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MILITARY LAW—NAVAL MILITIA MAY NOT SECURE CONTRIBUTING MEMBERSHIP UNDER SECTION 5193, GENERAL CODE.

SYLLABUS:

Section 5193, of the General Code, which authorizes each commanding officer of a company, troop, battery or detachment of the hospital corps to enlist contributing members not to exceed one hundred and fifty, in times of peace, applies exclusively to the Ohio National Guard and does not authorize such officers in the naval militia to enlist such contributing members.

COLUMBUS, OHIO, March 28, 1930.

HON. A. W. REYNOLDS, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“An opinion whether the naval militia has the same privilege as the national guard to secure contributing memberships under Section 5193, G. C., is requested.

One of our naval militia units has issued blanks for this purpose, but some of the people invited to contribute raised the question as to the legality of the matter.

It is respectfully requested that the opinion be rendered at the earliest possible time, inasmuch as the time for securing contributing memberships this year is growing very short.”

Chapter 1, Title 15, embracing Sections 5176 and 5177 of the General Code of Ohio, relates to the state militia. In the former section it is provided that the militia shall be divided into three classes, the national guard, the naval militia and the unorganized militia. Chapter 2, of the same title, including Sections 5178 to 5200, inclusive, relates to the national guard.

Section 5178 of the General Code, provides:

“The national guard shall consist of the regularly enlisted militia between the ages of eighteen and sixty-four years, and of commissioned officers between the ages of twenty-one and sixty-four years.”

Section 5179 of the General Code, reads:

“The national guard of Ohio shall consist of such companies, troops, batteries, battalions, squadrons, regiments, brigades, divisions, medical units, and the administrative staff as they now exist or as the governor may from time to time authorize to be formed, all of which to be in accordance with the laws governing the regular army, and with the regulations issued by the Secretary of War.”

Section 5195 of the General Code, to which you refer and which relates to contributing members, provides:

“In time of peace, each commanding officer of a company, troop, battery

or detachment of the hospital corps, may enlist contributing members not to exceed one hundred and fifty. All such enlistments shall be for the period of one year, and shall be made by signing papers in such form as shall be prescribed by the adjutant general, and as soon as practicable after his enlistment, the following oath shall be administered to such members by a commissioned officer: 'I,-----, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America, and to the State of Ohio, that I will serve them honestly and faithfully, and that I will pay such contributions and dues as are prescribed by the statutes of Ohio, and will perform such service as may be prescribed from time to time by the commander-in-chief of the Ohio National Guard by general orders in accordance with the statutes of the State of Ohio.'

Chapte 9, of the same title above mentioned, which includes Sections 5253 to 5264, inclusive, relates to the organization and powers and functions of the naval militia. In an examination of the sections last mentioned there has been found no similar provisions with reference to contributing members as is set forth in Section 5193, supra.

In considering all of the various sections of Title 15, which deal with the state militia, the conclusion is irresistible that section 5193 refers exclusively to the Ohio National Guard. Said section is embraced within the chapter which relates to the national guard, and in fact Section 5193, in the form of oath set forth therein which is required to be taken by contributing members, mentions "a commander-in-chief of the Ohio National Guard".

In connection with your inquiry it has been noted that the 82nd General Assembly, in an act (107 O. L., 382) entitled:

"AN ACT

To revise and re-codify the military laws of the State of Ohio, and bring same into conformity with the laws of the United States."

carried the same headnotes in the act to indicate the divisions of the state militia referred to that are carried in Title 15 of the General Code.

From the foregoing, it must be concluded that in the enactment of Section 5193, General Code, to which you refer, the Legislature unmistakably intended to refer only to the Ohio National Guard. Furthermore, inasmuch as in the re-codification of the laws pertaining to both the national guard and the naval militia the Legislature did not see fit to confer a similar power upon the naval militia, the conclusion is impelled that no such power exists, in so far as the naval militia is concerned.

Based upon the foregoing and in specific answer to your inquiry, it is my opinion that Section 5193 of the General Code, which authorizes each commanding officer of a company, troop, battery or detachment of the hospital corps to enlist contributing members not to exceed one hundred and fifty, in times of peace, applies exclusively to the Ohio National Guard and does not authorize such officers in the naval militia to enlist such contributing members.

Respectfully,

GILBERT BETTMAN,

Attorney General.