

CHAPTER 21

DEPARTMENT OF MILITARY AFFAIRS

21 01	Composition of national guard	21 32	Physical examinations.
21 025	State guard authorized	21 33	Pay department.
21 03	Distribution of arms	21 35	Federal laws and regulations; no discrimination.
21 04	Camp Williams	21 36	United States army regulations; constitution
21 05	Term of enlistment; requirements	21 37	The Wisconsin code of military justice
21 06	Exemptions from jury duty	21 38	Uniform of Wisconsin national guard.
21 07	Decoration for long and faithful service.	21 42	Status, powers and property of units
21 09	Training; special schools; pay and allowances	21 43	Commissions and rank.
21 11	Call to active service	21 47	Examinations for promotion or appointments.
21 12	Exemption from civil authority	21 48	Pay.
21 13	Defense of members of guard; payment of judgments	21 50	Military property accountability.
21 14	Penalty for injuries and threats because of enlistment; refusal to grant leave	21 51	Discharge of officers
21 145	Discrimination against national guard.	21 52	Authority to administer oaths
21 15	Penalty for retention of military property	21 54	Resignation of officer
21 155	Nondelivery of arms; resisting officer	21 56	Military supplies, board of inspection, obsolete property.
21 16	Penalty for unauthorized wearing of uniforms	21 57	Delivery of property on resignation or dismissal; custody in case of death
21 17	Penalty for encroachments on military grounds	21 59	Issue of subsistence; accounts.
21 18	Military staff of governor.	21 60	Discharge of enlisted men.
21 19	Adjutant general; powers and duties	21 61	Armories
21 20	Civil service status	21 612	Transfer of lands for military purposes
21 21	Printing report of convention of officers.	21 616	Facilities for administration and training
21 26	Issue of transportation to officers.	21 62	Rules for issuance of state property to bands
21 30	Chief surgeon; powers and duties	21 63	Grounds for mustering out of units

21.01 Composition of national guard. (1)

The organized militia of this state shall be known as the "Wisconsin National Guard" and shall consist of members of the militia voluntarily therein, who upon original enlistment shall be not less than 17 nor more than 45 years of age, or who in subsequent enlistment shall be not more than 64 years, organized, armed, equipped and federally recognized, and of commissioned officers and warrant officers who are citizens of the United States between the ages of 18 and 65 years; provided that former members of the regular army, navy or marine corps under 64 years of age may enlist in the Wisconsin national guard.

(2) The Wisconsin national guard shall be organized into army national guard and air national guard units, and the term "National Guard" when used in this chapter, unless the context otherwise requires, includes both the Wisconsin army national guard and the Wisconsin air national guard.

21.025 State guard authorized. (1)

AUTHORITY AND NAME. If all or part of the Wisconsin national guard is called into the service of the United States the adjutant general may organize a force to be known as the Wisconsin state guard. It shall be distinct from the national guard, uniformed, and composed of

officers, commissioned or assigned, and of enlisted personnel who volunteer for service.

(2) **ORGANIZATION; RULES AND REGULATIONS.** (a) The governor may prescribe rules and regulations not inconsistent with this section governing the enlistment, organization, administration, equipment, maintenance, training, and discipline of such forces, except that such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law governing and pertaining to the national guard and the rules and regulations promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities, or anything of value by such forces or by any member of such forces from any person by reason of such membership.

(b) The governor may form an aviation unit of the state guard and formulate the rules and regulations therefor and prescribe the duties thereof consistent with the functions of the state guard.

(c) Officers and enlisted men, while on active duty under orders of the governor, shall receive the base pay and allowances of the identical grade in the United States army.

(3) **REQUISITIONS; ARMORIES; OTHER BUILDINGS.** For the use of such forces, the governor may requisition from the federal government such arms and equipment as may be available, and he may make available to the state

guard the facilities of state armories and their equipment and such other state premises and property as may be available and may, through the department of military affairs, rent or lease buildings or parts of buildings and grounds for armory purposes or continue in possession of such premises leased by the department of military affairs for the use of the national guard, paying rental therefor out of funds appropriated under s. 20.465 (1) (a). All leases so made shall terminate upon dissolution of the Wisconsin state guard regardless of the term provided therein unless the premises shall be needed for national guard purposes, in which case the lease may be assigned by the department of military affairs to the national guard organization intending to occupy the premises.

(4) USE WITHOUT THIS STATE. Such forces shall not be required to serve outside the boundaries of this state except:

(a) Upon the request of the governor of another state, the governor of this state may order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state. Such forces may be recalled by the governor at his discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit, or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, provided such other state shall have given authority by law for such pursuit by such forces of this state. Any such person who shall be apprehended or captured in such other state by an organization, unit, or detachment of the forces of this state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

(5) PERMISSION TO FORCES OF OTHER STATES.

(a) Any military forces or organization, unit, or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and such military forces of such other

state may arrest or capture such persons within this state while in fresh pursuit.

(b) Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law.

(c) This subsection shall not be construed to make unlawful any arrest in this state which would otherwise be lawful.

(6) FEDERAL SERVICE. Nothing in this section shall be construed as authorizing such forces, or any part thereof to be called, ordered, or in any manner drafted, as such into the military service of the United States, but no person shall by reason of his enlistment or commission in any such forces be exempted from military service under any law of the United States.

(7) CIVIL GROUPS. No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

(8) DISQUALIFICATIONS. No person shall be commissioned or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any military or naval organization, of this state, or of another state, or of the United States.

(9) OATH OF OFFICERS. The oath to be taken by officers commissioned in such forces shall be substantially in the form prescribed for officers of the national guard.

(10) ENLISTED MEN. No person shall be enlisted for more than one year, but such enlistment may be renewed. The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed for enlisted men of the national guard.

(11m) RETENTION OF ITEMS OF UNIFORM.

(a) Officers and enlisted men of the "Wisconsin State Guard" who have served honorably therein for a period of at least one year and are active members of their respective units at the time of its demobilization shall, upon application to the unit commander, be permitted to retain the following items of the uniform: Belt, web waist; cap, field cotton; cap, field woolen; coat, woolen serge; insignia, collar gilt disc, "cross-rifle"; insignia, collar gilt disc, "WIS"; necktie, black; overcoat, short woolen O.D.; raincoat; shirt, cotton khaki; shirt, flannel O.D.; shoes, service; trousers, cotton khaki; trousers, woolen O.D.

(b) The above uniform shall be worn only on occasions of ceremony. "Occasions of ceremony" means occasions essentially of a military character at which the uniform is more appropriate than civilian clothing, such as

memorial services, military weddings, military funerals, military balls, military parades, and meetings or functions of associations formed for military purposes, the membership of which is composed largely or entirely of honorably discharged veterans of the services.

(11n) LABOR DISPUTES. The state guard shall not be used to interfere with the orderly process of a labor dispute.

(13) SHORT TITLE. This section may be cited as the "State Guard Act".

21.03 Distribution of arms. The governor may receive and distribute, according to law, the quota of arms and military equipment which the state may receive from the government of the United States under the provisions of any acts of congress providing for arming and equipping the national guard and the state guard.

21.04 Camp Williams. (1) The state camp grounds near Camp Douglas, Juneau county, shall be known as "Camp Williams". The officer in charge of Camp Williams shall have at said camp the police powers possessed by officials at state hospitals, as provided in s. 46.05 (2).

(2) The adjutant general may grant to the federal government the right to use any area of Camp Williams upon such conditions as he deems advisable.

(3) In memory of 1st lieutenant Jerome A. Volk, the first Wisconsin air national guard pilot killed in combat during the Korean conflict, so much of Camp Williams as is under lease to the federal government for use of the air national guard shall be known as "Volk Field" during the time the property remains under lease to the government of the United States.

21.05 Term of enlistment; requirements. Every person who enlists or receives a commission in the national guard shall serve for the term prescribed and satisfy the physical, educational and training requirements prescribed by the national guard bureau.

21.06 Exemptions from jury duty. Every member of the state military forces shall be exempt from jury duty and service on any posse comitatus.

21.07 Decoration for long and faithful service. Every member of the Wisconsin national guard, who has served for not less than 10 years in the national guard, shall be eligible to receive a decoration for long and faithful service and shall be entitled to a clasp thereon for each additional 5 years of service. The decorations shall be in such form and the issue thereof made

under such regulations as the governor may prescribe.

21.09 Training; special schools; pay and allowances. The governor may order the national guard to assemble for training at any military establishment within or without the state specified and approved by the department of defense and fix the dates and places thereof, and he may order members of the national guard, at their option, to attend such special schools for military training as may be authorized by the state or federal government. For such training and attendance at special schools, members of the national guard shall receive such pay and allowances as the federal government or the governor may authorize.

21.11 Call to active service. (1) In case of war, insurrection, rebellion, riot, invasion, resistance to the execution of the laws of this state, or of the United States, or in the event of public disaster resulting from flood, conflagration or tornado, or upon application of any marshal of the United States, the president of any village, the mayor of any city, or any sheriff in this state, the governor may order into active service all or any portion of the national guard. If the governor is absent, or cannot be immediately communicated with, any such civil officer may, if he deems the occasion so urgent, make such application, which shall be in writing, to the commanding officers of any company, battalion or regiment, who may upon approval of the adjutant general, if the danger is great and imminent, order out his command to the aid of such civil officer. Such order shall be delivered to the commanding officer, and by him immediately communicated to each, and every subordinate officer, and every company commander receiving the same shall immediately communicate the substance thereof to each member of the company, or if any such member cannot be found, a notice in writing containing the substance of such order shall be left at the last and usual place of residence of such member with some person of suitable age and discretion, to whom its contents shall be explained.

(2) Any commissioned officer or enlisted member of the national guard who fails to carry out orders or fails to appear at the time or place ordered as provided in sub. (1) shall be punished under the Wisconsin code of military justice. Any person who advises or endeavors to persuade an officer or soldier to refuse or neglect to appear at such place or obey such order shall be imprisoned not exceeding 6 months or fined not exceeding \$1,000 or both.

21.12 Exemption from civil authority.

During the time the state military forces are performing military duty pursuant to proper orders issued by the governor or by his authority, all members thereof while going to, remaining at or returning from a place of duty shall be exempt from arrest or service of any process issued by a civilian court. In any civil or criminal prosecution against any member arising out of his performing military duty, it shall be a defense that he was acting in good faith or pursuant to any lawful military order. Any such order shall be deemed prima facie lawful.

Since this state has never granted a guardsman immunity from suit of another guardsman for injuries negligently caused in performance of his military duty, the 1969 amendment of this section does not change the law *Mazurek v. Skaar*, 60 W (2d) 420, 210 NW (2d) 691.

21.13 Defense of members of guard; payment of judgments.

If any member of the national guard or the state guard is prosecuted by any civil or criminal action for any act performed by such member while in the performance of his military duty and in pursuance thereof, the action against such member may, in the discretion of the governor, be defended by counsel appointed therefor by the governor upon the recommendation of the attorney general. The costs and expenses of any such defense shall be audited by the department of administration and paid out of the state treasury and charged to the special counsel appropriation in s. 20.455 and if the jury or court finds that the member of the national guard against whom the action is brought acted in good faith the judgment as to damages entered against him shall also be paid by the state.

A national guardsman on active duty, but operating his own car for his own purposes while on a pass, is not acting in the performance of a military duty. *Wuorinen v. State Farm Mut. Auto. Ins. Co.* 56 W (2d) 44, 201 NW (2d) 521.

This section controls over 102.03 (4) and the state must pay a judgment based on negligence occurring in the good faith performance of duty. *Mazurek v. Skaar*, 60 W (2d) 420, 210 NW (2d) 691.

21.14 Penalty for injuries and threats because of enlistment; refusal to grant leave.

A person who, either by himself or with another, wilfully deprives a member of the national guard of his employment, or prevents his being employed by himself or another, or in respect to his trade, business or employment, because said member of said national guard is such member, or dissuades any person from enlistment in the said national guard by threat of injury to him in case he shall so enlist, in respect to his employment, trade, or business, or who refuses to grant leave to any employe who is a duly enrolled member of the national guard, state guard, officers reserve corps, enlisted reserve corps, naval reserve, marine corps

reserve or any other reserve component of the military or naval forces of the United States or the state of Wisconsin organized or constituted under federal law to attend military schools, armory drill, field training, field camps of instruction and training cruises which have been duly ordered or who shall cause the seniority, vacation, or salary advancement of such employe to be adversely affected by reason of such leave, shall be fined not less than \$50 nor more than \$200, or imprisoned not more than 6 months, or both.

21.145 Discrimination against national guard.

No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment or business of the members thereof, shall by any constitution, rule, bylaw, resolution, vote or regulation, discriminate against any member of the national guard of the state of Wisconsin, because of such membership in respect to the eligibility of such member of the said national guard to membership in such association or corporation, or in respect to his right to retain said last mentioned membership.

It is the purpose of this section and s. 21.14 to protect a member of the said national guard from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership in said national guard. A person who aids in enforcing any such provisions against a member of the said national guard with the intent to discriminate against him because of such membership, shall be fined not less than \$50 nor more than \$200, or imprisoned not more than 6 months, or both.

21.15 Penalty for retention of military property.

No person shall retain at any time any arms, equipment or military stores of any kind belonging to the state or any federally owned property issued to the state, unless they have been properly issued to him in pursuance of law, and he shall be permitted by proper authority to retain the same in the discharge of a public duty; and no person shall use any public arms, equipment, clothing or military stores belonging to the state, either as owner or bailee, for his private use. Any person violating this section shall be fined not more than \$200.

21.155 Nondelivery of arms; resisting officer.

Any person having in his possession, under the laws of this state, any arms, equipment or other military property, who shall wilfully neglect or refuse, after lawful demand thereof, by order of the commander in chief of the national guard of the state, to deliver up the same

promptly, and any person who shall knowingly resist any proper officer in lawfully taking possession of such arms, equipment or other military property shall be imprisoned not more than 6 months or fined not exceeding \$100.

21.16 Penalty for unauthorized wearing of uniforms.

(1) Any person not regularly enrolled in the United States army, navy or marine corps, the national guard of one of the states or one of the student cadet companies armed and recognized by the national or a state government or not an inmate of any veterans' or soldiers' home who wears the uniform of the Wisconsin national guard or of the United States army, marine or navy, shall be fined not less than \$10 nor more than \$100, or imprisoned not less than 5 days nor more than 30 days, or both. The district attorney of the county in which any such offense is committed shall bring an action in the name of the state against the offender.

(2) Nothing in this section shall be construed as prohibiting persons of the theatrical profession from wearing such uniform in any playhouse or theater while actually engaged in following said profession.

(3) Nothing in this section shall be construed as prohibiting the members of any uniform rank of civic societies from the wearing of such uniforms.

(4) Whenever the national guard, or any part thereof, is called into active service on account of war, insurrection, rebellion, riot, invasion, resistance to the execution of the laws of this state, or of the United States, or on account of public disaster, no civic organization or member thereof shall parade or appear in uniform in the locality where said national guard is in service.

21.17 Penalty for encroachments on military grounds.

The commanding officer of any parade or drill, and the officer in charge of any rendezvous or camp, may cause the ground selected for that purpose to be marked or designated in such a manner as not unnecessarily to obstruct travel on any public highway; and if any person, during the occupation of such ground for military purposes, shall encroach upon such bounds, or enter upon such ground without the permission of such officer, he may be arrested and kept under guard by the order of such officer until the setting of the sun of the same day, or for such reasonable time as may be necessary to procure his arrest by the civil authorities. Any such offender may be arrested and punished as for a breach of the peace. If any person shall intercept, molest, insult or abuse any officer or enlisted man while in the performance of his military duty, he may be immediately arrested and kept confined at the discretion of

the commanding officer of the force engaged in the performance of such duty, until the setting of the sun of the same day on which the offense shall have been committed, or for such reasonable time as may be necessary to procure his arrest by the civil authorities. Any such offender may be arrested and punished as for a breach of the peace.

21.18 Military staff of governor.

(1) The military staff of the governor shall consist of the adjutant general, with a minimum rank of brigadier general; a deputy adjutant general, who may be a general officer; an assistant adjutant general for air, who may be a general officer; a chief surgeon; and not more than 5 aides-de-camp with the rank of colonel; and such other officers as the governor deems necessary. Vacancies shall be filled by appointment by the governor.

(2) No person shall be appointed on the governor's staff who has not had previous military experience.

(3) All staff officers, appointed under sub. (1), except the aides-de-camp who shall hold office at the pleasure of the governor and except the adjutant general whose tenure is governed by s. 15.31, shall hold their positions until they have reached the age of 65 years, unless retired prior to that time by reason of resignation, disability or for cause to be determined by a court-martial legally convened for that purpose. Vacancies among said officers, other than aides-de-camp, shall be filled by appointment from officers of the Wisconsin national guard.

21.19 Adjutant general; powers and duties.

(1) The adjutant general shall be chief of staff, inspector general and quartermaster general. He shall have the custody of all military records, correspondence and other documents relating to the volunteers of this state, at any time in the service of the United States, and of the national guard heretofore or hereafter organized, except such as are required to be filed with the governor. He shall be the medium of military correspondence with the governor and perform all other duties pertaining to his office or prescribed by law. He shall make and transmit to the president the annual returns required by the laws of the United States and submit to the governor a duly certified copy thereof.

(2) The department of military affairs on behalf of the state may lease or rent state-owned lands, buildings and facilities used by, acquired for, or erected for the Wisconsin national guard when not required for use by the Wisconsin national guard. No such lease shall be effective unless in writing and approved by the governor in writing.

(3) The department of military affairs on behalf of the state, upon appraisal by the state chief engineer submitted to the governor in writing, may sell and convey upon such terms as the department of military affairs may determine, with the approval of the governor in writing, any state-owned property acquired or erected for state military purposes, which property is no longer useful to the national guard.

(4) The adjutant general shall be the auditor of military accounts, and all accounts or claims payable from the treasury of the state for military purposes shall be regularly audited by him before payment. He shall cause to be prepared and issued all necessary books, blank books, blanks and forms required by his office for the national guard. All said books, blank books, blanks and forms shall be made to conform as nearly as practicable to those in use in the United States army.

(5) In the absence or incapacity of the adjutant general the deputy adjutant general shall have all the powers and duties of the adjutant general.

(6) The adjutant general as quartermaster general shall also be chief of all logistical services.

(7) The adjutant general as quartermaster general shall have charge of all the military property of the state and shall carefully preserve, repair and account for the same; keep in such manner as the governor directs, and subject to his inspection, an account of all moneys received and expended by him; perform the customary duties of his office, and of the office of chief of all logistical services, and have the custody of all records, returns and papers pertaining to such offices; and the report required of the adjutant general by s. 15.04 (4) shall include a detailed statement of all moneys received and expended by him, of all military property belonging to the state as owner or bailee and remaining on hand at the date of his last report, and such as may have come into his possession after such date, from what sources the same have been received, to whom issued or how expended, and upon whose order, and the condition of the property remaining on hand, also showing who has the possession, and the condition of all military property issued under the law, so far as the same has been reported to him. The transportation of all troops, arms, accoutrements, stores and other property and the preparation for encampments shall be contracted for by him under direction of the governor.

(8) The adjutant general as quartermaster general shall issue all necessary supplies to members and units of the national guard and, subject to the approval of the governor, may

contract for the purchase and transportation of such supplies.

(9) When any military property belonging to the state as owner or bailee is wrongfully held by another person, the adjutant general may bring an action in the name of the state to recover possession of the same or the money value thereof.

(10) The adjutant general may, upon receipt of meritorious requests for state service flags for public use and within the limits of the appropriation made under s. 20.465 (1) (e), furnish such flags without charge to the persons or organizations requesting them.

21.20 Civil service status. All full-time state-paid employes of the department of military affairs, except the adjutant general and the deputy adjutant general, shall be under the classified service.

History: 1971 c. 164.

21.21 Printing report of convention of officers. Upon the request of the adjutant general and upon the order of the department of administration the state printer shall print and deliver to the adjutant general not to exceed 1,000 copies of the report of the annual convention of the officers of the national guard which he shall distribute; but such report shall not exceed 150 pages.

21.26 Issue of transportation to officers. The quartermaster general, subject to the approval of the governor, may issue state transportation to the officers of the national guard for use of schools of instruction, boards of survey and examination, the annual convention of the officers of the national guard, for tours of instruction and inspection, and for use of members of the national guard when traveling solely on official business.

21.30 Chief surgeon; powers and duties. The chief surgeon shall, under direction of the governor, have general supervision of the selection, purchase and issue of all medical and hospital supplies and may, with the approval of the governor, purchase such supplies as may be necessary; he shall make, subject to such approval, such regulations for the government of his department as he may deem necessary; he shall submit to the adjutant general annually on June 30 a report with an itemized statement of the affairs and expenses of his department.

21.32 Physical examinations. The chief surgeon, subject to the approval of the governor, shall provide for such physical examinations and inoculations of officers, enlisted men and

applicants for enlistment, Wisconsin national guard, as may be prescribed by war department regulations, and physicians making such examinations of enlisted men and applicants for enlistment and inoculations of officers, enlisted men and applicants for enlistment shall be compensated at rates not exceeding those allowed to civilian physicians by army regulations for similar services. Compensation for officers' physical examinations shall be made at such reasonable rates as shall be fixed by the chief surgeon.

21.33 Pay department. The quartermaster general acting as paymaster under orders from the governor may draw from the state treasury the money necessary for paying troops in camp or on active service, and shall furnish such security for the same as the state treasurer may direct. The amount due on account of the field, staff or other officers, noncommissioned staff and band, company or enlisted men, not herein enumerated, if any, shall be paid to the person to whom the same shall be due, on the properly signed and certified payrolls.

21.35 Federal laws and regulations; no discrimination. The organization, armament, equipment and discipline of the Wisconsin national guard shall be that prescribed by federal laws or regulations; and the governor may by order perfect such organization, armament, equipment and discipline, at any time, so as to comply with such laws and regulations insofar as they are consistent with the Wisconsin code of military justice. Notwithstanding any rule or regulation prescribed by the federal government or any officer or department thereof, no person, otherwise qualified, shall be denied membership in the Wisconsin national guard because of color, race or creed and no member of the Wisconsin national guard shall be segregated within the Wisconsin national guard on the basis of color, race or creed.

21.36 United States army regulations; constitution. (1) The rules of discipline and the regulations of the armed forces of the U.S. shall, so far as the same are applicable, constitute the rules of discipline and the regulations of the national guard; the rules and uniform code of military justice established by congress and the department of defense for the armed forces shall be adopted so far as they are applicable and consistent with the Wisconsin code of military justice for the government of the national guard, and the system of instruction and the drill regulations prescribed for the different arms and corps of the armed forces of the U. S. shall be followed in the military instruction and practice

of the national guard, and the use of any other system is forbidden.

(2) The governor may make and publish rules, regulations and orders for the government of the national guard, not inconsistent with the law, and cause the same, together with any laws relating thereto, to be printed and distributed in book form or otherwise in such numbers as he deems necessary, and he may provide for all books, blank books, and blanks that may be necessary for the proper discharge of the duty of all officers.

21.37 The Wisconsin code of military justice. The Wisconsin code of military justice as created by Chapter 20, laws of 1969, shall govern the conduct of all members of the national guard and any other military force organized under the laws of this state. The revisor of statutes shall not print the Wisconsin code of military justice in the statutes.

Note: Chapter 20, laws of 1969, contained numerous explanatory notes which may be found in Ch. 20 as printed in the 1969 session law volume.

Limitation of court martial to service connected crimes. 1970 WLR 172

21.38 Uniform of Wisconsin national guard. The uniform of the national guard shall be that prescribed by regulations for the corresponding branch of the United States armed forces.

21.42 Status, powers and property of units. (1) Every federally recognized company sized unit, when such organization is perfected, shall without any further proceeding constitute a corporate body to be known by the name by which such company is officially designated under the military laws and regulations of the state, and shall possess all the powers necessary and convenient to accomplish the objects and perform the duties prescribed by law.

(2) The members of such company sized unit in good standing and no others shall constitute the members of such corporation and shall elect 3 trustees who shall manage and administer the business of such corporation. The trustees shall elect one of their number president, and one vice president and shall also elect a secretary.

(3) Each such company sized unit may take by purchase, devise, gift or otherwise and hold property and with the approval of the adjutant general sell, convey and mortgage such property so long as such company sized unit is an existing unit and a part of the national guard of Wisconsin. All such property shall be in the custody and control of the trustees.

(4) Whenever any such company sized unit shall be disbanded as provided by law such corporation shall cease to exist and all property

belonging to it shall become the property of the state.

21.43 Commissions and rank. The governor shall issue commissions to all officers whose appointments are approved by him. Every commission shall be countersigned by the secretary of state and attested by the adjutant general and continue as provided by law. Each officer so commissioned shall take and file with the department of military affairs the oath of office prescribed by the constitution. All commissioned officers shall take rank according to the date assigned them by their commissions, and when 2 of the same grade rank from the same date, their rank shall be determined by length of service in the national guard, and if of equal service then by lot.

21.47 Examinations for promotion or appointments. The governor may order any subordinate officer or person nominated or recommended for promotion or appointment to be examined by any competent officer or board of officers, designated in orders for that purpose, as to his qualifications for the office to which he may be recommended or appointed, and may take such action on the report of such examining officer or board of officers as he deems to be for the best interests of the service. The governor may also require the physical examination provided for admission to the United States army.

21.48 Pay. (1) Each officer and enlisted man on active duty in the state under orders of the governor on a state pay basis shall receive the base pay and allowances of an officer or enlisted man of equal rank in the corresponding branch of the U.S. armed forces except that the base pay so provided shall not be less than \$20 per day.

(2) The governor may, by orders, duplicates of which shall be filed with the secretary of state, fix the pay of any member of his staff, or other members of the national guard for any special service under orders.

(3) The governor may order, with their consent, to active duty in the department of military affairs, any departmental officers of his staff, including the adjutant general and the deputy adjutant general, and while so assigned shall receive the pay, but not the allowances, of an officer of equal grade in the armed forces of the United States.

History: 1973 c 279

21.50 Military property accountability.

(1) Each commanding officer to whom state or federal military property is issued shall execute

to the state a bond, with such sureties and in such form and amount as the adjutant general shall approve, conditioned for the faithful preservation and care of all such arms, accoutrements, moneys, or stores, as shall be by him received, to indemnify the state against loss by misuse or misapplication or any part thereof by himself or any other person; to account for all of the same according to law, and to deliver the same to any officer lawfully entitled thereto, on demand, and to pay all sums lawfully appraised for losses or damages. Thereupon the quartermaster general shall issue such arms, accoutrements and stores as the governor shall by order direct, which shall be as nearly as possible like those in use in the armed forces of the United States.

(2) The unit commander is the legal custodian of the money, property and effects of any company sized unit or detachment of the national guard, whether said property is owned by said unit or detachment or its members collectively, or has been issued to it or any of its officers, for its use by state or United States authority, and may sue for and recover possession of the same, whenever wrongfully withheld from his custody or the custody of the unit or detachment.

(3) The adjutant general, with the approval of the governor may obtain and pay for out of the annual military appropriation an adequate indemnity bond covering all of the officers of the Wisconsin national guard responsible to the state for moneys and military property.

(4) Each company commander, with the approval of the adjutant general, may employ an armorer to assist in the proper care of military property for which he is accountable.

21.51 Discharge of officers. Any officer may be discharged by the governor pursuant to the Wisconsin code of military justice or upon resignation or disability preventing full discharge of the duties of his office.

21.52 Authority to administer oaths. All officers of the national guard may administer oaths of enlistment.

21.54 Resignation of officer. A commissioned officer may resign his commission to his immediate commanding officer, in writing, who shall promptly forward the same through military channels to the adjutant general. The governor shall, by order, accept or reject the same, and, if accepted, fix the date of its taking effect. No resignation shall take effect except as so ordered.

21.56 Military supplies, board of inspection, obsolete property. (1) All military supplies issued to any officer shall be at all times subject to inspection by the inspector general, chief of ordnance, or officer designated by the governor for such purpose, who shall report the true condition thereof. The governor may at any time require repairs to be made or defects or losses supplied; and he may, at any time, convene a board of survey to condemn quartermaster's and ordnance stores and supplies or to appraise the loss sustained by the state from injury, want of repair, defects or losses in any such quartermaster's or ordnance stores issued to any officer; which board, after reasonable notice to him and hearing his explanations or objections, shall appraise the same and make report, and the amount so appraised, when approved by the governor, shall be conclusively deemed the amount of such officer's liability on his bond therefor up to the date of such report; and he shall be compelled to pay the same into the general fund of the state treasury. The governor shall cause suit to be brought whenever necessary to make good any injury, want of repair or loss of any quartermaster's or ordnance stores or supplies or other state property. But if any such stores or property belonging to the state shall be lost, destroyed or damaged, without the fault or neglect of the officer responsible for the same, such officer and his sureties may, by order of the governor, on the report of a board of survey or other satisfactory proof, be relieved of all liability therefor.

(2) Whenever any chattel property of the state in the official custody of the quartermaster general shall become unserviceable or unsuitable, or is no longer required for military purposes, the quartermaster general may, upon recommendation of a board of survey and subject to the approval of the governor, dispose of and sell at public sale any such property; such sale to be conducted and the proceeds applied as follows:

(a) Notice of the time and place of such sale and of the property to be sold shall be published as a class 2 notice, under ch 985.

(b) At least 10 days before such sale a written notice containing a brief description of the property, its location and an estimate of its value, shall be given to each principal officer of the state, including the department of health and social services and the board of regents of the university of Wisconsin system. If any such officer or institution can use any such property to advantage, he or it shall be allowed to purchase the same or any part thereof at any price deemed reasonable by the quartermaster general.

(c) The quartermaster general shall make and preserve an accurate account of each sale which shall be subscribed by the vendee; and the proceeds shall, within 10 days after the receipt thereof, be paid into the revolving appropriations provided in s. 20.465 (1) (g).

History: 1971 c 100 s 23.

21.57 Delivery of property on resignation or dismissal; custody in case of death. Whenever any officer responsible for state property shall resign, be promoted, dismissed or discharged, he shall deliver the quartermaster's and ordnance stores in his possession or for which he is responsible, only to the quartermaster general, or to some person duly appointed to receive the same, who shall give such bond for its safe-keeping while in his possession as the governor may direct, and take duplicate receipts therefor, one of which he shall file with the quartermaster general. A discharge shall not be issued until such officer has received certificates of nonindebtedness from the quartermaster general. His successor in office shall, before receiving such property, execute and file a bond as hereinbefore provided. In case of the death of any such officer the next in command shall immediately take charge of such quartermaster's and ordnance stores and supplies and deliver the same to the quartermaster general or some person appointed to receive the same; or, if commissioned in place of said deceased, he shall execute and file a like bond, and give duplicate receipts therefor, one of which he shall file as aforesaid.

21.59 Issue of subsistence; accounts. The quartermaster general, during the encampments or active service of the national guard, shall issue subsistence based upon the United States army ration, to the enlisted men. The subsistence accounts of the quartermaster general shall be audited by such board of officers as the governor may direct.

21.60 Discharge of enlisted men. Enlisted men shall be discharged as provided in the laws and regulations of the United States governing the national guard.

21.61 Armories. (1) The board of supervisors of any county or the common council of any city in which one or more companies of the national guard may be located, may erect or purchase a suitable armory for the purpose of drill and for the safe-keeping of the arms, equipment, uniforms and other military property furnished by the state, and for public meetings and conventions, when such use will not interfere with the use of such building by the national

guard; plans and specifications for which armory shall be inspected and approved by the governor, adjutant general and quartermaster general, who shall file with the board of supervisors of such county, or the common council of such city, a certificate of such inspection and approval prior to the erection thereof.

(2) The necessary care, fuel and lights of such armories, shall be paid by the company or companies occupying the same; provided, no charge for rent shall be made to said company or companies.

(3) The board of supervisors of any county or the common council of any city in which any such company of the national guard may be located, may purchase land and build armories in the same manner as they are now authorized by law to build other county or city buildings, and when unable to agree upon the price of land with its owner may, if in their opinion necessary, appropriate land for the purpose of building armories in the same manner as they are now authorized by law to appropriate real estate for other county or city buildings. In case however a city or county shall have aided in the erection of said armory and the company or companies of the national guard for which said armory was erected shall at any time be disbanded, then such armory shall become the property of said city or county in which said armory is erected.

(4) Such armory, when erected or purchased, shall be under the control and charge of the governor, the quartermaster general and commanding officer of the company or companies of the national guard for which it has been provided, and the said commanding officer shall cause to be deposited therein, all arms, uniforms and equipment received from the governor, the quartermaster general and commanding officer of the company or commanding officer may make such orders, rules and regulations as they deem proper for the observance of all officers and persons having charge of such armories or occupying any part thereof.

(5) Whenever any county, city, town or village shall erect a building as a memorial to the soldiers, sailors and marines who served in the late war against Germany and its allies and shall make provision therein for the accommodation of one or more companies of the national guard having no regularly established armory, the governor, adjutant general or other state officers having control of armory accommodations and regulations shall, whenever practicable, rent the armory or armories provided in such memorial building for the use of companies of said national guard.

21.612 Transfer of lands for military purposes. Any county, city, town or village may transfer land or may acquire land for the purpose of transferring the same, by gift or otherwise, to the state for state military purposes, and any such transfers or acquisitions heretofore made for such purposes are validated.

History: 1973 c. 90.

21.616 Facilities for administration and training. The department of military affairs is authorized and directed, when contributions therefor are made available by the federal government under the national defense facilities act of 1950 or any act or acts amendatory thereof or supplementary thereto, to expand, rehabilitate, equip or convert facilities owned by the state and to acquire, construct, expand, rehabilitate, equip or convert additional facilities. The department of military affairs may on the part of the state accept such federal contributions in the manner prescribed by federal law or regulation, and may accept on behalf of the state the lawful terms and conditions thereof. The department of military affairs shall take such steps and have all the functions and powers necessary, consistent with the appropriation therefor, to acquire contributions under any such federal act and to undertake and complete any such project in conformity with the applicable federal act and this section.

21.62 Rules for issuance of state property to bands. The governor may, by orders, prescribe and establish such rules and regulations for the issuing of state property to bands and the giving of security therefor, the mustering, inspection, property and other returns, as he deems proper.

21.63 Grounds for mustering out of units. Whenever any company sized unit or detachment shall fall below the minimum in membership, become lax in discipline, negligent in drill or other duties, insubordinate, or its members lose interest in their organization, or when, upon inspection, it shall appear to be not properly organized or conducted, or when musters and returns shall not be made, the governor may muster out the same, and may direct all arms, accoutrements and stores to be delivered up by whomsoever held. Any person, who is not a member in good standing, retaining arms or property belonging to the state, as owner or bailee, in his possession shall forfeit not less than \$25 nor more than \$100.