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LAWFUL ACTION OF STATE MILITARY FORCES: A REVIEW

FENWICK T. REED*

To the uninitiated and particularly to those members of state military forces who have never been concerned with military law, this book must represent a very welcome guide.¹ Two of the four authors are members of the Judge Advocate department in the New York Guard while the remaining two are lawyers and teachers of law. This makes for a very neat balance, presenting as it does the collective grasp of knowledge of the problems of military law and the reasoning and judgment common to both military and civil procedure.

No attempt is made to present to the reader a complete compendium of accomplished facts, in the application of military law to the myriad problems to be encountered in its contacts with our complex civil affairs. Rather is found a sensible guide to this application in which the reader is given an orderly and sequential story of the situations which bring about the invoking of the law of the Army. The book is broken down into five major parts, followed by a sixth part comprised of a bibliography and index.

To the state guard reader one of the most useful and enlightening chapters must be the first one. Anticipating some confusion in the correct application of terms peculiar to the military and to military law the authors have set forth the more commonly used terms and phrases and in such cases as require a more complete definition and discussion than permitted in this chapter the reader is referred to subject matter to be found elsewhere in the text where the term in question is defined by application. This must truly be a God-send to the inexperienced guardsman who must, for instance, decide whether "superceding a civil official" means that the individual in question must be removed from office or merely prevented from discharging some or all of the functions of his office while the troops are in charge.

Having given some initial guidance to the reader the authors next consider the subject of State Military Forces

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1. Beckwith, Holland, Bacon, McGovern, *Lawful Action of State Military Forces*, Random House (1944).

and make a sturdy effort to set forth in almost too few words the basic laws by which the various state military forces are brought into being and the pertinent Army Regulations governing the organization and conduct of these forces. In my case, as one who promptly develops a paralysis of reasoning power upon being confronted with the peculiar methods of expressing a statement in either legal or Army Regulation language this section could stand a bit of "Main Street" re-writing but the facts are there nevertheless.

Following this exposition comes a number of paragraphs devoted to the status of the Guard under war conditions in which the state forces must be in contact with enemy belligerents and those who challenge the sovereignty of the United States. This is rather heavy fare for the reader who is thinking in terms of riot duty or upheavals and visitations of irate Nature but the knowledge cannot do any harm. After all, there is a suspicion that certain events might have followed fast on the heels of Pearl Harbor if our enemies had not managed to relapse into their own peculiar ideas of grand strategy instead of following the beckoning hand of opportunity.

Having given the reader some idea of the real possibilities of state forces in event of more than local upheavals they next consider real cases involving the employment of these forces. Leading off with further explanation of terms to be used, the routine of ordering of state troops into active duty is explained together with the probable occasions for such duty. The contacts to be made and maintained with various civil authorities are rather carefully outlined as are the differences between the use of state troops in assisting these authorities and in the administering of true martial law. This leads very naturally into the limitations which must be imposed on the powers and actions of state forces. Sharp delineation is made between the issuance of legal and illegal orders by various commanding officers and a strong effort is made to set forth the position of state troops who may, in their eagerness to perform their duty, transgress certain provisions of the common law. Naturally the duty and responsibility of these forces to the courts enter into this exposition and is carefully explained with specific references to injunctions and the writ of "habeas corpus."

Rights of the individual who may make himself subject

to control by state troops are exhaustively discussed. Here the authors appear to fully appreciate the dilemma in which the state troop may find himself in attempting to discharge his duty and thereby assume civil liability inconsistent with his military position. The knotty problem of state laws is rather adroitly avoided in the sense that no attempt is made to fit them into specific situations. Instead the reader is subtly invited to place himself in a number of situations and then just as subtly told to use some common sense and refer his problem to proper authority for decision and guidance.

The possibility of the use of state troops in event of labor disputes is discussed by the authors but recourse is at once made to certain State and Federal court decisions which may be illuminating to those members of the various State Guards who are attorneys but are hardly of immediate value to the young company commander who may be "sweating out" his decision without the advice of competent counsel. On second thought the authors are probably wise in seeking the obscuring haven of a legal fog bank in this case for a statement appearing in the present text might very well invite trouble for the one applying it six months after the statement was printed.

No military force can long enter into an active period without becoming involved in property problems—requisitions must be made, troops quartered both on land and in buildings. The authors have given very helpful directions. In general the laws of all states lend themselves to reasonable interpretation on these and allied questions and the reader can here find quite definite answers to his inquiries. Even the use of civil communications systems comes in for a bit of discussion and all are enjoined to refrain from "wire tapping."

The final part of the text material is almost entirely given over to an exhaustive description and discussion of military law, military offenses, the nature and composition of courts martial, provost courts, commissions and courts of inquiry.

This section is the most informative of any part of the book. Taking as their guide the "Manual for Courts-Martial (1928)" as amended, which is the base of military law for the Army of the United States, the authors have carefully adopted the angle of vision of the non-legal minded reader and, beginning with a history, briefly told, of military law proceed into a

discussion of the procedure of military courts in which the reader is told in plain, understandable language, just what causes the wheels of military justice to revolve and what is produced by this revolving. Applicable parallels with state courts and state laws are set forth and the more commonly transgressed Articles of War are understandably explained and the penalties for transgression tabulated under degrees of severity to be imposed by the court. It is timidly advocated by this reviewer that this treatment of military law and courts could well be put in the form of a manual for all military personnel.

The book wisely avoids any attempt at complete coverage. Only those factors normally expected to be encountered by State forces are discussed but this is well and clearly done. In a pocket in the back cover a supplement containing Annotations on the Law, a Topical Summary of Personal Rights of Officers and Men and a list of suggested Forms by the Office of the Judge Advocate of the several states, provides additional reward to the reader of the excellent work.