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MILITARY DISTRICTS OF OHIO—BRIDGES WHICH CROSS OHIO RIVER—COMPACT—OHIO, WEST VIRGINIA, KENTUCKY—MUTUAL AID IN CASE ENEMY ATTACK OR INVASION—COMPACT PROVIDES ONLY FOR USE AND INTERCHANGE OF SERVICES OF CIVIL DEFENSE ORGANIZATIONS OF THE SEVERAL STATES—DOES NOT CONTEMPLATE OR AUTHORIZE MUTUAL EMPLOYMENT OF MILITIA OR OTHER LAW ENFORCEMENT AGENCIES.

SYLLABUS:

The compact which has been entered into between the states of Ohio, West Virginia and Kentucky for mutual aid in case of enemy attack or invasion provides for mutual assistance between the contracting states only by the use and interchange of services of the civil defense organizations of the several states, and does not contemplate or authorize the mutual employment of the militia or other law enforcement agencies of the several states.

Columbus, Ohio, October 8, 1953

Major General Albert E. Henderson
Adjutant General and State Director of Civil Defense
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Some few months ago the Military Districts of Ohio, West Virginia and Kentucky, each of which are divisions of the Second Army, Fort George G. Meade, Md., became concerned as to the defense of the various bridges which cross the Ohio River between our respective states. This concern is apparently founded on an apprehension that in the event of an active program of sabotage the bridges might be destroyed.

“It has been my belief that the protection of these bridges is a responsibility of our Civil Defense forces rather than something our National Guard should undertake as, in my opinion, they will not actually be attacked in strength by an organized force of an enemy, at least prior to an invasion when the United States Army would be involved. If we are to require our Civil Defense organization to assume such a mission, it would be my personal

opinion such a project could be covered by the Civil Defense compacts between the respective states. It would seem to me it might also be possible to supplement Civil Defense law enforcement personnel with such other forces as may be available to us, if necessary, and not go beyond the terms of the compacts.

"I now have a letter from the Adjutant General of West Virginia attaching a copy of an opinion of their Assistant Attorney General, which General Fox believes necessitates a separate compact between the States. A copy of this correspondence is attached for your information. You will note a conference will be scheduled to resolve the matter of arranging for the joint protection of the bridges.

"My question is, does the present compact, copy attached, cover a joint arrangement for the protection of these structures or if such plans are prepared and put into effect, will a new one be required? There is also the question of supplementing Civil Defense forces as may be necessary with any and all law enforcement agencies available to us in times of emergency.

"Your consideration of this matter and the receipt of your Opinion as to the limitations of the existing Compact will be greatly appreciated as the Department of Defense, through its Second Army, is most anxious that the bridges be protected."

I understand from your letter and from data submitted therewith that there are a number of bridges crossing the Ohio river into the states of West Virginia and Kentucky, some of which bridges belong to the state of Ohio, some to the states of West Virginia and Kentucky, respectively, and some to private ownership.

I understand, furthermore, that the eastern and southern boundary of Ohio, so far as it touches the Ohio River, is at low watermark on the western and northern bank of the river, in other words, that the territory occupied by the river itself belongs to the states of Kentucky and West Virginia, respectively.

The statutes of Ohio relative to civil defense, are comprised in Sections 5291 to 5315, inclusive, of the General Code. Section 5294, General Code, reads as follows:

"The governor may enter into mutual aid arrangements with other states and shall coordinate mutual aid plans between political subdivisions of this state, other states and the United States."

The Congress of the United States by an Act entitled "Federal Civil Defense Act of 1950, Public Law 920, 81st Congress, Second Session, approved January 12, 1951," has granted its consent to the making of civil defense compacts between the various states.

Pursuant to the foregoing authority, various states, including as I am advised, the states of Ohio, Kentucky and West Virginia, have entered into the form of compact submitted with your letter, portions of which are as follows:

"ARTICLE 1. The purpose of this compact is to provide mutual aid among the states in meeting *any emergency or disaster from enemy attack* or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full and effective utilization of the resources of the respective states, including such resources as may be available from the United States Government or any other source, are essential to the safety, care and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the Civil Defense agencies or similar bodies of the states that are parties hereto. The Directors of Civil Defense of all party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact."

"ARTICLE 3. Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges and immunities as are extended to the civil defense forces of such state. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

"ARTICLE 4. Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state

to meet an emergency or disaster and such state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered." (Emphasis added.)

With further reference to the statutes of Ohio, it appears that the primary purpose of such civil defense organization is for the protection of the state and its people against possible enemy action and that the primary area of its operations is the State of Ohio. It is only by virtue of the authority given by Section 5294 supra, and the agreements entered into pursuant thereto, that it would have authority to operate beyond the state limits.

Accordingly, but for the compact in question it seems clear that the defense organization of Ohio would have the sole duty to protect persons and property within its territorial boundaries and would have neither the right nor the duty to go beyond its boundaries for such purpose. In such case the authority to protect the bridges in question would end at the state line, irrespective of the fact that the State of Ohio or any of its citizens owned certain bridges located in another state.

Presumably the civil defense organizations of the states in which the bed of the river is located, would have and exercise the authority and duty to protect the property lying within their limits irrespective of the fact that it might be owned either by the state of Ohio or by some private person or corporation. The compact clearly implies that whenever requested by either of the contracting states, the adjoining state would send its personnel and equipment into the other state, and join in the common defense. For this purpose it appears to me that the compact contains abundant provisions.

As to the question of using not only the facilities of the civil defense organization but also "any and all law enforcement agencies available" and sending them into another state, I cannot agree that the compact in question contemplates or sanctions such action. This would evidently involve the use of the state militia.

Section 4 of Article IX of the Constitution makes the following provision:

"The Governor shall commission all officers of the line and staff, ranking as such; and shall have power to call forth the Militia, to execute the laws of the State, to suppress insurrection, and repel invasion."

The power to call the militia into action is lodged in the Governor by Section 5202 of the General Code, which reads as follows:

“The organized militia may be ordered by the governor to aid the civil authorities to suppress or prevent riot or insurrection, or to repel or prevent invasion, and shall be called into service in all cases before the unorganized militia.”

A careful consideration of the compact in question seems to make it clear that it contemplates only the use of the civil defense organization as a cooperative agency between the several states, and has no reference to the use of the militia or other law enforcement agencies of a neighboring state.

Accordingly, in specific answer to your question it is my opinion and you are advised that the compact which has been entered into between the states of Ohio, West Virginia and Kentucky for mutual aid in case of enemy attack or invasion provides for mutual assistance between the contracting states only by the use and interchange of services of the civil defense organizations of the several states, and does not contemplate or authorize the mutual employment of the militia or other law enforcement agencies of the several states.

Respectfully,

C. WILLIAM O'NEILL

Attorney General