all military forces of the state except those which may be in the service of the United States and during such service. It shall be the duty of the governor to appoint and commission all officers of the military forces of the state, who shall be selected from the classes prescribed in the National Defense Act, and to issue necessary regulations for the government of such forces.

Sec. 3. National Guard; Service Within or Without State.

The organized militia of the state shall constitute and be known as the West Virginia national guard, and shall be liable at all times to be ordered into active service, and all, or any part thereof, may be turned over by the governor into the service of the United States, on requisition by the President, for service without the state: Provided, That no officer or enlisted man shall be held to such service for a period longer than that of the remaining time to be served by such officer or en-
listed man under the term of his commission or enlist-
ment. When the national guard of this state, or any part
thereof, is called for under the constitution and laws of
the United States, the governor shall order out for serv-
ice the national guard or such part thereof as may be
necessary. During the absence of organizations of the
national guard in the service of the United States, their
state designation shall not be given to new organizations,
and all organizations and officers on return from such
service shall be given their former standing and rank,
providing it can be feasibly done.

Sec. 4. Federal Laws and Regulations.—The duty of
maintaining and governing the national guard not in
the service of the United States rests upon the state,
subject to the constitutional authority of Congress. The
purpose of the force is national defense. Its efficiency as
an agent for national defense necessarily depends upon
systematic uniformity in the organization, composition,
arms, equipment, training and discipline of its component
parts. The attainment of such uniformity and efficiency
requires on the part of each state a rigid adherence to
federal laws and regulations relating to the national
guard. Therefore, the governor shall cause the national

guard of this state always to conform to all such federal

laws and regulations as are now or may hereafter from
time to time become operative and applicable, notwith-
standing anything in the laws of this state to the con-
trary.

Sec. 5. How National Guard Constituted and Organ-
ized.—The national guard of West Virginia shall be or-
ganized and equipped in accordance with the provisions
of the national military establishment regulations gov-
erning same. The governor shall at all times have the
power to create new organizations whenever, in his judg-
ment, the efficiency of the state force will thereby be
increased, except insofar as such action would be con-
trary to the provisions of the regulations of the national
military establishment governing the national guard; and
he is hereby directed to organize a unit or units and equip
same, composed of negro troops which unit or units shall
be organized and equipped in accordance with the pro-
visions of the U. S. Army regulations governing same, and
he shall at any time have power to change the organization of departments, organizations and units so as to conform to any organization, system of drill, or instruction now or hereafter adopted for the Army of the United States, and for that purpose the number of officers of the organizations and units may be increased or diminished and their rank increased or reduced to the extent made necessary by such change. The officers of the foregoing departments shall be of like rank as officers of similar departments of the national military establishment of the United States and shall perform like duties. The number of such officers shall be determined by the governor, but this number shall be limited to the actual requirements of the different departments and the governor may designate one officer as chief of a number of different departments, unless such action would be contrary to the regulations provided by the national military establishment for the government of the national guard. The governor shall have the power, in case of war, insurrection, invasion or imminent danger thereof, to increase the force beyond the maximum now estab-
lished by law and to organize the same with the proper
officers as the exigencies of the service may require. In
the event of the formation of any such new organiza-
tions, officers holding commissions in the national guard
as organized at such time shall be eligible for commis-
sion in such new organizations and units with like or
higher grade and rank, if found capable, after examina-
tion by an authorized board, and shall be given prefer-
ence over the one not holding commission at the time.

Sec. 6. *Composition of Units.*—The number and grades
of officers and enlisted men of the state staff shall be as
prescribed by federal law and regulations thereunder
issued by direction of the secretary of defense. In case
of emergency, line officers of the national guard, active
or reserve, may be temporarily detailed by the governor
for staff duty.

All officers of the staff and subordinate units shall be
appointed by the governor from officers or ex-officers
who have had previous military experience of not less
than two years, or as provided in section eight, and shall
hold their respective grades until they reach the retire-
ment age as established and prescribed by currently controlling federal regulations, unless they resign or are discharged for disability, or by reason of the findings of a court-martial legally convened for the trial of such officer, and vacancies shall be filled by appointment of persons fulfilling the above requirements of this section.

Sec. 7. Governor's Staff; Adjutant General.—The staff of the governor shall consist of one adjutant general with rank of brigadier general, an assistant adjutant general with rank not above that of colonel, and, in addition thereto, such other officers as may be currently prescribed by existing tables of organization as established by federal authority. The governor may also appoint and commission an honorary staff to serve during his term of office, of such number as he may deem advisable, with such rank as he may fix, which honorary staff will not be held to be a part of the regularly organized militia.

The adjutant general shall be appointed and commissioned by the governor, but no person shall be appointed adjutant general unless such person has had at least six years' service in the national guard of this or some other
state, or in the armed forces of the United States, or in all
combined.

In time of peace he shall perform the duties of chief of
the pay, quartermaster and ordnance departments unless
otherwise ordered by the governor, and shall give bond
in such sum as the governor may require, such bond to
be provided in like manner as the bonds of other officers.

He shall receive a compensation of six thousand dollars
per annum, which shall be paid to him in equal monthly
installments, and his term of office shall be for four years.

He shall attest, record, and seal with the seal of the state
all commissions issued by the governor, and keep a regis-
ter of all commissioned officers, with dates of commission,
and all changes occurring in the commissioned force, and
shall keep a full and complete record at all times of the
organized militia of the state. He shall, as soon as possible
after the first day of July in even years, make a biennial
report to the governor of the transactions and the expendi-
tures of his department and the condition of the national
guard. Such report shall show all receipts into the mili-
tary or militia fund of the state from every source, includ-
ing fines, appropriations from the state, and all money
received from the federal government and from every
other source. All such funds and moneys shall be paid
into the state treasury as soon as received, and shall be
credited to the military fund. Such report shall also
show in detail all expenditures made from each fund, and
the purpose of the expenditures, and shall state such
other details as the governor may order; and the report
shall be communicated by the governor to the next session
of the legislature. He shall also make such other reports
and returns as may be required by the governor from time
to time. He shall cause to be procured, prepared and issued
to the different organizations of the national guard all
necessary books and blanks for reports, records, returns
and general administration, and shall, at the expense of the
state, cause the military laws, military code, and rules and
regulations in force to be printed, bound in proper form,
and distributed, one copy to each commissioned officer, and
one each to all the circuit, intermediate and criminal court
judges, sheriffs, assessors, and justices of the peace in the
state requiring them; and shall procure and supply all
necessary text books of drill and instruction. He shall keep in his office an accurate account of all state and United States property issued to the state. He shall keep on file in his office all official bonds, except the bond of the adjutant general, which shall be filed with the auditor of the state; the reports and returns of troops and heads of military departments; and all other writings and papers which are required to be transmitted to and preserved at the general headquarters of the state militia. He shall employ such clerical force and assistants as may be required in the military department, in addition to the assistant adjutant general herein authorized, which assistant adjutant general shall receive a compensation of four thousand, eight hundred dollars per annum, payable in equal monthly installments. He shall keep records of all service personnel from the state of West Virginia, commissioned or enlisted, in any of the wars of the United States, and of individual claims of citizens of West Virginia for service rendered in such wars. He shall assist all persons residing in this state having claims against the United States for pension, bounty or back pay, or such claims as have arisen
out of, or by reason of, service in any of said wars. To this end he shall cooperate with the agents or attorneys of such claimants, furnish to claimants only all necessary certificates or certified abstracts from, or copies of, records or documents in his office, and shall in all practicable ways seek to secure speedy and just action in all claims now pending or which may hereafter be filed: Provided, That any and all of the above services shall be rendered without charge to the claimant. He shall establish and maintain as a part of his office a bureau of records of the services of the West Virginia troops during such wars, and shall keep arranged in proper and convenient form all records and papers pertaining thereto.

Sec. 8. Promotion of Officers.—Appointment and promotion of officers shall be made in conformity with currently existing rules and regulations of the federal military establishment governing eligibility and procedure, but nothing herein shall be construed to limit the power of the governor to appoint, commission, and promote an officer in the national guard for state service only.

Sec. 9. Oath of Commissioned Officers.—Every officer
2 duly commissioned shall, within ten days after his com-
3 mission is tendered to him, or within ten days after he
4 shall be personally notified that the same is held in read-
5 iness for him by any superior officer, take and subscribe
6 to the constitutional oath of office. In case of neglect
7 or refusal to take and subscribe to such oath within the
8 time mentioned, he shall be deemed to have resigned
9 such office. Such oath shall be taken and subscribed be-
10 fore any officer authorized to take acknowledgments of
11 deeds in this state, or some officer who has taken it him-
12 self and who is hereby authorized to administer the same.
13 All military officers attesting oaths required by the pro-
14 visions of this article shall do so without fee.

Sec. 10. Surplus Officers.—Commissioned officers who
2 shall be rendered surplus by reduction, consolidation, or
3 disbandment of organizations, or in any manner provided
4 by law, may be transferred to the inactive national guard
5 in conformity with currently existing rules and regula-
6 tions prescribed by Federal authority, or may be dis-
7 charged.

Sec. 11. Resignation of Officers; Removal.—No resig-
nation shall be accepted unless the officer tendering the
same shall furnish to the adjutant general a certificate
from each property accounting officer that he has deliv-
ered all books and other property of the state in his pos-
session to the officer authorized to receive the same, and
that his accounts for money or public property are cor-
rect, and that he is not indebted to the state or federal
military authorities. No commissioned officer shall be
removed from office, unless by the senate on recommen-
dation of the governor, stating the grounds on which such
removal is recommended, or by the decision of a court-
martial, or an examining board, or pursuant to law.

Sec. 12. Reserve List; Dismissal of Officers.—Any com-
missioned officer who shall have served for a continuous
period of ten years may, upon his own request, be placed
upon the reserve list and withdrawn from active service
and command by order of the governor, and the vacancy
thereby created shall be filled in the same manner as
other vacancies. Any commissioned officer who has be-
come or shall become disabled, and thereby incapable of
performing the duties of his office, shall be withdrawn
from service and command and placed on the reserve
list, and any commissioned officer who has, or shall
hereafter become unfit or incompetent, and thereby in-
capable of performing the duties of his office, shall be
dismissed. Such transfer or dismissal shall be by order
of the governor, and, before making such order, the gov-
ernor shall appoint a board of not less than three nor
more than five commissioned officers, one of whom shall
be a medical officer, whose duty it shall be to determine
the facts as to the nature and cause of incapacity of such
officer as appears disabled, unfit or incompetent from
any cause to perform military service, and whose case
shall be referred to it by the governor. No officer whose
rank or promotion would be affected by the decision of
such board, in any case that may come before it, shall
participate in the examination or decision of the board
in such case. Such board is hereby invested with the
powers of courts of inquiry and courts-martial, and, when-
ever it finds an officer incapacitated for active service,
shall report such facts to the governor, stating the cause
of incapacity, whether from disability, unfitness or in-
competency, and if he approves such findings, such officer shall be placed on the reserve list or dismissed as provided in this section. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the reserve list or dismissed by the action of such board without having had a fair and full hearing before the board, if upon due notice he shall demand it.

It shall not be necessary to refer any case arising under this section for the action of such board, unless the officers designated by the governor to be placed on the reserve list or dismissed shall, within twenty days after being notified that they will be so transferred or dismissed, serve on the adjutant general notice in writing that they demand a hearing and examination before such board.

Sec. 13. Noncommissioned Officers; Appointment.—All noncommissioned officers of the staff, corps, departments and other organizations of the national guard shall be appointed by the appointing authority prescribed by fed-
eral law and regulations which are now or may hereafter
from time to time become operative and applicable.

Sec. 14. Reduction of Noncommissioned Officers.—The
officer warranting noncommissioned officers shall have
power to reduce, or reduce to the ranks, on the applica-
tion of the immediate commanding officer of the organ-
ization to which he belongs, for good and sufficient rea-
sons, the noncommissioned officers of his command: Pro-
vided, however, That in active service for the state, in
cases requiring immediate example, a noncommissioned
officer may be reduced to the ranks by his immediate
commander, subject to appeal to, and review and ap-
proval by, the officer warranting him.

Sec. 15. Enlistments.—Able-bodied men of good char-
acter who conform in all respects to the qualifications pre-
scribed by federal law and regulations now in force, or
that may hereafter become operative and applicable, gov-
erning enlistment in the national guard, may be enlisted
in the national guard of West Virginia under the same
conditions and the same enlistment period as are now,
or may hereafter be, prescribed by federal law for the
national guard of the United States. Every enlisted man, if in active service, may continue to be held for duty for a period not exceeding three months after the expiration of his term of enlistment or reenlistment, and shall retain rank and be eligible to promotion until he is actually discharged. When an organization is consolidated or disbanded, its enlisted men discharged by reason thereof shall hereafter reenter the service shall have allowed to them as part of their term of service the time already served. An enlisted man may be transferred from one organization to another upon such regulations as the governor may prescribe.

Sec. 16. Enlistment Papers.—Every person recruited for the national guard shall sign an enlistment paper, which shall be forwarded to the adjutant general, of such form as may be prescribed, which shall contain an oath of allegiance to the state and the United States. Such oath of allegiance may be taken before any commissioned officer of the national guard, who is hereby authorized to administer the same, or before any civil officer duly authorized to administer oaths.
Sec. 17. Discharge of Enlisted Men.—Whenever any enlisted man of the national guard shall have performed service therein for the term of his enlistment or reenlistment, and has turned in to the proper officer all state or military property for which he is responsible, his commanding officer shall grant him a full and honorable discharge, except in time of insurrection or invasion. Discharge for physical disability shall be granted pursuant to applicable rules and regulations. The governor may authorize for sufficient reason, and in his discretion, the discharge of enlisted men, with or without their consent, at any time, upon the recommendation of the commanding officer of the unit, organization or squadron to which they belong. An enlisted man who cannot, after due diligence, be found, or who shall remove his residence from the state, or to such a distance from the armory of his organization, as to render it impracticable for him to perform properly military duties, or who shall be convicted of a felony, may be discharged by order of the governor.

Enlisted men may be honorably discharged, discharged,
It 19 or discharged dishonorably; but in no case may an en-
listed man be dishonorably discharged unless by sentence
of a general court-martial, except as hereinafter provided.

25 No enlisted man shall be honorably discharged from serv-
vice unless he produces the certificate of his immediate
commanding officer that he has turned over or satisfac-
torily accounted for all property issued to him.

Sec. 18: Dishonorable Discharge—A dishonorable dis-
charge from service in the national guard shall operate
as a complete expulsion from the guard, a forfeiture of all
exemptions and privileges acquired through membership
therein, and disqualification for any military office under
the state. The names of all persons dishonorably dis-
charged shall be published in orders by the adjutant gen-
eral at the time of such discharge, and in two newspapers
of opposite politics and general circulation, if such there
be in the locality in which such dishonorably discharged
person resides, and a complete list of all such dishonor-
ably discharged persons shall be kept posted in all the
armories in the state. No persons so discharged shall be
admitted to any armory or other meeting place of the
national guard or to the immediate vicinity of any en-
campment, drill or parade of troops. All commanding
officers are hereby required to enforce these prohibitions.

Sec. 19. Unlawful Military Organizations; Penalty.—It
shall be unlawful for any body of men whatever, other
than the regularly organized national guard or the troops
of the United States, to associate themselves together as
a military company or organization in this state: Pro-
vided, That the governor may grant permission to public
or private schools of the state to organize themselves
into companies of cadets, and may furnish such cadets,
under proper restrictions, such obsolete ordnance stores
and equipment owned by the state as are not in use by
the national guard. Whosoever offends against the provi-
sions of this section, or belongs to or parades with any
such unauthorized body of men with arms, shall be pun-
ished with a fine of not exceeding one hundred dollars
or imprisoned for a term not exceeding six months.

Sec 20. Uniforms, Arms, Equipment and Supplies.—
The uniforms, arms, equipment and military supplies
necessary for the proper performance of the duties re-
quired by this article shall be similar to those prescribed for the army of the United States. Commissioned officers shall provide themselves with the uniform, arms and equipment lawfully prescribed and approved, and there shall be allowed annually, to aid them in procuring and maintaining same in condition for service, the sum of seventy-five dollars each, providing, however, that on and after July one, one thousand nine hundred fifty-one, the annual sum of one hundred dollars shall be allowed. All uniforms, arms equipment and other property shall be issued to organizations of the national guard, and accounted for under such regulations as the governor may prescribe.

Sec. 21. Military Property.—All officers shall be responsible for the safe keeping and return of all military property committed to their charge, but no such property shall be issued until suitable bond shall be given by such officers, in an amount and with security approved by the governor, for the safe keeping and return of the same. Whenever property is ordered transferred by the governor from one unit to another, the officer turning the
property over shall be held responsible for the same until he has received a receipt from the officer to whom the transfer is ordered to be made. In case of state property worn out and become worthless in the service of the state, an inspector shall have power to condemn the same and authorize the officer responsible to drop it from his returns, but no inspecting officer shall exercise this power except when inspecting such property under authority of the governor. Any officer who shall neglect or refuse to properly account for any military property he shall have received shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided in section eighty-four.

Sec. 22. Offenses Concerning Property; Penalty.—Whoever shall secrete, sell or dispose of, or offer for sale, on purchase, or purchase, knowing the same to be such, retain after proper demand is made, or in any manner pawn or pledge, any military property, which shall have been issued under the provisions of this article, shall be guilty of a misdemeanor, and, in addition to the punishment provided for misdemeanors in this article, shall forfeit to
Sec. 23. Unlawful Wearing of Uniforms; Penalty.—Any person who shall wear any uniform or any device, strap, knot, or insignia of any design or character, used as a designation of grade, rank or office, such as are by law or regulations, duly promulgated, prescribed for the use of the national guard, or similar thereto, except members of the army or navy of the United States or the national guard of this or any other state, members of associations wholly composed of soldiers honorably discharged from the service of the United States, or the members of the Order of Sons of Veterans, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than one hundred dollars, and any member of the national guard who shall, when not on duty, wear any such uniform or equipment issued by the state without the permission of his commanding officer, shall be subject to a fine of not more than fifty dollars.

Sec. 24. Annual Inspection and Muster.—An annual
inspection and muster of each organization of the national guard shall be made by an inspector at such time and place as the governor shall order and direct.

Sec. 25. Drills; Target Practice.—Organization and unit commanders may in their discretion order drills of such portion of their command as may be deemed necessary; and may in their discretion order target practice for their command: Provided, That if any expense is to be incurred, authority must be obtained from the adjutant general.

Sec. 26. Camp or Maneuver Duty.—The governor, except as provided in section forty-six, shall cause the national guard to perform at least five consecutive days of camp or maneuver duty in each calendar year, exclusive of the time consumed by troops in going to and returning from camp, and shall designate the time and place therefor. The commanding officer of an encampment may fix certain bounds within the limits of the camp ground, not including any public road, within which no spectator shall enter without leave, and whoever does enter within such boundary, either with or without permission, may be
expelled therefrom by the commanding officer, or by
his order; and whoever intrudes within such limits when
forbidden to do so, or, after entering by permission, con-
ducts himself in a disorderly manner, or whoever resists
a sentry or guard acting under orders to prevent such
entry, or to prevent disorderly conduct, or to expel any
person or persons ordered to leave such boundary, may
be arrested by the commanding officer, or by his order,
and taken before a justice of the peace of the county in
which such camp is located, and, upon conviction, shall
be fined not less than ten nor more than one hundred
dollars, and the costs of prosecution, and committed to the
jail of the county until such fine and costs are paid:

Sec. 27. Warning for Duty; Exemption from Arrest.—
Officers and enlisted men shall be warned for duty in
the manner prescribed by the governor in orders or regu-
lations. No person belonging to the military forces of
the state, while performing military duty under proper
orders of his superior officers, shall be arrested on civil
process, nor shall any person belonging to the military
forces of the state, while performing military duty under
proper order of his superior officer, be arrested on criminal process, except upon process from a circuit or criminal court or a judge thereof in vacation.

Sec. 28. *Absence from Drill, Parade or Other Duty; Penalty.*—Organization and unit commanders of the national guard, upon receiving information as to the whereabouts of any officer or enlisted man of their organization who is absent from any drill, parade or other prescribed duty without having been properly excused, may cause such officer or enlisted man to be taken into custody and forthwith conveyed to the organization rendezvous to be there kept until such duty is completed or until relieved by the organization commander; and said organization commander is hereby authorized to direct any or all members of his command at his discretion to apprehend such officer or enlisted man and convey him to the organization rendezvous.

Enlisted men who shall, without proper excuse, be absent from or in any other respect be delinquent at, any drill, parade, encampment, meeting for instruction, or other duty ordered by competent authority, may be fined
by a summary court not more than five dollars, and imprisoned not more than five days in jail for each offense or delinquency.

The aggregate punishment under this section shall not exceed thirty days' jail sentence at any one time.

Sec. 29. Calling out National Guard by Governor.—In event of war, insurrection, rebellion, invasion, tumult, riot, mob or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state or the United States, or in case of the imminent danger of the occurrence of any of said events, or in event of public disaster, the governor shall have power to order the West Virginia national guard, or any part thereof, into the active service of the state, and to cause them to perform such duty as he shall deem proper.

Sec. 30. Calling on Governor or Commander for Aid;

Summons.—In case of any breach of the peace, tumult, riot, unlawful assemblage, or resistance of law, or imminent danger thereof, which cannot be speedily suppressed
or effectually prevented by the ordinary posse comitatus and peace officer, it shall be the duty of the judge of any court of record, sheriff of any county, or mayor of any city, town or village to call upon the governor for aid, and in cases where the emergency is such as not to admit of this delay, upon the commander of any organization or unit, and it shall be the duty of the organization or unit commander, upon whom such call is made, to order out, in aid of the civil authorities, the military force or any part thereof under his command. Such call for aid shall be by means of a summons issued by such judge, sheriff, or mayor, directed to the commander of any such unit or organization, directing him to order his command, or such part thereof as in the judgment of such commanding officer may be necessary, to appear at a time and place therein specified to aid the civil authority in supporting the laws; which summons shall be in substance, as follows:

The State of West Virginia,

To (insert the officer's title) A.B.,

Commanding (insert his command), Greetings:
Whereas, it has been made to appear to (the sheriff or mayor, as the case may be) of (the county, city or town), (here state one or more of the causes above mentioned), in our (here state place of), and that military force is necessary to aid the civil authority in suppressing the same, and the urgency is such as not to admit of the delay necessary in calling upon the governor for military aid; now, therefore, we command you, that you cause your command, or such part thereof as may be necessary, armed and equipped with ammunition, and with proper officers, to parade at (here state place of) on (here state day), then and there to obey such orders as may be given according to law. Hereof fail not at your peril and have you there this summons, with your doings returned thereof.

This summons shall be signed and properly attested as the act of such judge, sheriff or mayor, and may be varied to suit the circumstances of the case; and a copy of the same shall be immediately forwarded to the governor by the civil officer issuing the same. The officer to whom the order of the governor or such summons
is directed shall forthwith order the troops therein called for to parade at the time and place appointed; and shall immediately, by telegraph or most expeditious means, notify the governor and adjutant general of the receipt of such summons and also by letter through the usual military channels. Such troops shall appear at the time and place appointed, armed, equipped and with ammunition, and shall obey and execute such orders as they may then and there receive according to law. All orders from civil officers to military commanders must be in writing and attested by two witnesses; but such orders shall contain only the specific act to be performed by the military officer. The manner of performing such act shall be left to the discretion of the military officer. Military commanders shall transmit a copy of such orders at once through channels to the governor.

Sec. 31. When Order by Civil Officers to be in Writing; Compliance with Written Orders.—Any officer whose command is called out under the provisions of this article, and reporting to any civil officer may require such civil officer to make such order in writing and prescribe there-
in the outline of the duties required of him and his command, and may decline to obey such orders until put in writing; and while such commanding officer must obey all lawful written orders of such civil officer, such military officer may use his discretion as to the manner of carrying out such orders, so long as he complies with their spirit.

Sec. 32. Command to Assembly or Mob to Disperse.—

Before using any military force in the dispersion of any riot, rout, tumult, mob or unlawful assembly, or combination mentioned in this article, it shall be the duty of the civil officer calling out such military force or some conservator of the peace, or if none be present, then of the officer in command of the troops, or some person by him deputed, to command the persons composing such riotous, tumultuous or unlawful assembly or mob to disperse and retire peaceably to their respective abodes and business; but in no case shall it be necessary to use any set or particular form of words in ordering the dispersion of any riotous, tumultuous or unlawful assembly; nor shall any such command be necessary where the officer or person, in order to give it, would necessarily be put
Enr. S. B. No. 108

16. in imminent danger of loss of life or great bodily harm, or
17. where such unlawful assembly or mob is engaged in the
18. commission or perpetration of any forcible or atrocious
19. felony, or in assaulting or attacking any civil officer or
20. person lawfully called to aid in the preservation of the
21. peace, or is otherwise engaged in actual violence to per-
22. sons and property.

Sec. 33. Penalty for Failure to Disperse.—Any person
2. or persons composing or taking part in any riot, rout,
3. tumult, mob or lawless combination or assembly men-
4. tioned in this article, who, after being duly commanded
5. to disperse, as provided in the preceding section, wilfully
6. and intentionally fails to do so as soon as practicable,
7. shall be guilty of a felony, and, on conviction thereof,
8. shall be imprisoned in the penitentiary for not less than
9. one or more than two years.

Sec. 34. Power of Officers.—After any person or per-
2. sons, composing or taking part, or about to take part, in
3. any riot, mob, rout, tumult, or unlawful combination or
4. assembly mentioned in this article shall have been duly
5. commanded to disperse, or when the circumstances are
such that no such command is requisite under the provisions of this article, and civil officer to whom such military force is ordered to report, or if there be no civil officer present, then such military officer (or if such command is acting under the direct order of the governor, then such officer within the limits provided in his instructions) shall take such steps for the arrest, dispersion, or quelling of the persons composing or taking part in any such mob, riot, tumult, outbreak, or unlawful combination or assembly mentioned in this article, as may be required, and if, in doing so, any person is killed, wounded, or otherwise injured, or any property injured or destroyed, by the civil officer, or officer or member of the National Guard, or other persons lawfully aiding them, such officer, member or person shall be held guiltless.

Sec. 35. Assaults on National Guard or Persons Aiding Them; Penalty.—It shall be unlawful for any person to assault, fire upon, or throw any missile at, against or upon any member or body of the national guard, or civil officer or other person lawfully aiding them, when going to, returning from, or assembled for performing any duty.
Sec. 36. Repelling Assault.—If any portion of the National Guard, or any person lawfully aiding them in the performance of any duty, under the provisions of this article, is assaulted, attacked or in imminent danger thereof, the commanding officer of such national guard need not await any orders from any civil magistrate, but may at once proceed to quell such attack and disperse the attacking parties, and take all other needful steps for the safety of his command.

Sec. 37. Failure to Retire from Unlawful Assembly; Penalty.—Whenever any shot is fired or missile thrown at, against or upon any body of national guard, or upon any officer or member thereof, assembling or assembled for the performance of any duty under the provisions of this article, it shall forthwith be the duty of every person in the assembly from which such shot is fired, or missile thrown, to immediately disperse and retire therefrom,
without awaiting any order to do so; and any person
knowing or having reason to believe that a shot has been
fired, or missile thrown from any assembly of which such
person forms a part or with which he is present, and
failing without lawful excuse to retire immediately from
such assembly, shall be guilty of a misdemeanor; and any
person so remaining in such assembly, after being duly
commanded to disperse, shall be guilty of a felony and
on conviction, shall be imprisoned in the penitentiary not
less than one nor more than two years.

Sec. 38. National Guard to Have Right of Way.—Any
to the national guard parading or performing any
duty according to law shall have the right of way in any
street or highway through which they may pass: Pro-
vided, That the carriage of United States mails and opera-
tion of fire engines and fire departments shall not be in-
terfered with thereby.

Sec. 39. Regulation of Occupancy of Streets for Passage
of National Guard.—Whenever any rout, riot, or mob has
occurred or is progressing, or is so imminent that any
portion of the national guard is or has been called out
for the performance of any duty under the provisions of this article, it shall be lawful for the civil officer under whose orders the national guard is acting or the commanding officer of such national guard, if it be deemed advisable in subduing or preventing such mob, or riot, or the outbreak thereof, to prohibit all persons from occupying or passing on any street, road, or place, or where the national guard may be for the time being, and otherwise to regulate the passage and occupancy of such streets and places. Any person, after being duly informed of such regulations, who wilfully and intentionally, without any lawful excuse, attempts to go or remain on such street, road, or place, and fails to depart after being warned to do so, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than one hundred dollars, or imprisoned in the county jail not less than ten nor more than sixty days, or both; and in such case the officer in command of the national guard may forthwith arrest persons so offending and turn them over to some civil magistrate.

Sec. 40. Transportation of Officers and Men.—The sev-
general railroads and other transportation companies in this
state shall furnish transportation for all officers and en-
listed men in the national guard, together with the stores,
ammunition and equipment, when traveling on duty un-
der orders from competent authority, on request of the
officer desiring transportation, which request shall state
the number of persons to be carried, and their destina-
tion, and for such transportation said companies shall be
entitled to receive compensation from the state at the
rate specified.

Sec. 41. Suits Against Officers or Persons Acting Under
Military Authority; Security for Costs.—When a suit or
proceeding shall be commenced in any court by any per-
son, against any military officer of the state, for any act
done by such officer in his official capacity in the discharge
of any duty under this article, or against any person act-
ing under the authority or order of any such officer, or
by virtue of any warrant issued by him pursuant to law,
the court shall, upon motion of the defendant, when it
has been made to appear to the court by affidavit, or
otherwise, that the act done is such as hereinbefore set
forth, require the person prosecuting or instituting the
suit or proceeding to file security for the payment of
costs that may be incurred by the defendant therein. This
security shall be by bond payable to the state, with surety
to be approved by the clerk of the court, in a penalty
equal to six times the costs incurred and likely to be
incurred by the defendant, but in no case shall such bond
be for a penalty less than five hundred dollars. The court
before whose clerk such bond is given, may, on motion
by a defendant, give judgment for so much as he is en-
titled to by virtue of such bond under the provisions of
this section. If such security for costs be not given within
sixty days from the time the same is required by the court
to be given, the suit or proceedings shall, by order of the
court, be dismissed. In case the plaintiff in any suit or
proceeding shall be nonsuited, or shall have a verdict or
judgment rendered against him, or in case any suit or
proceeding shall be dismissed for failure to give security
for costs, then the defendant shall recover three times
the amount of the costs incurred by him. In all such cases
as are referred to in this section the defendant may make
a general denial and give the special matter in evidence.

Sec. 42. Change of Venue of Prosecutions or Suits

Against Members of National Guard.—Any civil or mili-
tary officer or member of the national guard, or any per-
son lawfully aiding them in the performance of any duty
required under the provisions of this article, who is in-
dicted or sued for any injury to person or property in en-
deavoring to perform such duty, shall have the right, and
it is hereby made the duty of the court in which such
indictment or suit is pending, upon the application of any
person so indicted or sued, to remove the trial of the in-
dictment or suit to some county free from exception.

Sec. 43. Pay and Allowances.—The pay for officers and
enlisted men of the West Virginia national guard for serv-
ice at camps of instruction, rifle practice, practice marches
and maneuvers, or other duties ordered by the President
of the United States, shall be such as are provided in the
national defense act and amendments thereto. Officers
and enlisted men, when employed in the actual service
of the state, as defined and provided in this article, be-
ginning on the day they assemble at their armories or
other designated places, until the day they have returned
thereto and been properly relieved, inclusive, fractional
parts of a day counting as a full day, shall receive pay and
allowances at the rate which are currently applicable for
federal service. Transportation for all military personnel,
and subsistence for enlisted men, shall be provided by the
state when the national guard is engaged in state duty.

Sec. 44. Command Pay; Inspection; Compensation for
Clerical Services and Care of Property.—There shall be
paid to each regimental commander one hundred dollars
per month, and to each battalion commander fifty dollars
per month, payable quarterly, to be known as command
pay. The governor may, by order, direct such organiza-
tion commanders to make certain inspections of the or-
organizations in their command, and file reports thereon,
not exceeding four visits to each of such organizations
in any one year, and for which such commanding officer
shall receive no other compensation than that mentioned
herein, but may be reimbursed his actual traveling ex-
spenses.
There shall be allowed to each regimental headquarters for clerical service the sum of one hundred and fifty dollars per month; to each separate battalion or similar organization, not a part of a regiment or group within the state, the sum of fifty dollars per month for clerical service; and to each company, or corresponding unit, the sum of twenty dollars per month for like services, payable quarterly.

In the discretion of the adjutant general, there may be paid to the enlisted man who is directly responsible for the care and custody of the federal and state property of each organization or unit, the sum of ten dollars per month, payable quarterly, upon the certificate of his commanding officer that he has faithfully and satisfactorily performed the duties assigned him and accounted for all property intrusted to his care.

Sec. 45. Injury While in Service.—A member of the national guard who shall, when on duty or assembled therefor, in case of riot, tumult, breach of the peace, insurrection, or invasion, or whenever ordered by the governor, commanding officer of the national guard, or called
in aid of the civil authorities by proper military order,
receive an injury, or incur or contract any disability or
disease, by reason of such duty or assembly therefor, or
who shall without fault or neglect on his part be wound-
ed or disabled while performing any lawfully ordered
duty, which shall temporarily incapacitate him from pur-
suing his usual business or occupation, shall, during the
period of such incapacity, receive the pay provided by
this article and actual necessary expenses for care and
medical attendance. All claims arising under this sec-
tion shall be inquired into by a board of three officers,
at least one being a medical officer, to be appointed, upon
the application of the member claiming to be so incapac-
tated, by the commanding officer of the organization or
unit to which such member is attached or assigned. Such
board shall have the same power to take evidence, ad-
minister oaths, issue subpoenas and compel witnesses to
attend and testify and produce books and papers, and
punish their failure to do so, as is possessed by a general
court-martial. The findings of the board shall be subject
to the approval of the officer convening it, and also to the
approval of the governor, either of whom may return the
proceedings of the board for revision and for the taking
of further testimony. The amount found due such mem-
ber by such board, to the extent that its findings are ap-
proved by the reviewing officers thereof, shall be paid by
the treasurer of the state out of any moneys in the mili-
tary fund unexpended. The widow and children of every
officer or soldier killed, while in the service of the state,
shall be suitably provided for by the legislature.

Sec. 46. Military Fund.—The sums of money which may
be appropriated by the legislature for carrying into effect
any provisions of this article, and the fines and penalties
required thereby to be paid to the treasurer of the state,
shall constitute the military fund of the state for the uses
and purposes set forth in this article. The state treasurer
shall, at the end of each quarter, render to the adjutant
general a statement of the condition of the military fund,
showing the amount on hand at the beginning of the
quarter, the amount received and expended during the
quarter, and the balance on hand at the end of the quarter.
The adjutant general shall furnish the governor a copy
of this quarterly report, and if the sum appropriated by
the legislature for any year shall not be sufficient to pay
for duty at the annual encampment for the number of
days provided in this article, then either such encamp-
ment shall not be held for that year, or held without pay,
or held for less number of days than provided in this arti-
cle, as the governor may determine, so that no deficiency
shall be created by reason of the holding of such encamp-
ment.

Sec. 47. Military Expenses.—All payments made under
the provisions of this article, except for active service,
shall be paid out of the military fund, and all expenses
incurred in active service shall be paid out of any moneys
in the treasury not otherwise appropriated. The military
fund shall be disbursed on warrant of the adjutant gen-
eral, properly drawn, and in such manner as the governor
may order, or as may be required by law, but no warrant
for funds signed by him shall be honored by the auditor
until such adjutant general shall have executed and filed
such bond as may be required by the governor. Pay-
ments shall be made on proper vouchers, which vouch-
ers shall show the authority under which the expendi-
tures are made, contain an itemized statement of the
transaction, and be filed for record in the office of the
adjutant general. All claims for services rendered or
material furnished shall be approved by the officer order-
ing the work or material, and shall be over his certificate
to the effect that the amount is just and reasonable, and
that it has not been previously paid. No expenditures
shall be made by any officer until an estimate of the
amount and a statement of the necessity therefor shall
have been laid before the adjutant general and his ap-
proval received.

Sec. 48. Military Courts; Jurisdiction.—Military courts
of this state shall be: (a) General courts-martial; (b)
Special courts-martial; (c) Summary courts-martial; (d)
Courts of inquiry; and shall have jurisdiction over any
officer, warrant officer, or enlisted man of the West Vir-
ginia national guard and other persons subject to military
law for any crime made punishable by this article. The
jurisdiction of the courts established by this article shall
be presumed and the burden of proof shall rest with the
person seeking to oust any such court of jurisdiction in any matter or proceeding.

Sec. 49. Courts-Martial; General.—Officers shall be triable only by general courts-martial and special courts-martial, and in no case, whether officer or enlisted man, shall a person be tried by persons inferior in rank or grade when it can feasibly be avoided. An enlisted man may request that at least one-third of a general or special court-martial total membership consist of enlisted men.

Sec. 50. Appointment and Composition of Military Courts.—(a) General courts-martial shall be appointed by the governor, and shall consist of not less than five members. (b) Special courts-martial may be appointed by the governor, or as provided in the manual for courts-martial, U. S. army, and shall consist of not less than three members. (c) Summary courts-martial may be appointed by the governor, or as provided in the manual for courts-martial, U. S. army, and shall consist of one officer. (d) Courts of inquiry may be appointed by the governor, or as provided in the manual for courts-martial, U. S. army, and shall consist of from one to three officers.
Sec. 51. *Forms; Practice; Procedure.*—The practice and procedure of courts-martial and courts of inquiry shall conform to the procedure of similar courts in the army of the United States, except as otherwise specially provided herein. Such forms as are necessary for carrying into effect the provisions of this article shall be prescribed by the governor. The president of any military court authorized herein shall have authority to appoint and dismiss required clerks and reporters and the compensation therefor shall be taxed as costs in such case. The clerk of a summary court shall receive a reasonable compensation to be fixed by the court, not to exceed one dollar for each man tried.

Sec. 52. *Courts-Martial; Personnel.*—The senior in rank among the members present is the president and presiding officer of the court. The person ordering a general court-martial may appoint a judge advocate for the same.

Sec. 53. *Secrecy of Proceedings.*—The proceedings and sentence of a court-martial shall be kept secret until the same shall have been approved by proper authority. In any event, the vote and opinion of any member of a court
shall be kept secret unless such is required to be revealed in a court of justice.

Sec. 54. Powers of President; Witnesses; Oaths.—The president of a court-martial shall have power to issue subpoenas for the arrest of accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum and to enforce attendance of witnesses and the production of books and papers and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. All military courts shall have power to administer oaths as required by the manual for courts-martial, U. S. army.

Sec. 55. Charges; Trial.—When an officer or enlisted man is put under arrest for the purpose of trial, a copy of the charges and specifications upon which he is to be tried shall be delivered to him or left at his last known place of abode or business, within twenty days after ar-
rest, and a court shall be ordered for his trial within thirty days after the notice of arrest is received by the officer authorized to order the court. He may be held in any jail or other place of detention or released upon his own recognizance or upon such bail as is deemed necessary by the circuit court of the county in which he is detained. If a copy of the charges and specifications be not served, or a court be not ordered within the time herein limited, then arrest shall cease; but such charges and specifications may be served, a court ordered and the officer or enlisted man brought to trial within twelve months after such release from arrest. The appearance of the accused, without objection, and pleading to the charges, shall be deemed a waiver of any defect or irregularity of such service of any of the papers mentioned in this section. If an officer or enlisted man who has been ordered or duly summoned to appear before a military court for trial fail to appear, the court may enter a plea of not guilty for him and proceed to trial in his absence.

Sec. 56. General Court-Martial; Offenses by Commissioned Officers; Penalties.—Commissioned officers may be
tired by a general court-martial for the following offenses:

(a) For unmilitary or unofficer-like conduct;
(b) For drunkenness on duty;
(c) For neglect of duty;
(d) For disobedience of orders or any act contrary to the provisions of this article, or to the provisions of the regulations for the government of the national guard;
(e) For refusing to grant a discharge to an enlisted man when entitled to the same;
(f) For oppression or injury of any one under his command;
(g) For a combination or attempt to break, resist or evade the laws or lawful orders, given to a person, or advising any person so to do;
(h) For insult to a superior officer;
(i) For presuming to exercise his command while under arrest or suspension;
(j) For neglect or refusal when commanding officer to order out the troops under his command when required by law or lawfully ordered by his superior officers;
(k) For neglect or refusal to make a draft or detach-
ment when lawfully ordered to do so;

(i) For parading the troops under his command on days of election contrary to law;

(m) For receiving any fee or gratuity for any certificate;

(n) For neglect, when detailed to drill or instruct a command, to make complaint for neglect or violation of duty as provided by law, or for any other neglect for which a commanding officer would be liable;

(o) For making a false certificate, account or muster or parade or property return;

(p) For conduct unbecoming an officer or a gentleman, or for conduct to the prejudice of good order and military discipline.

On conviction of any of the above-named offenses, officers may be sentenced to be dismissed, and shall thereby become incapacitated from holding any military commission, may be fined to any amount not exceeding two hundred dollars, and in addition may be confined for a period not exceeding sixty days in the county jail of any county in the state, except, however, that the maximum
penalties herein set forth shall not be regarded as affect-
ing or limiting such penalties as may be imposed under
other sections of this article. The order of the general
court martial directed to the jailer of such jail shall be
sufficient authority for said jailer to receive and confine
said prisoner.

Sec. 57. Special Court-Martial; Offenses by Commis-
sioned Officers; Penalties.—Commissioned officers may be
tried by a special court-martial for the same offenses list-
ed under section fifty-six, except that upon conviction of
any of the named offenses, officers may be fined to any
amount not exceeding one hundred dollars, and in addi-
tion may be confined for a period not exceeding thirty
days in the county jail of any county in the state, except,
however, that the maximum penalties herein set forth
shall not be regarded as affecting or limiting such penalties
as may be imposed under other sections of this article.
The order of the special court-martial directed to the
jailer of such jail shall be sufficient authority for said
jailer to receive and confine said prisoner.
Sec. 58. General Court-Martial; Offenses by Enlisted Men; Penalties.—Enlisted men, in time of peace, may be tried by a general court-martial:

(a) For disobedience of orders;
(b) For disrespect to his superior;
(c) For mutiny;
(d) For desertion;
(e) For drunkenness on duty;
(f) For conduct prejudicial to good order and military discipline;
(g) For any act contrary to the military code, or to the provisions of the regulations for the government of the national guard.

On conviction, such enlisted man may be sentenced to be dishonorably discharged with loss of time served, reprimanded, reduced to the ranks, or may be fined not to exceed one hundred dollars, and in addition thereto may be confined in the county jail for a period of not exceeding sixty days in any county within the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penal-
ties as may be imposed under other sections of this article. The order of the general court-martial directed to the jailer of such jail shall be sufficient authority to receive and confine such prisoner in such jail.

Sec. 59. Special Court-Martial; Summary Court-Martial; Offenses by Enlisted Men; Penalties.—Enlisted men may be tried by a special court-martial or a summary court-martial for the same offenses listed under section fifty-eight, except that on conviction by a special court-martial such enlisted man may be reprimanded, reduced to the ranks, or may be fined not to exceed fifty dollars, and in addition thereto may be confined in the county jail for a period of not exceeding thirty days in any county in the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penalties as may be imposed under other sections of this article. In the case of a summary court-martial, on conviction, such enlisted man may be reprimanded, fined not to exceed twenty-five dollars, and in addition thereto may be confined in the county jail for a period of not exceeding fifteen days in any county in the
state, except, however, that the maximum penalties here-

in set forth shall not be regarded as affecting or limiting

such penalties as may be imposed under other sections of

this article. The order of the court-martial directed to

the jailer of such jail shall be sufficient authority for said

jailer to receive and confine said prisoner.

Sec. 60. Form of Summons.—The form of summons is-

ied by summary courts provided by this article shall be

substantially as follows, the blanks being properly filled

in:

SUMMONS

The State of West Virginia:

To ______________________________________________________ , who is hereby
designated and directed to serve this summons:

You are commanded to summon _______________________________________________ _
to personally appear before the summary court for the
trial of himself, which will meet pursuant to the laws of
the State of West Virginia, at (address) _________________________________ 
(city) --------------------------------------------------------, West Virginia, on the
____________ day of ________________________________________ , 19 ________ , at __________ o'clock
M., by virtue of __________________________________________ Orders No.
Sec. 61. Service of Summons; Penalty for Failure.—

The president of a court-martial shall designate and direct a fit person or persons to summon all delinquents to appear before the court. Service of the summons shall be made by the person so designated in the same manner as service or process in civil cases. The person serving the summons shall receive a fee of one dollar for such service, together with five cents per mile in necessary travel, and such fee of one dollar together with mileage, shall be taxed as a part of the costs in such proceeding.
The summons may be directed by the president of the court-martial to the sheriff, or his deputy, or any constable, or member of the department of public safety, or to any individual, in the county where such delinquent resides or may be found for service; and it shall be the duty of such person in whose custody the summons has been placed for service forthwith to serve same, if the delinquent be found, and make due return thereof, before the return day of such summons, to the president of the court-martial. The return of service of such summons shall be in form and effect the same as is customarily used by officers in making returns in civil process.

Any member of the department of public safety, sheriff, or his deputy, constable or individual, who shall refuse, fail or neglect to serve such summons and make his return thereon to the president of the court-martial before the return day thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not to exceed fifty dollars.

Sec. 62. Trial; Judgment; Duties of Sheriff; Penalty.—

On the return day of the summons the court shall hear
3. the evidence and render judgment thereon as the case may be. If, however, on the return day of the summons the accused shall fail to appear, after having been duly served with summons, the court shall proceed to hear the evidence and try the accused in his absence and render judgment thereon as the case may be and the facts warranted by such judgment, if such judgment be for a fine and costs solely, the court shall forthwith issue an execution in form and effect as hereafter set forth, and place it in the hands of
4. the sheriff of the county wherein the accused may be found. If, however, the judgment of the court against the accused is for confinement in the county jail, the court shall forthwith issue an order directed to the sheriff of the county wherein the accused may be found, directing said sheriff to take into custody the body of the accused and confine him in the county jail. Such order so delivered by the court shall be coextensive with the state, and shall be sufficient evidence and authority for
5. the jailer of such county jail to receive the body of the accused and confine him therein pursuant to said judg.
ment. No prescribed form of order for confinement of the accused shall be required. Any sheriff who fails, neglects or refuses to perform any duty required of him by this section by reason of any order of confinement directed by any court, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred dollars for each offense.

Sec. 63 Form of Execution. Presumption of Jurisdiction of Military Courts.-Execution for the purpose of collecting the fine and costs of imprisoning the delinquent for failure to pay the same shall be substantially in the following form, blanks being properly filled:

The State of West Virginia:

To the Sheriff of __________ County, Greeting:

Whereas, pursuant to the laws of the State of West Virginia, by an order duly issued by ________________, an officer ordering court of the West Virginia National Guard, and dated on the ___ day of _________, 19___, a court was
14 duly appointed, for (state object of court) .................................*;
15 and,
16 Whereas, the said court was duly and regularly con-
17 vened and from time to time duly adjourned; and
18 Whereas, (name and rank of accused) .............................
19 ........................................ in (organization) ..............................,
20 of the West Virginia National Guard, was duly and regu-
21 larly returned to said court, as required by law, charged
22 with (state whether accused was charged with delinquent-
23cies of offenses against the military code, without speci-
24fying character thereof) as appears by (either summons
25 or charges and specifications, as the case may be) duly
26 filed with said court, and was duly summoned and noti-
27 fied to appear before said court; and it satisfactorily ap-
28 pearing to the court that such ...................................................
29 was and is a ........................................ of the West
30 Virginia National Guard and subject to the jurisdiction
31 of the court; and after due deliberation of the evidence
32 offered by the state and the accused, the court did find and
33 adjudge the said ...........................................................
34 (state finding) .............................................................
and did sentence him to pay a fine of -------------------------

dollars, and did also sentence him to pay costs of ------------

 dollars, making a total fine of -------------------------

dollars; and,

Whereas, the proceedings, findings and sentences of such court were thereafter duly approved by -------------------------, the officer ordering said court.

These are therefore in the name of the State of West Virginia to command you to levy and collect said fines, together with your costs, according to law, of the goods and chattels of -------------------------, and in default of sufficient goods and chattels of such -------------------------, to satisfy the same; then, within five days, to take the body of such delinquent to the common jail of ------------------------- county, and deliver him to the jailer thereof; and the said jailer is hereby directed and requested to receive the body of such ------------------------- conveyed to the jail aforesaid, and to keep such ------------------------- closely confined in the manner and during the time required by law, and until discharged according to law, for which this shall be his warrant; and of your doings
by virtue thereof to make return to me within forty
days after the execution of these presents.

Given under my hand at __________________________, and
State of West Virginia, on the _____ day of ________________,
19______

(Signed) ___________________________________________

(Rank and organization of presiding officer.)

West Virginia National Guard,

President of the court.

Sec. 64. Courts of Inquiry.—Courts of inquiry shall be
ordered for the same purposes as provided in the manual
for courts-martial, U. S. army, which are applicable to
this state. Such courts of inquiry shall, without delay,
report the evidence adduced, a statement of the facts,
and, when required, an opinion thereof, to the appointing
authority.

Sec. 65. Disorderly Conduct Before Military Court;

Penalty.—Any person other than a member of the na-
tional guard who shall resort to disorderly, contemptuous
or insolent behavior in, or use any insulting or indecor-
ous language or expressions to, or before, any military
court, or any member of either of such courts, in open
7 court, to interrupt the proceedings or to impair the au-
8 thority of such courts, shall be guilty of a misdemeanor.
9 and may be arrested by the order of the president of the
court, and at once delivered to the civil authorities; and
10 such person, if found guilty, shall be fined not less than
11 five nor more than fifty dollars, or imprisoned in the
12 county jail not exceeding thirty days, or both fined and
13 imprisoned:

Sec. 66. Record and Approval of Court-Martial Sentence.—The record of the proceedings and sentence of
every court-martial shall, without delay, be delivered to
the appointing authority, who shall approve or disapprove
thereof. A court may proceed with the execution of a
sentence pending approval by the appointing authority.

Sec. 67. Reconvening Court-Martial.—A court-martial
appointing authority is authorized to direct a court-mar-
tial to reconvene, and send back its proceedings for re-
vision, and to remit, commute, or investigate any
punishment awarded by the court.

Sec. 68. Collection and Disposition of Fines.—All fines
2 under the provisions of this article not collectible by the
court may be levied or collected by the sheriff of any
county of the state, and shall be transmitted to the
adjutant general of the state who shall deposit the same
to the military fund of the state. Whenever process of
law is necessary for collection of fines, the sheriff shall
collect in addition thereto his usual fees.

Sec. 69. Execution in Aid of Collection of Fines and
Penalties.—For the purpose of collecting any fines or pen-
alties imposed by any courts-martial, the president of
the court shall issue execution, or executions, for the
collection thereof, and deliver the same to the sheriff of
any county for levy on the goods and chattels of the de-
linquent, and, in addition to such fine, shall collect the
necessary costs of such proceedings, as provided in civil
cases. On failure, within fifteen days from the time of de-
livery of such execution into his hands, to satisfy such
execution from the goods and chattels of the delinquent,
the sheriff shall forthwith take the body of the delinquent
to the county jail and therein confine him to serve the
execution at the space and rate of one day's confinement
for each two dollars of fine and the costs: Provided,

however, That the delinquent may furnish a bond with

good and sufficient surety to the sheriff to stay such

execution and costs for a period of thirty days, either

before confinement or during confinement; and if at the

expiration of said thirty days such delinquent fails to

pay the execution and costs, the sheriff may apprehend

the delinquent and confine him in the county jail, as in

the original proceeding; and if the accused be not found,

the sureties on such bond shall be liable to the State of

West Virginia for the amount of said execution and the

costs thereof.

The sheriff shall be entitled to such commissions and

fees as provided in civil cases.

Sec. 70. Failure of Sheriff to Execute Process or Return

Fines.—Any sheriff failing to execute any process, or to

make proper return of all fines and penalties collected,

shall be guilty of a misdemeanor, and, upon conviction

thereof, be fined not less than fifty nor more than one

hundred dollars for each offense.

Sec. 71. Actions Against Members of Military Courts.—
2 No action shall be maintained against any member of a
3 military court, or officer or agent acting under its au-
4 thority, on account of the imposition of a fine or penalty
5 or for the execution of a sentence on any person.

Sec. 72. Trial by Civil Authorities.—For any offense
2 enumerated in this article which is also cognizable under
3 civil law, the offender may, in the discretion of his su-
4 perior officer, be delivered over to the civil authorities
5 for such action and disposition as may be warranted.

Sec. 73. Armory Board; How Constituted; Duties.—The
2 governor, the secretary of state and the auditor shall
3 constitute the state armory Board, whose duties it shall
4 be to approve the selection of all armory sites and plans
5 and specifications, to contract for the erection of all ar-
6 mories, for the purchase of buildings suitable, or which
7 can be made suitable, for armory purposes and the ac-
8 quisition of armories already constructed, to audit and
9 approve all bills, claims and accounts in connection with
10 the construction or purchase of all armories before such
11 bills, claims and accounts shall be paid, and to perform
12 such other duties as this article may require, but without
compensation except that their actual and necessary traveling expenses shall be paid; an allowance shall be made for the necessary clerical assistance, printing, stationery and postage, which shall be paid out of the fund appropriated for the maintenance of the national guard.

Sec. 74. Control of Armories; Acquisition of Sites; Appropriations and Expenditures Therefor; Consent to Acceptance of Federal Funds.—The state armory board shall have control of any arsenal, armory, or other quarters of the national guard, camp ground and rifle range owned by the state, and shall cause the same to be kept in good repair, and all money which may be appropriated or otherwise made available for the purchase, erection, acquisition or repair of such buildings, grounds or ranges may be expended and shall be accounted for by the armory board. The armory board may procure by purchase or condemnation sufficient ground for armories, arsenals, quarters, camp grounds or rifle ranges, when funds are available for the purpose, the title of same to be in the name of the state, and may, when the state shall be reimbursed for its expenditures, transfer title of such
17 grounds and rifle ranges to the United States, but may
18 provide for the retention by the state of civil and police
19 jurisdiction through such ranges and camp grounds and
20 a right to tax persons residing thereon.
21 Authorization is hereby given to acceptance by the
22 state armory board of any Federal or other funds to
23 assist or match state appropriations for the purposes of
24 this article. Nothing herein contained shall be construed
25 as limiting the authority of the adjutant general to enter
26 into leases for armory, camp, and rifle range facilities on
27 behalf of the national guard.

Sec. 75. Control of New Armories; Rules and Regulations.—Upon the completion of any new state-owned
3 armory building or the purchase of any armory building
4 property, the control and use of such armory shall vest in
5 the armory board as provided in this article: Provided,
6 That the proceeds of rentals and other revenue derived
7 from such armories may be devoted and applied by the
8 armory board to the maintenance, extension, improve-
9 ment and equipment thereof. The armory board may
10 make and alter rules and regulations for the government
Sec. 76. Municipal Aid for Armory Purposes; Issuance of Bonds.—Any city or village, or two or more cities or villages jointly, in which an armory has heretofore been, is now, or may hereafter be, erected or authorized under the provisions of this article, may raise and appropriate money and funds in the aid of the construction, repair and improvement thereof, and to that end may issue bonds payable not more than thirty years after their issue and bearing interest at a rate not exceeding six per cent per annum, and may deposit such money and funds and the proceeds of the sale of such bonds with the state treasurer to the credit of the proper construction fund, and may make such further provisions for the maintenance and improvements of such armory as may be deemed necessary: Provided, That whenever the board deems it expedient and in furtherance of the purposes of this article, it may purchase and finish armories already built or partly built.

Sec. 77. Funds for Armory Purposes.—All moneys
raised for the building of any armory shall be paid to the state treasurer, who shall keep separate account with each organization or unit which shall avail itself of the provisions of this article, and credit the same with the amount of money deposited by such organization, together with the appropriation made under the provisions of this article; and all bills for the construction or purchase of armories shall, after being approved by such board, be paid out of said account or fund, and charged to the proper organization, upon the warrant of the state auditor, and the state auditor shall issue his warrant upon such fund upon the certificate of the board.

All money returned and repaid to the state treasury from armory property sold, damaged or destroyed, or otherwise, shall be credited to a general armory fund, and may be expended for the building and construction or the purchase of armories for military organizations not having armory accommodations under the provisions and limitations of this article.

Sec. 78. Disposition of Abandoned or Unsuitable Armories.—Whenever any such military organization which
has availed itself of the provisions of this article, and
has received the appropriation provided herein, shall
be called or drafted into the federal service or shall be
mustered out of the service of this state, and it shall
appear probable that no new military organization will
be organized in the city or village in which the armory
is located, and there is no other military organization oc-
cupying said armory, the adjutant general shall imme-
diately take possession of and close the same, and not
permit its use for other than military purposes, but the
armory board shall have the authority and it is hereby
expressly empowered to sell, transfer and convey such
property to the municipality or municipalities in which
the same is located, for public purposes, upon the repay-
ment to the state, for credit to the general armory fund,
of the appropriation expended thereon, without interest:
Provided, That if such municipality shall not purchase
such property, the board shall then be authorized to sell,
transfer and convey the same to any individual, firm or
corporation, repaying to the state at least the full appro-
priation expended therefor: Provided further, That if
the armory can not be sold in this manner, the armory
board may lease it to the municipality for public pur-
poses at an annual rental which shall not be less than
ten per cent of the amount invested by the state in such
armory: And provided further, That the armory board is
hereby authorized and empowered to sell, transfer and
convey on behalf of the state any state armory site or
building which in the judgment of the board is unsuit-
able for military purposes or which has been condemned
by the state fire marshal. The moneys so received from
the sale of such armories shall be paid into the state
treasury and by the treasurer credited to the general
armory fund.

Sec. 79. Regulations While Military Forces on Duty.—
When any portion of the military forces of this state
shall be on duty, under or pursuant to the orders of the
governor, or whenever any part of such forces shall be
ordered to assemble for duty in time of war, insurrection,
invasion, public danger, any breach of the peace, tumult,
riot or resistance to process in this state, or imminent
danger thereof, the rules and articles of war and the gen-
eral regulations for the government of the Army of the United States shall be considered in force and regarded as a part of this article until such forces shall be duly relieved from such duty. No punishment under such rules and articles which shall extend to the taking of life shall, in any case, be inflicted except in time of actual war, invasion, or insurrection, declared by proclamation of the governor to exist, and then only after the approval of the governor of the sentence inflicting such punishment. In the event of invasion, insurrection, rebellion or riot, the governor may in his discretion declare a state of war in the towns, cities, districts or counties where such disturbances exist.

Sec. 80. Governor to Make Rules and Regulations.—

The governor is hereby authorized to make such rules and regulations, from time to time, as he may deem expedient; but such rules and regulations shall conform to this article and as nearly as practicable to those governing the United States army, and, when promulgated, shall have the same force and effect as the provisions of this article. But the rules and regulations now in force
9 shall remain in force until new rules and regulations are
10 approved and promulgated.

Sec. 81. United States Army Regulations.—All matters
2 relating to the organization, discipline and government of
3 the national guard, not otherwise provided for in this
4 article or in regulations, shall be decided by custom and
5 usage of the United States army.

Sec. 82. Leave of Absence for Public Officials and Em-
2 ployees.—All officers and employees of the state, or sub-
3 divisions or municipalities thereof, who shall be members
4 of the national guard, shall be entitled to leave of absence
5 from their respective offices or employments without loss
6 of pay, status, or efficiency rating, on all days during
7 which they shall be engaged in drills or parades during
8 business hours ordered by proper authority, or for field
9 training or active service for a maximum period of thirty
10 days in any one calendar year ordered or authorized under
11 the provisions of state law. The term “without loss of
12 pay” shall mean that the officer or employee shall con-
13 tinue to receive his normal salary or compensation, not-
14withstanding the fact that such officer or employee may
have received other compensation from federal sources
during the same period. Benefits of this section shall not
accrue to individuals ordered or called to active duty by
the president.

Sec. 83. Contributing Members.—In time of peace the
officers commanding organizations and units may enlist
contributing members not to exceed one hundred and fifty.
Such members shall be subject to such contributions, dues
and services as may be ordered by the respective organi-
izations, but the dues of such members shall in no case
be less than five dollars each, per annum, and the whole
number of active and contributing members belonging to
the active militia in any county shall not exceed five per
centum of the voting population of such county.

Sec. 84. General Penalty; Jurisdiction.—A person con-
victed of a crime declared by this article to be a mis-
demeanor shall, unless otherwise provided, be punished
by a fine of not more than five hundred dollars, or by im-
prisonment in the county jail for not more than one year,
or by both. Any circuit, intermediate, criminal court, or
justice of the peace shall have jurisdiction over offenses
enumerated in this article.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

Takes effect ________ passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within ________ this the ________

day of ________, ________

[Signature]
Governor.

Filed in the Office of the Secretary of State
of West Virginia ________

D. E. McAlister, Secretary of State