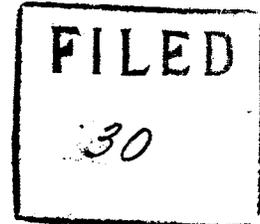


GOVERNOR:
DEPARTMENT OF PUBLIC SAFETY:
MILITARY:
ADJUTANT GENERAL:
NATIONAL GUARD:

An executive order of the
governor is required to direct
the organization of the Mis-
souri reserve military force.

October 18, 1982

OPINION NO. 30



Edward Daniel, Director
Department of Public Safety
621 East Capitol
Jefferson City, Missouri 65101

Dear Mr. Daniel:

This is in response to your request for an opinion asking the following question:

Can the Director of the Department of Public Safety direct the organizing of the Missouri reserve military force or must it be done by an executive order of the Governor?

For the reasons set forth herein, we believe that the organization of the reserve military force can only be done by an executive order of the governor.

Article IV, Section 6, Missouri Constitution, provides:

The governor shall be the commander in chief of the militia, except when it is called into the service of the United States, and may call out the militia to execute the laws, suppress actual and prevent threatened insurrection, and repel invasion.

The Constitution clearly contemplates that the governor shall exercise authority to control the militia.

Chapter 41, RSMo, implements the provisions of Article IV, Section 6, Missouri Constitution. Pertinent to your opinion request, Section 41.040, RSMo 1978, provides:

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The militia of the state of Missouri, which includes the adjutant general and his office, constitutes the military division of the executive department of the state government, under the direct control of the governor. [Emphasis added.]

Section 41.070.2, RSMo 1978, provides, in pertinent part:

The organized militia shall consist of the following:

* * *

(3) Missouri reserve military force, when organized.

Section 41.080.3, RSMo 1978, provides, in pertinent part:

The reserve military force when organized shall be of the strength and composition prescribed by the governor, . . . [Emphasis added.]

Section 41.490, RSMo 1978, provides:

The governor shall have the power to organize from the unorganized militia of Missouri a reserve military force for duty within or without the state to supplement the Missouri national guard or replace it when it is mobilized in federal service. . . . The governor shall prescribe the strength and composition of the various units of the same, uniform and insignia and the qualifications of its members, and shall have the power to grant a discharge therefrom for any reason deemed by him sufficient. [Emphasis added.]

As you indicate, Section 11.10 of the Omnibus State Reorganization Act of 1974 (Appendix B, RSMo 1978), provides:

The office of adjutant general and the state militia are assigned to the department of public safety; provided however nothing herein shall be construed to interfere with

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the powers and duties of the governor as provided in Article IV, Section 6 of the Constitution of the state of Missouri or chapter 41, RSMo. [Emphasis added.]

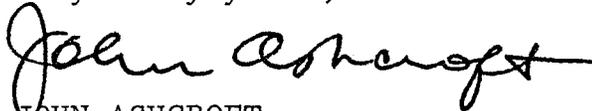
The clear mandate of the cited section of the Omnibus State Reorganization Act that such reorganization does not interfere with the constitutional and statutory duties of the governor leads us to the conclusion that it is only the governor who may direct the organizing of the Missouri reserve military force. A contrary conclusion would violate the clear expression of legislative intent contained in Section 11.10 above cited.

CONCLUSION

It is the opinion of this office that an executive order of the governor is required to direct the organization of the Missouri reserve military force.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Lew A. Kollias.

Very truly yours,



JOHN ASHCROFT
Attorney General