

CHAPTER 21.

WISCONSIN NATIONAL GUARD AND NAVAL MILITIA.

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NAVAL MILITIA.

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21.01 Organization of militia. The organized militia of this state shall be known as the "Wisconsin National Guard" and shall consist of not more than forty companies of infantry, one battery of artillery, one troop of cavalry, an adjutant general's department, a quartermaster's and ordnance department, a subsistence department, a medical department, a pay department and such other officers as may be required. Provided, that the governor shall have power to alter, divide, transfer, consolidate, disband, or reorganize any organization; to create new organizations, and to enlist, organize and prescribe regulations to govern a reserve corps for the organized militia so as to conform in quota of troops and arm or kind of service to any organization or system now or hereafter adopted by the regular army or prescribed by order of the secretary of war for the government of the organized militia.

21.02 Temporary military force. In the event of all or part of the Wisconsin national guard being called into the service of the United States, the governor is hereby authorized to organize and equip a temporary military force equal in size and organization to that called from the state, provided, that upon the return to the state of the troops

called into the service of the United States, the temporary military force shall be disbanded.

21.025 State guard authorized. (1) **AUTHORITY AND NAME.** Whenever any part of the national guard of this state is in active federal service, the governor may organize and maintain within this state during such period, under such regulations as the secretary of war of the United States may prescribe for discipline in training, such military forces as the governor may deem necessary to defend this state. Such forces shall be composed of officers commissioned or assigned, and such able-bodied male citizens of the state as shall volunteer for service therein. Such forces shall be additional to and distinct from the national guard and shall be known as the "Wisconsin State Guard". Such forces shall be uniformed.

(2) **ORGANIZATION; RULES AND REGULATIONS.** (a) The governor may prescribe rules and regulations not inconsistent with the provisions of this section governing the enlistment, organization, administration, equipment, maintenance, training, and discipline of such forces, except that such rules and regulations, in so far 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 individual, firm, association, or corporation by reason of such membership.

(b) The governor is authorized to form an aviation unit of the state guard and to formulate the rules and regulations therefor and to prescribe the duties thereof consistent with the functions of the state guard. The aviation unit of the state guard shall be under the command of a lieutenant colonel who shall be designated as a senior staff officer and who shall be appointed by the governor and who shall work in conjunction with the governor, the adjutant general, and the other staff officers of the state guard. There shall be at least one state guard aviation squadron for each battalion of the state guard.

(c) 1. Enlisted men while on active duty under orders of the governor, or at field encampments of instruction shall receive a subsistence allowance plus pay at the following rate: Sergeants (all classes), \$100 per month; corporals, \$85 per month; privates, first class and privates, \$75 per month.

2. When enlisted men are called into state service, said payments shall be made at such proper portion of the monthly pay for each day of actual service on such duty or enroute to and from the home station. Subsistence shall be furnished in addition to the pay herein provided. If such enlisted men are engaged in such service for more than 30 days, they shall receive thereafter in addition to such subsistence allowance the following rate of pay: Sergeants (all classes), \$125 per month; corporals, \$112.50 per month; privates, first class and privates, \$100 per month.

(3) **REQUISITIONS; ARMORIES; OTHER BUILDINGS.** For the use of such forces, the governor may requisition from the secretary of war such arms and equipment as may be in possession of and can be spared by the war department, and he may make available to such forces the facilities of state armories and their equipment and such other state premises and property as may be available and may, through the adjutant general, rent or lease buildings or parts of buildings and grounds for armory purposes or take possession of like premises leased by any national guard organization, paying rental therefor out of funds appropriated under section 20.03 (1) (d). 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 adjutant general 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, in his discretion, 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.

(11) **ARTICLES OF WAR; FREEDOM FROM ARREST; JURY DUTY.** (a) Whenever such forces or any part thereof shall be ordered out for active service the articles of war of the United States applicable to members of the national guard of this state in relation to court martials, their jurisdiction, and the limits of punishment and the rules and regulations prescribed thereunder, shall be in full force and effect with respect to the Wisconsin state guard.

(b) No officer or enlisted man of such forces shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he is ordered to attend for military duty and no officer or enlisted man of such forces shall be held criminally liable or liable for damages or for any forfeiture on account of any act performed by him in good faith pursuant to any reasonable order of a superior officer or any applicable general order. Any order of a superior officer shall be deemed prima facie reasonable except in cases of treason or felony in which cases (other than homicide or assault) the burden shall be on the guardsman to establish that such order was reasonable under the circumstances. Nothing herein shall constitute a defense to any criminal or civil action for a negligent act. Every officer and enlisted man of such forces shall, during his service therein, be exempt from service upon any posse comitatus and from jury duty.

(12) **SEVERABILITY.** If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

(13) **SHORT TITLE.** This section may be cited as the "State Guard Act." [1941 c. 21; 1943 c. 441, 451; 1945 c. 137]

21.03 Distribution of arms. The governor is authorized to receive and distribute, according to law, the quota of arms and military equipments 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.

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 section 46.05, subsection (5), of the statutes.

(2) The state of Wisconsin hereby grants to the United States the right to use the state encampment grounds known as the "Wisconsin Military Reservation," near Camp Douglas, in Juneau county, exclusive of buildings thereon, for infantry and artillery practice, whenever such use does not conflict with state control, care and improvement by the proper state authorities and its use by the militia of the state, without cost to the United States so long as said grounds are used and owned by this state for encampment purposes.

21.05 Term of enlistment; physical examination of men. Every man who shall have been mustered or enlisted in the national guard shall be held to service therein for three years, unless sooner discharged as herein provided. The governor may require all men who enlist in the national guard to first pass the physical examination that is required for admission to the United States volunteer army.

21.06 Exemptions from poll taxes and jury duty. Every member of the national guard shall be exempt from jury duty and every member who shall be honorably discharged after five years' service, or by reason of injury received in the line of duty, shall be forever so exempt, and also exempt from military duty in time of peace. The proper discharge certificate shall be conclusive evidence of the right to such exemption.

21.07 Decoration for long, faithful service. For not less than fifteen years' service a bronze medal may be issued to all officers and enlisted men eligible to receive a decoration for long and faithful service. The issue shall be made under such regulations as the governor may prescribe.

21.08 State militia; pension; audit exception. (1) A pension, not exceeding twelve dollars per month, payable quarterly, may be paid to either the widow, minor children or dependent parent, of any member of the state militia who may die from injuries received, or who may be killed while in active service under orders of the governor.

(2) All claims for pension under this section shall be made to a state military board, consisting of the adjutant general, the governor and state treasurer, who shall establish rules governing the filing of such claims, thoroughly investigate all circumstances connected with the death of the member of the state militia, whose death is the basis of a claim for pension, and this state military board may, after July 1, 1909, upon satisfactory evidence submitted or obtained, grant the pension hereinbefore provided for.

(3) No pension granted under this section shall be granted for a longer period than five years, but may be renewed for a further period of five years upon satisfactory evidence of the dependence of the pensioner.

(4) The state military board shall have power to revoke any pension granted under this section when it shall appear to the satisfaction of said board that the pensioner is no longer dependent.

(5) The provisions of this section shall not apply to any member of the state militia while in the service of the United States in case of war or under the orders of the president of the United States.

21.085 [*Repealed by 1923 c. 345 s. 1*]

21.09 Review or parade; encampments; transportation of troops. The governor may order all or any portion of the national guard, and the commander of any organization thereof may order the whole or any portion of his command, stationed in any city, to assemble for instruction, parade, review or exercise, at such times and places and for such length of time as he may think proper, or make any other orders relating thereto; provided, no organization shall be ordered to, or shall leave the limits of the county in which its station is located except by permission of the commander in chief. The governor may also order the national guard, or any part thereof, into encampments for military instruction, not to exceed ten days in any year, and may fix the time and place for such encampment, provided that no troops shall be transported on Sunday except for active military service, in cases of necessity. Field and staff officers when so ordered into camp may be furnished, under such conditions as the governor may order, with suitable mounts. Any troops when so ordered into camp, shall be furnished by the state with transportation, tents and camp equipage, and such other reasonable and necessary provision for the proper care and preservation of the health of the men, as may be ordered by the governor.

21.10 Advanced rifle practice camp. The governor shall have authority to order, not to exceed one of each in any one year, a camp for advanced instruction in rifle practice and competition, a field camp of instruction for officers, and a field camp of instruction for non-commissioned officers; the duration of any such camp not to exceed six days, and the attendance to be limited to such officers and enlisted men as the governor may direct. The quartermaster-general shall, subject to the approval of the governor, furnish necessary transportation to the officers and men and provide for the proper maintenance of the camps. Officers and men detailed for duty at these camps shall receive such pay as the

governor may direct; provided, such pay shall not exceed the pay of officers and men at the annual encampments.

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 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 be 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 be 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) If any company commander or commissioned officer, receiving such order, shall fail to give such notice or shall fail to appear at the time and place ordered, prepared for duty, he shall be cashiered and be further punished by fine and imprisonment as a court-martial may judge; or if any enlisted man, after being duly notified, shall refuse or neglect to appear at the time and place of rendezvous, properly prepared for duty, or fail to obey any order issued in such case, he shall be deemed a deserter, and punished by a fine of not less than fifty dollars nor more than three hundred dollars, or be imprisoned in the county jail not exceeding six months, or both; and any person who advises or endeavors to persuade any officer or soldier to refuse or neglect to appear at such place or obey such order, shall be punished by imprisonment in the county jail not exceeding six months, or a fine not exceeding one thousand dollars, or both. But physical incapacity to perform military service, dangerous sickness in the family of any such officer or enlisted man, or absence at the time such notice was served, when such absence was not intended to avoid such notice or service, and when he shall join for duty on his return, if his command is still in service, shall excuse such fault.

21.12 Exemption from civil process. On days of military parade the national guard, when called out by proper authority, and performing military duty, shall be considered under military discipline, and performing such duty from the rising to the setting of the sun, or if performing military duty under orders after the setting of the sun, then until the rising of the sun on the next day; and no officer or enlisted man shall be subject to arrest on any civil process during the time aforesaid.

21.13 Defense of members of guard. If any member of the national guard or the state guard shall be 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 secretary of state and paid out of the state treasury and charged to the legal expense appropriation provided in section 20.08 (2). [1943 c. 441]

21.14 Penalty for injuries and threats because of enlistment. 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, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars, or by imprisonment in the county jail for not less than ten days nor more than twenty days.

21.15 Penalty for retention of military property. No person shall retain at any time any arms, equipments or military stores of any kind belonging 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, equipments, clothing or military stores belonging to the state for his private use. Any person violating any provisions of this section shall forfeit not less than twenty dollars nor more than fifty dollars, such forfeiture to be recovered in action brought in the name of the state on the complaint of any citizen. It shall be the duty of the district attorney of the proper county to prosecute every such action.

21.16 Penalty for unauthorized wearing of uniforms. (1) Any person not regularly enrolled in the United States army 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 shall wear the uniform of the Wisconsin national guard or of the United States army, marine or navy, shall be punished for each such offense by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than five days nor more than thirty days, or by both fine and imprisonment. 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 be appointed by him and shall consist of one adjutant general, with the rank of brigadier general, adjutant general, one chief surgeon, one inspector of small arms practice and five aides-de-camp, each with the rank of colonel, two quartermasters, each with the rank of major, two quartermasters, each with the rank of captain, and such other officers as he may require.

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

(3) All departmental staff officers of the Wisconsin national guard, heretofore or hereafter appointed, shall hold their positions until they shall have reached the age of sixty-four 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 shall be filled by appointment from the 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 an office in the capitol and keep it open during the usual business hours. 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 on or before the thirtieth day of June in each even-numbered year make a report to the governor, to be laid before the legislature, of all the transactions of his department since the last biennial report, setting forth the number, strength and condition of the national guard, and such other matters as he may deem important. 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. [1945 c. 580]

21.20 Auditor of military accounts. 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.

21.21 Printing report of convention of officers. Upon the request of the adjutant general and upon the order of the director of purchases the state printer shall print and deliver to the adjutant general not to exceed one thousand 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 one hundred and fifty pages. [1931 c. 45 s. 6]

21.22 Traveling libraries. The adjutant general, subject to the approval of the governor, may purchase a traveling library of military textbooks for each regiment of infantry.

21.23 Quartermaster-general, powers and duties of; bond. The quartermaster-general shall also be commissary general and chief of ordnance.

21.24 Quartermaster's accounts. The quartermaster-general shall have charge of all the military property of the state, and carefully preserve, repair and account for the same; keep in such manner as the governor shall direct, 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 commissary general and chief of ordnance, and have the custody of all records, returns and papers pertaining to such offices; and he shall on or before the first day of October in each even-numbered year render a report to the governor, to be laid before the legislature, giving a detailed statement of all moneys received and expended by him, of all military property belonging to the state 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.

21.25 Issue of arms, accoutrements, ordnance stores and supplies. The quartermaster-general shall, subject to the approval of the governor, issue to the commanding officer of each regularly organized company, troop, battery, and sanitary detachment, such arms, accoutrements, uniforms, quartermaster's and ordnance stores, supplies for rifle practice and such other supplies, drill regulations, textbooks, blanks and papers, and stationery as may be necessary, taking receipts and causing proper returns to be made for the same. The quartermaster-general shall, subject to the approval of the governor, provide by purchase or by hire such public animals and motor transport as are necessary for the proper training of any military unit at home station and field camp of instruction and for the care and keep of such public animals and transport. The quartermaster-general, subject to the approval of the governor, may contract for the purchase and transportation of the supplies provided for in this section.

21.26 Issue of transportation to officers. The quartermaster-general, subject to the approval of the governor, shall have authority to 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.

21.27 Issue of ordnance stores to schools and colleges. The quartermaster-general, subject to the approval of the governor, may issue ordnance stores in possession of the state, to such colleges and schools therein applying for the same for the purpose of instruction in military science, in such quantities as he may deem proper. But no ordnance stores shall be issued otherwise than as provided in this act except in case of war, insurrection or imminent public danger. The quartermaster-general shall require the persons to whom such issues are made to hold the property subject to inspection at any time and he may also require it to be kept insured at the expense of the persons to whom issued for such amount as he may direct.

21.28 Medical department. The medical department of the national guard shall be organized as follows: The chief surgeon shall be the head thereof and shall be paid a salary of one thousand dollars annually and shall be allowed his necessary expenses when serving under orders. There shall be as many surgeons as there are regiments, three assistant surgeons for each regiment of infantry, and one for each squadron of cavalry,

battalion of field artillery and separate battalion; such surgeons to have the rank of major, assistant surgeons to have the rank of first lieutenant mounted for the first five years of service and that of captain mounted after five years' service. A hospital corps may also be organized by order of the governor.

21.29 Medical officers. All medical officers shall be commissioned by the governor upon the recommendation of the chief surgeon, or otherwise, and any vacancies shall be filled by the promotion of the medical officer next in rank unless such promotion be waived or the governor order otherwise. No person shall be commissioned in the medical department until he shall have passed such examination as the chief surgeon may direct.

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 the thirtieth day of June a report with an itemized statement of the affairs and expenses of his department.

21.31 Duties of surgeons and assistants. The duties of the surgeons and the assistant surgeons shall be such as may be provided for by the United States or state regulations; they shall act as examiners of applicants for admission to the national guard, instruct the hospital corps, and advise commanding officers in sanitary matters. They may, by order of the governor, be assigned to duty with such commands as the chief surgeon may recommend.

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 chief quartermaster acting as paymaster under orders from the governor, shall have authority to 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 pay rolls.

21.34 Brigade organization. The national guard may, at the discretion of the governor, be organized into brigades. The officers of a brigade shall be such as provided by the laws of the United States governing the military forces.

21.35 Federal laws and regulations control. The organization, armament, and discipline of the Wisconsin national guard shall be the same as that which is now, or may hereafter be prescribed for the regular and volunteer armies of the United States; and the governor may by order perfect such organization, armament and discipline, at any time, so as to comply with the laws, rules and regulations that may be prescribed for the regular and volunteer armies of the United States; and the governor shall have power to fix and from time to time to alter the maximum number of enlisted men which shall form part of any organization of the Wisconsin national guard; provided, that such maximum shall not exceed the statutory maximum prescribed for a like organization of the regular army.

21.36 United States army regulations; constitution. (1) The rules of discipline and the regulations of the United States army, shall, so far as the same may be applicable, constitute the rules of discipline and the regulations of the national guard; the rules and articles of war established by congress and the war department for said army, shall be adopted so far as they may be applicable 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 United States army, 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, from time to time, 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 may deem necessary, and he shall have authority to provide for all books, blank books, and blanks that may be necessary for the proper discharge of the duty of all officers.

(3) Each company or band may adopt such constitution, rules or by-laws, not inconsistent with the constitution and military regulations of the United States and of this state, as a majority of all the members thereof may approve; and may therein provide fines and penalties for any violation thereof, which, for absence or refusal to appear for instruction or parade, shall not exceed five dollars, nor be less than one dollar; and all such fines and penalties shall be collectible in an action in the name of the commanding officer as plaintiff before any competent court or magistrate. Such constitution, rules or by-laws shall become operative only when approved by the governor.

21.37 Courts-martial. (1) General courts-martial legally convened for the trial of members of the Wisconsin national guard shall have authority, subject to approval by the governor, to impose fines not to exceed twenty-five dollars in any one case and to punish by imprisonment in a county jail not to exceed thirty days, and the sheriff or other officers shall aid in the enforcement of such sentences in the same manner as in other cases.

(2) All processes and sentences of Wisconsin national guard courts-martial convened and held in accordance with the act of congress, known as the "National Defense Act," and war department regulations governing the national guard, shall be executed by the sheriff or other civil officer having local jurisdiction, and return thereof shall be made by such sheriff or officer to the court-martial issuing or imposing the same. Nothing herein contained shall deprive the governor of any existing right of approval or disapproval of sentences by courts-martial.

21.38 Uniform of Wisconsin national guard. The uniform of the national guard shall be that of the United States army.

21.39 Infantry organization. The infantry shall be organized into regiments as provided by the laws and army regulations of the United States. Each regiment may have one band. All companies not needed to complete the regiments of infantry may, at the discretion of the governor, be organized into a separate battalion.

21.40 Word "company" defined. Whenever the word "company" is used in a military sense in this chapter, it shall be understood and construed to mean a company of infantry, troop of cavalry, or battery of artillery.

21.41 Formation, organization and mustering of companies. Whenever sixty-five persons, resident and liable to military duty, in any county shall subscribe and present to the governor an application for the organization of a military company, he may, at his discretion, detail an officer to muster such company and perfect the organization thereof; provided the whole number of companies shall not exceed the number fixed in section 21.01. Such officer shall forthwith fix a time and place of meeting for the purpose of such muster and organization and give not less than ten, nor more than thirty days' notice thereof, by publication in some newspaper published in the county or by posting notices in three or more public places therein. Such officer shall preside at such meeting, which may be adjourned from time to time, and shall provide a muster roll which each person so volunteering, who shall be accepted as competent by such officer, shall sign; and such signature and the muster roll shall be conclusive evidence that such volunteer is subject to all the obligations imposed by law upon the members of the national guard. When at least fifty persons shall have been so mustered in, they shall proceed at such meeting to elect by ballot, under the superintendence of such officer, the several officers required by law, and a majority shall be necessary to a choice. After such election the name and rank of such officers shall be entered on the muster roll and the officer shall certify to and forward the same, together with a copy of the proceedings and notice of such meeting, to the adjutant general. If it shall appear that such organization shall have been perfected and the officers elected according to law, and the governor shall approve such organization and officers, such company shall be enrolled as a part of the national guard, and the officers thereof be commissioned. If the governor disapprove such organization, he may, at his discretion, direct another meeting to perfect the same. If he disapprove any officer so elected he may direct another meeting or meetings to elect another instead, or may fill the position in such manner as he may deem best.

21.42 Status, powers and property of company. (1) Such company, 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 military company in good standing and no others shall constitute the members of such corporation and shall elect three 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 may take by purchase, devise, gift or otherwise and hold property, both real and personal, and with the approval of the adjutant general sell, convey and mortgage such property, so long as such company is an existing company and a part of the national guard of Wisconsin. All such property shall be in the custody and control of the trustees hereinbefore provided for.

(4) Whenever any such company 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 of Wisconsin. [1937 c. 266]

Note: No person outside of the military or- corporation authorized by this section. 26
ganization may be elected as a trustee of the Atty. Gen. 132.

21.43 Commissions and rank. The governor shall issue commissions to all officers whose appointment shall be 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 adjutant general 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 two 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.

21.44 United States army officer may be colonel. The governor of the state may commission any retired United States army officer who holds the position of professor of military science and tactics in the state university, or at any seminary or college within this state maintaining military instruction and drill in its course of study, and having not less than one hundred students on its drill roll at any one term, to the rank of colonel of infantry; said commission, however, shall not entitle such professor of military science and tactics to command in the state militia.

21.45 University cadet majors brevetted upon examination. The students of the University of Wisconsin who shall have completed four years of military drill and instruction, and who shall have been commissioned by the university to the rank of major or higher and who shall have served as such for the term of one year, shall be eligible to appointments as brevet second lieutenants in the Wisconsin national guard without pay or remuneration subject to assignment to duty with the Wisconsin national guard, at the discretion of the governor, during the next five years succeeding such appointment providing that before such assignment they shall first pass the prescribed examination before a board of officers of the Wisconsin national guard.

21.46 School for officers. Once each year a school for all the officers of the Wisconsin national guard shall be held, on the approval of the governor, and at such time and place as he may order. This school shall be held not to exceed two days. Attendance shall be compulsory.

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 may deem 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 Officers' pay. (1) Each officer while on active duty in the state under orders of the governor other than at encampments of instruction shall receive the pay and allowances of an officer of equal rank in the United States Army, and shall furnish his own subsistence.

(2) The quartermaster-general may, under such regulations as may be approved by the governor, issue to each officer on the active list of the Wisconsin national guard, the service uniforms, arms, and equipments prescribed by equipment manuals and regulations for officers of similar grade in the United States army.

(3) 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.

(4) Any mounted officer not providing himself with and using a proper mount while on duty shall be entitled to dismounted pay only.

21.49 Compensation of inspecting officer. The compensation of the inspecting officer, making the annual inspections, shall be six hundred dollars per annum, which shall be in full for all expenses incurred by him.

21.50 Military property accountability. Each commanding officer to whom state military property is issued shall execute to the state a bond, with such sureties and in such form as the governor shall approve, and in a sum not less than double the value of such arms, accoutrements or stores furnished, 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 of 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 army of the United States.

(2) The commanding officer for the time being is the legal custodian of the money, property and effects of any company, band, regiment or brigade of the national guard, whether said property is owned by said company, band, or regiment or brigade, 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 company, band, regiment or brigade.

(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 order of the governor upon recommendation of any general court-martial after due trial 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 shall have authority to administer oaths of enlistment.

21.53 Retirement of officers. All commissioned officers who may have heretofore served or who shall hereafter serve five years in the national guard, may, upon honorable retirement from the service, be carried on a roll to be established and maintained in the office of the adjutant general, which roll shall be designated the "Wisconsin National Guard Retired List" and they shall be entitled to wear, on occasions of ceremony, the uniform of the highest rank which they have held. The officers so carried on such roll may be eligible for detail or appointment by the governor, but when so detailed or appointed shall be considered as of the rank to which they have been detailed or appointed, which rank they shall hold during the period of such detail or appointment, and in case of a second retirement from active service, if the rank held by them at the time be higher than the one held by them on their first retirement, they shall be entered on said list as of the highest rank held by them. No officer whose name shall appear on said retired list shall be entitled to receive any pay or emolument whatever from the state during the time he so remains on said list, and in case he be reappointed, recommissioned or detailed therefrom, he shall be entitled to the pay and allowance provided by law for officers of the rank to which he may be detailed or appointed.

21.54 Resignation of officer; vacancies. A commissioned officer may resign his commission to his immediate commanding officer, in writing, who shall properly forward the same 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. Vacancies caused by death, resignation, promotion, discharge or removal of any company officer shall be filled by the promotion of the officer of such company next in rank, subject to the approval of the governor, or they may be filled by appointment by the governor.

21.55 Lost civil war commissions. Whenever satisfactory evidence shall be furnished to the governor by any officer of any Wisconsin regiment which served in the civil war that his commission from this state, as such officer, has been lost or destroyed without his fault, the governor may furnish a suitable certificate of the facts shown by the records of said commission.

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 sus-

tained 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 given in such manner as he believes will be most likely to attract the attention of probable purchasers.

(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 state department of public welfare, the board of normal regents and the board of regents of the University of Wisconsin. 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 ten days after the receipt thereof, be paid into the common school fund.

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.

21.58 Pay of men at encampments and in active service. Enlisted men while on active duty in the state under orders of the governor, other than at encampments of instruction, shall be paid as follows: Each master sergeant, technical sergeant, first sergeant, staff sergeant, and warrant officers, two dollars and twenty-five cents per day; each sergeant, two dollars per day; each corporal, one dollar and seventy-five cents per day; each private, first class, one dollar and sixty cents per day; each private, one dollar and fifty cents per day; said payments to be made for each day's actual service on such duty or en route to and from the same, and to include all other allowances not herein provided for, except subsistence which shall be furnished in addition to the pay herein provided for. When men called into state service and remaining for thirty days or less, such enlisted men shall be subsisted and paid as provided in this section. If engaged in such service for more than thirty days they shall receive thereafter the pay and rations established by law for the United States army.

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, equipments, 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 equipments received from the governor, the quartermaster-general and commanding officer of the company or commanding officer may from time to time make such orders, rules and regulations as they may 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.

Note: This section is applicable to armories financed under ch. 395, Laws 1939. 28 Atty. Gen. 663.

21.615 Armory board; powers and duties; purposes and uses of armory. (1) (a) There is created the Wisconsin state armory board which is hereby made a body politic and corporate to consist of 5 members. The adjutant general, the chief quartermaster, and the state engineer shall at all times be ex officio members of the board. The remaining 2 members shall be appointed by the governor from the active list of officers of the Wisconsin national guard or its successor, and any vacancy arising among the 2 members appointed by the governor shall be filled by appointment by the governor in like manner. The adjutant general of Wisconsin shall be chairman of the board. The board shall elect from its own membership a secretary and a treasurer and the board may change such officers from time to time.

(b) The board shall act by resolution adopted at a meeting thereof called and held in accordance with such by-laws or rules and regulations as the board may adopt for the regulation of the conduct of the affairs thereof. Three members of the board shall constitute a quorum for the transaction of business at any meeting which has been duly called and convened, in accordance with the by-laws or rules and regulations of the board, and any action taken by 3 members of the board at any such meeting shall be deemed to be the action of the board for all purposes. The members of the board shall serve without compensation.

(2) It shall be the object, purpose and duty of the board to construct or acquire armory buildings suitable for use by the Wisconsin national guard and the board shall possess all powers necessary and convenient for the accomplishment of such object, purpose and duty, including, but without being limited thereto, the following express powers:

- (a) To sue and be sued;
- (b) To enter into contracts in connection with any matter within the objects, purposes or duties of the board;
- (c) To have and use a corporate seal;
- (d) To employ and pay such agents, employes and counsel as may be necessary to carry out the objects, purposes and duties of the board;
- (e) To adopt and from time to time to change or amend all necessary by-laws, rules and regulations for the conduct of the business and affairs of the board;
- (f) To accept gifts of money, services and property of any and every description

from the federal government or any agency or instrumentality thereof or from any political subdivision of the state; to acquire by purchase property of any and every description, both real and personal; and to convey any such property, whether acquired by gift or purchase, and to pledge the rents, issues and profits thereof;

(g) To acquire building sites and buildings and equipment suitable for armory purposes by gift or purchase; to acquire building sites by gift or purchase and to construct and equip buildings thereon; to hold, use and convey all such building sites and buildings, together with appurtenances thereunto belonging, and all equipment located thereon, and to pledge the rents, issues and profits of all such property;

(h) To borrow money and to issue and sell bonds, debentures or other evidences of indebtedness for the purpose of acquiring building sites and buildings and for the purpose of constructing and equipping buildings; such bonds, debentures or other evidences of indebtedness to be payable solely, both principal and interest, from any and all rents, issues and profits from any sources of all property acquired or constructed by the said board; and to pledge any and all property, and the income therefrom, to secure the payment of and to redeem such bonds;

(i) To execute and deliver leases demising and leasing to the state of Wisconsin (and so long as the prescribed rent shall be paid by the state of Wisconsin, it shall have priority of possession over all other leases executed by the state of Wisconsin armory board to other public or private bodies for any purposes) for such lawful terms as may be determined by the board any building or buildings and the equipment therein, and the site or sites therefor, to be used for armory and other purposes, and to renew such leases from time to time for additional lawful terms, provided, however, that if, at any time, the state of Wisconsin shall fail or refuse to pay the rental reserved in any such lease or shall fail or refuse to lease any such building and site, or to renew any existing lease thereon at the rental herein provided to be paid, then the board shall have the power to lease such building and the equipment and site therefor to any person or entity and upon such terms as the board may determine.

(3) If the state of Wisconsin shall lease any such property, the annual rental (which may be made payable in such instalments as the board shall determine) to be charged the state of Wisconsin for the use of property leased to it by the board as herein provided shall be sufficient to provide for the operation and maintenance of the property so leased, to pay the interest on the bonds, debentures or other evidences of indebtedness issued by the board for the purpose of acquiring, constructing or equipping such property, and to provide for the retirement of such bonds, debentures or other evidences of indebtedness at or before their maturity and the payment of the expenses incident to the issuance thereof. The board in determining what shall constitute a sufficient rental charge for any and all armories leased by the state of Wisconsin shall take into account all other income, rentals and profits received from any other source.

(4) As and when all of the property acquired or constructed by the board shall be fully paid for and all bonds, debentures or other evidences of indebtedness and obligations of the board issued or incurred in connection with the acquisition or construction of such property have been fully paid, both as to principal and interest, the board shall donate, transfer and convey all such property to the state of Wisconsin by appropriate instruments of transfer and conveyance. So long as any property of any kind or character shall be owned by the board such property, together with the rents, issues and profits thereof, shall be exempt from taxation, both general and special, by the state of Wisconsin or by any municipal corporation, county or other political subdivision or taxing body in the state.

(5) The board shall cause to be kept accurate minutes of its meetings and accurate records and books of account in conformity with approved methods of bookkeeping, clearly reflecting the income and disbursements of the board and all transactions in relation to its property. In the execution and administration of each and every of the objects and purposes herein set forth, the board shall have the power to adopt means and methods reasonably calculated to accomplish such objects and purposes and this section shall be construed liberally in order to effectuate such objects and purposes.

(6) If any part or parts of this section shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this section, and in such case this section shall be read as if such unconstitutional parts thereof had not been inserted therein. [1939 c. 535; 1943 c. 271]

Note: Razing of condemned armory and sale or lease of site are discussed in 29 Atty. Gen. 172.

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 may deem proper.

21.63 Allowances for encampment may be withheld. The allowances provided for any encampments may be withheld by order of the governor, and applied to the payment of any damage to grounds, buildings, uniforms, equipments, or any property, public or private, which may be caused by the fault or neglect of any officer or enlisted man in camp or en route to or from the same.

21.64 Assembling of company for instruction. Each company of the national guard shall assemble for instruction at least four times in each month, unless in the case of infantry companies excused for good and sufficient reasons by the regimental commander, and in case of a troop or battery unless excused by special order of the governor.

21.65 Annual inspection. At least once in each year and upon not less than three days' notification to the commanding officer, an inspection shall be made of each company and band, and regimental and battalion noncommissioned staff of the national guard by some officer appointed by the governor for that purpose, in the same manner and form prescribed for United States troops. The inspecting officer shall be furnished with the last muster roll and ordnance and quartermaster's return of such company, and shall report to the governor in writing on a form provided for that purpose.

21.66 Mustering of company and band. Each and every company and band of the national guard shall be mustered by the commanding officer thereof, as provided in the United States army regulations.

21.67 Mustering out of company for negligence or insubordination. Whenever any company 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, and if any person, who was a member of such disbanded company, shall appear with or retain arms or property of the state in his possession, until again mustered or enlisted in service, he shall forfeit not less than twenty-five dollars nor more than one hundred dollars.

21.68 St. John's military academy; Northwestern military and naval academy.

(1) St. John's Military Academy at Delafield, Wisconsin, and Northwestern Military and Naval Academy at Lake Geneva, Wisconsin, each is hereby recognized and approved as a military school by the state of Wisconsin, as long as each said military academy remains recognized and approved by the United States government as a military school of the first class, and the governor is hereby directed to provide for an annual inspection of each of said schools by appointing for this purpose a committee of 3 members recommended respectively by the adjutant general, the state superintendent of public instruction and the president of the state board of health.

(2) The governor is furthermore authorized and directed to appoint and commission the officers of each of said schools as officers of the national guard of Wisconsin, to rank as follows: The president as colonel and aide-de-camp; the commandant as inspector general, with the rank of major; and the surgeon as major of the medical corps.

(3) Furthermore, any commissioned officer of the militia of Wisconsin may enter as a pupil of either of said military academies, for a period of time not exceeding 10 months, and receive instruction in any or all of the departments of military science therein taught, without being required to pay any fee or charge whatever for such instruction.

(4) Nothing in this section shall be construed to require an appropriation. [1943 c. 29]

21.69 Free instruction in military science. (1) Any university, college or academy or other educational institution either endowed or operated without profit and regularly incorporated under and by authority of the state of Wisconsin and wherein there is given annually by an officer or officers duly appointed by the United States army or navy or both a course of instruction in military or naval science and tactics, may, by application signed by the chancellor, president or other presiding officer and under the seal of the institution, be declared a post of the Wisconsin national guard, provided that such institution shall offer free instruction in military science and tactics and the art of war to such officers of the national guard of the state of Wisconsin as the adjutant general may designate to attend such school.

(2) The governor is hereby authorized and directed to select such officer as may be agreeable to the board of directors or trustees of such institution and commission him as commanding officer of such post with the rank of colonel of infantry in the Wisconsin national guard. There may be furthermore commissioned on the recommendation of the commanding officer of such post and on the approval of the adjutant general, an assistant to the commanding officer; and a post-surgeon with the rank of major; and a quartermaster and a limited number of tactical officers with the rank of captain; provided that

all such officers shall give evidence of their fitness for the receiving of military rank by passing such examinations as the adjutant general may prescribe.

(3) All such officers shall be subject, furthermore, to service with the troops of the national guard of the state at such time and place as the governor or the adjutant general may direct, but not to receive pay unless so serving.

(4) The governor shall annually appoint a committee of three members, one of whom shall be appointed on the recommendation of the adjutant general, one on the recommendation of the state superintendent of public instruction and one on the recommendation of the president of the state board of health. With a view to the proficiency of the said departments, said committee shall, without any notice whatsoever, visit and inspect the post, making a thorough inspection of the military and naval department, the discipline, the course of study and work of the academic department, and the sanitary condition of the post, and report to the governor the results of such inspections.

(5) The graduates of the courses in military science and tactics in any such university, college, or academy as may be designated a post of the national guard and be under inspection as directed, shall be eligible to appointment as second lieutenants in the Wisconsin national guard, and may be commissioned as such, and assigned to vacancies at the discretion of the governor upon the recommendation of the commanding officer of the post, provided such graduates are residents of the state of Wisconsin.

Note: This section applies only to educational institutions incorporated under ch. 180 or ch. 187, Stats., and not to public high schools. 32 Atty. Gen. 72.

21.70 Reemployment in civil employment after completion of military service.

(1) Any person who has enlisted or enlists or has been or is inducted or ordered into active service in the land or naval forces of the United States pursuant to the selective training and service act of 1940 or the national guard and reserve officers mobilization act of 1940, and any acts amendatory thereof or supplementary thereto, and any person whose services are requested by the federal government for national defense work as a civilian during a period officially proclaimed to be a national emergency or a limited national emergency, who, in order to perform such training or service, has left or leaves a position, other than a temporary position, in the employ of any political subdivision of the state or in the employ of any private or other employer, shall be restored to such position or to a position of like seniority, status, pay and salary advancement as though such service toward seniority, pay or salary advancement had not been interrupted by such military service; provided that (a) he presents a certificate or other evidence that he has satisfactorily completed his period of training or service, (b) he is still qualified to perform the duties of such position, (c) he makes application for reemployment within 90 days after he is relieved from such training or services, and (d) the employer's circumstances have not so changed as to make it impossible or unreasonable to so restore such person, and upon the employe's request made at any time before 6 months after completion of the employe's service in the armed forces of the United States, or absence during federal hospitalization because of injuries or sickness resulting from such war or emergency service the employe upon presentation of proof of his honorable discharge or release from such active service or federal hospitalization shall be returned to his former position. The findings of the medical examiner entered on the discharge or release papers of the employe shall be deemed sufficient proof of the employe's physical fitness to resume his former position. In the event of any dispute arising under this subsection the matter shall be referred to the industrial commission for arbitration except as such matters pertain to any classified employe of the state of Wisconsin, in which case the matter shall be referred to the bureau of personnel.

(2) The service of any person who is restored to a position in accordance with subsection (1) hereof shall be deemed not to be interrupted by such leave, except for the receipt of pay or other compensation for the period of such absence and he shall be entitled to participate in insurance, pensions, or other benefits offered by the employer pursuant to established rules and practices relating to employes on furlough or leave of absence in effect with the employer at the time such person entered or was enlisted, inducted or ordered into such forces and service, and shall not be discharged from such position without cause within one year after such restoration; and such discharge is subject to all federal or state law affecting any municipal or private employment; and subject to the provisions of contracts that may exist between employer and employe. Each county, town, city or village shall contribute or pay from September 16, 1940 all contributions of the employer to the applicable and existent pension, annuity or retirement system as though the service of any such employe had not been interrupted by such military service, provided that in the case of teachers such payment shall be made as provided in sections 38.24, 71.26 and chapter 42.

(3) In case any employer fails or refuses to comply with the provisions of subsections (1) and (2) hereof, any court of record whether created by general or special act in the

proper county having jurisdiction of an action on contract for an amount exceeding \$500 shall have power, upon the filing of a motion, petition or other appropriate pleading and on reasonable notice, which shall not be less than 10 days, to such employer by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. No fees or court costs shall be taxed against the person so applying for such benefits. The place of the commencement of the action or proceeding hereunder against a private employer, and the trial or hearing thereof, shall be in any county in which the employment took place or in which such private employer maintains a place of business, and in all other cases shall be as provided in section 261.01. No person who is appointed in the service of any county, city or village to fill the place of a person so entering the federal armed forces shall acquire permanent tenure during such period of replacement service.

(4) Any individual or employer aggrieved by the decision of the court provided in subsection (3) may appeal in accordance with the provisions of appealable orders referred to in chapter 274; and the employe need not file an appeal bond for the security for costs on said appeal.

(5) The restoration of classified employes of the state shall be governed by the provisions of section 16.276. The restoration of unclassified state employes shall be governed by section 21.70. [1941 c. 238; 1943 c. 430; 1945 c. 310, 433, 506]

Note: A state employe inducted into the army and thereafter discharged under the provisions of Army Regulation 615-360, Sec. X, 1942 and Sec. II, War Department Circular No. 397, 1942, for Convenience of Government, is not entitled to reemployment where in accordance with the conditions of his discharge he entered an essential war industry and did not apply for reemployment within 40 days after his discharge under 21.70, Stats. 1943. 33 Atty. Gen. 240.

21.705 Physical disability of veterans not to disqualify for public employment, when. An honorably discharged veteran of any war participated in by the United States who has suffered a physical disability as a direct result of his military or naval service during such war shall not on that account be barred from employment in any public position or employment whether under state, county or municipal civil service or otherwise, provided that the licensed physician making a physical examination of such veteran for the public employer shall certify that such applicant's disability will not materially handicap him in the performance of the duties of the position for which he is making application. [1945 c. 266]

NAVAL MILITIA

21.71 Naval militia; organization. There shall be allowed in addition to the forces now authorized by law to be maintained, 4 divisions or companies of naval militia, each of the number of men hereinafter stated. Four companies or divisions shall constitute a battalion, to be known as the "Wisconsin Naval Militia." [1943 c. 9]

21.72 Lieutenant commander; staff; appointment; petty officers. (1) The naval militia shall be commanded by an officer to be appointed in the first instance by the governor, and commissioned by him, with the rank of lieutenant commander, who shall have the power to appoint a staff to consist of one executive officer, with the rank of lieutenant; one navigating officer, one past assistant engineer, one ordnance and equipment officer, all with the rank of lieutenant; one signal officer, one assistant surgeon, one assistant paymaster, one chaplain, and one judge advocate, all with the rank of lieutenant junior grade, one ensign who shall be aid to the commanding officer, all who shall be commissioned by the governor, when so appointed.

(2) There shall also be attached to the commanding officers' staff the following petty officers,—one master-at-arms, who shall be the chief petty officer of the naval force, one chief boatswain's mate, one gunner's mate, one equipment yeoman, one apothecary, one ship's armorer, one electrician, and one machinist, one chief quartermaster, one coxswain, one chief bugler, and one band not exceeding 21 pieces. [1943 c. 9]

21.73 Company officers. To each company or division there shall be one lieutenant; one lieutenant, junior grade; and two ensigns, to be elected in the first instance by the members of said company or division, and commissioned by the governor; and 35 petty officers and men as a minimum, and 65 petty officers and men as a maximum; the petty officers of each company to be appointed by the commander upon the recommendation of the lieutenant in command thereof. [1943 c. 9]

21.74 Organization; discipline; vacancy; control. (1) The organization of the naval militia shall conform generally to the provisions of the laws of the United States, and the system of discipline and exercise shall conform as nearly as possible to that of the United States navy, as now or hereafter organized; and whenever a vacancy shall occur in any position herein enumerated, the ranking officer next below shall, by virtue of his

rank, succeed to and become entitled to said position and rank and the governor, upon such succession, shall issue a commission to said successor, as if originally appointed.

(2) When not otherwise provided for, the government of the naval militia shall be controlled by the provisions of the military code of the state of Wisconsin. The naval militia shall be under the control of the adjutant general under the commander in chief, and all reports shall be made to him through proper channels. [1943 c. 9]

Note: Specific language of 22.02 [21.72] militia controls more general provisions of relative to rank of officers in state naval this section. 28 Atty. Gen. 279.

21.75 Examining board. All officers below the grade of lieutenant commander shall hold their commissions for 90 days as acting officers in the grade to which appointed or elected, and within that time shall be examined as to their mental and physical qualifications, and if not passing satisfactorily, the acting appointment shall then cease. The examining board shall consist of 3 officers, one of whom shall be the commanding officer. [1943 c. 9]

21.76 Arms; equipment. When the government of the United States is ready to supply arms and equipment, as well as material and opportunity, for naval instruction and drill, the governor is authorized to make the necessary arrangements for carrying such program into effect. [1943 c. 9]

21.77 Duties; compensation; "armory" defined. The duty of the naval militia required by law, or any part of it, may be performed afloat in United States vessels. Officers and men of the naval militia, while mustered temporarily into the service of the United States for instruction, or active service, other than when called into active service by the governor, in time of war, riot, insurrection, etc., shall not be entitled to any compensation or allowance from the state. The word "armory," as used in the military code, shall be held to include any vessel, anchored, moored or secured to land, or any boat, boathouse or dock, used for the purpose of instruction, drill or defense. [1943 c. 9]

21.78 Exemptions; privileges. The exemptions, and privileges granted by law, to the officers and enlisted men of the national guard, are extended to the members of the naval militia. [1943 c. 9]

21.80 Soldiers' and sailors' civil relief act. (1) In this section, unless the context indicates otherwise:

(a) "Persons in military service" shall mean any man or woman who is or was in the military service of the United States in World War II.

(b) "Property" shall mean any real estate or personal property belonging to a person in military service provided that such property was acquired prior to the commencement of military service except in cases where such property was acquired by descent in which case the proviso shall not apply.

(c) "Taxes" shall mean any general taxes or special assessments or tax certificates evidencing such taxes and assessments not belonging to private buyers.

(d) "Interest and penalties" shall mean interest and penalties accruing on taxes during the period of military service and 6 months thereafter. In case property is owned jointly by several owners other than the spouse of the person in military service, interest and penalties shall mean the proportionate share of the total interest and penalties commensurate with the equity in the property of such person in military service.

(2) In order to supplement and complement the provisions of the soldiers' and sailors' civil relief act of 1940 and all amendments thereof, so as to afford and obtain greater peace and security for persons in military service, the enforcement of certain tax obligations or liabilities which may prejudice the property rights of persons in military service, for the period herein set forth may be temporarily suspended as hereinafter provided.

(3) Any person while in the military service of the United States or within 6 months after terminating such service, or his agent or attorney during such period, may petition a court of record in any county in which he owns property for relief under this section. Upon filing of such petition the court shall make an order fixing the time of hearing thereon and requiring the giving of such notice of the hearing as it may deem reasonable. If after hearing the court shall find that the person on whose behalf the petition is made is, or within 6 months next preceding the filing of such petition was, in the military service of the United States and owns property within the county on which taxes have fallen due or will fall due, and that his ability to pay such taxes has been materially adversely affected by reason of his being in military service, the court shall enter an order determining that such person is entitled to relief under this section. When an order shall so determine it may further suspend proceedings for the collection of taxes on such property for a period not exceeding 6 months after termination of the military service of the person on whose behalf the petition is made, or for such time as may reasonably be

necessary to complete the agreement provided in subsection (7) and thereafter no sale of property or tax certificates to enforce collection of taxes on such property shall be made, all proceedings for that purpose shall be suspended, except under such terms as the court in such order may direct.

(4) Whenever any tax or assessment on real property including all special assessments shall not be paid when due, the penalty provisions providing for an eight-tenths of one per cent per month as provided by section 74.03 (4) and the maximum limitation of 6 per cent per annum as provided by such soldiers' and sailors' civil relief act shall be waived for the purpose hereof and upon the conditions specified hereinafter.

(5) The penalties and interest which shall be waived pursuant to this section are those for nonpayment of all taxes or assessments, general or special, falling due during the period of military service of any person against either real or personal property of which such person is the bona fide owner or in which he has a beneficial interest.

(6) The person owning or having an interest in any property in respect to which such order is made, his agent or attorney, may file with the county treasurer or with the city treasurer of cities authorized by law to sell lands for the nonpayment of taxes as to such taxes and assessments a certified copy of such order of suspension together with an affidavit in triplicate, sworn to by such person or his agent or attorney setting forth the name of the owner, the legal description of the property, the type of property, when acquired, volume and page number where such deed was duly recorded if acquired by deed and the name of the estate if acquired by descent, amount of delinquent taxes if any, and the names of the holders of any outstanding mortgage, lien or other incumbrance. Upon such filing the county treasurer or the city treasurer, as the case may be, shall file a first copy thereof in the office of the register of deeds of such county, the second copy to be filed in the office of such treasurer, as the case may be, wherein there will be marked, in the tax sale record book or such other record books as he may maintain, proper notation to the effect that a person in military service is the holder of the legal title thereto and has made application for special relief as herein provided, and the third copy shall be immediately forwarded to the office of the clerk of the town, city or village wherein the property is located, or if it be located in a city authorized to sell lands for nonpayment of its taxes to the tax commissioner thereof, who shall make an appropriate notation thereof on his records.

(7) Any person seeking relief under this section, within 6 months after termination of his military service, or his agent or attorney, or in case of death of such person, his personal representative, widow or heir at law, may apply to the county treasurer of the county, or the city treasurer of cities authorized by law to sell lands for the nonpayment of taxes, as the case may be, wherein such property is located for an agreement for scheduled instalment payments, covering the taxes accrued during such person's period of military service, provided that such taxes will be paid over a period of time equal to a period no longer than twice the length of military service of such person, in equal periodic instalments of not less than \$10, and subject to such other terms as may be just and reasonable.

(8) In the event default is made by the applicant in the performance of any of the provisions of such agreement, such treasurer, as the case may be, shall forthwith notify the applicant of such default and the amount and date due, by written notice either served personally or by registered mail with return receipt demanded to the address set forth in such application. If such defaulted payment is not fully made within 10 days after service of such notice, then such treasurer without further notice may declare that the entire amount of such tax subject to the scheduled instalments shall be immediately due and payable and that such agreement is fully rescinded and terminated. Thereupon the county treasurer shall notify the register of deeds and the town, city or village treasurer thereof, or if the city treasurer of cities authorized by law to sell lands for the nonpayment of taxes the latter shall notify the register of deeds and the county treasurer and such officers and shall make appropriate notations thereof on their records. Thereafter, the county treasurer or city treasurer as to taxes of cities authorized by law to sell land for the nonpayment of taxes, may without further order of the court enforce the collection of such tax or assessment and sell such tax certificates together with such penalties and interest as may have accrued thereon from the date of default of such scheduled instalment payment. [1943 c. 419, 574; 1945 c. 33]