



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



April 25, 1991

FILE NO. 91-018

STATE EMPLOYEES:
Military Leave

Terry Gainer, Director
Illinois State Police
State of Illinois Center
100 West Randolph, Suite 4-600
Chicago, Illinois 60601

Dear Director Gainer:

I have your predecessor's letter wherein he inquired whether an employee of the State of Illinois is entitled to a military leave of absence with pay, under section 1 of the Military Leave of Absence Act (Ill. Rev. Stat. 1989, ch. 129, par. 501), to perform duties as a member of a National Guard unit organized in another State. For the reasons hereinafter stated, it is my opinion that members of National Guard units of sister States are entitled to military leaves of absence in accordance with the provisions of that Act.

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According to the information we have been provided, an Illinois resident who is an employee of the Illinois State Police is also a member of an Iowa National Guard unit. At issue is whether he may be granted a paid military leave for the time spent in the service of the Iowa National Guard.

Section 1 of the Military Leave of Absence Act provides:

"Any full-time employee of the State of Illinois, other than an independent contractor, who is a member of any reserve component of the United States Armed Forces or of any reserve component of the Illinois State Militia, shall be granted leave from State employment for any period actively spent in such military service, including:

- (1) basic training;
- (2) special or advanced training, whether or not within the State, and whether or not voluntary; and
- (3) annual training.

During such leaves, the employee's seniority and other benefits shall continue to accrue.

During leaves for annual training, the employee shall continue to receive his regular compensation as a State employee. During leaves for basic training and up to 60 days of special or advanced training, if such employee's compensation for military activities is less than his compensation as a State employee, he shall receive his regular compensation as a State employee minus the amount of his base pay for military activities." (Emphasis added.)

The question to be resolved, therefore, is whether the Iowa National Guard is included in the statutory description "any reserve component of the United States Armed Forces or of any reserve component of the Illinois State Militia".

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Section 4 of the Military and Naval Code of Illinois (Ill. Rev. Stat. 1989, ch. 129, par. 220.04.) provides:

"The intent of this Act and all Acts of the State of Illinois affecting the Illinois National Guard and Unorganized Militia is to conform to all Acts and regulations of the United States affecting the same subjects, and all Acts of the State of Illinois shall be construed to effect this purpose."

It is therefore appropriate to consider pertinent Federal law in interpreting the provisions of the Military Leave of Absence Act.

Federal law provides that the "reserve components of the armed forces" include (1) the Army National Guard of the United States, (2) the Army Reserve, (3) the Naval Reserve, (4) the Marine Corps Reserve, (5) the Air National Guard of the United States, (6) the Air Force Reserve, and (7) the Coast Guard Reserve (10 U.S.C. § 261). All National Guard units are organized pursuant to Federal law. (32 U.S.C. § 101 et seq.)

32 U.S.C. § 101 provides, in part:

" * * *

(4) 'Army National Guard' means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that--

- (A) is a land force;
- (B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) 'Army National Guard of the United States' means the reserve component of the Army all of whose members are members of the Army National Guard.

(6) 'Air National Guard' means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that--

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(7) 'Air National Guard of the United States' means the reserve component of the Air Force all of whose members are members of the Air National Guard.

* * *

"

Under the plain language of these statutes, the National Guard units of the several States are all considered by Federal law to be reserve components of the United States Armed Forces. Pursuant to section 4 of the Military and Naval Act, section 1 of the Military Leave of Absence Act should be construed consistently with the Federal law.

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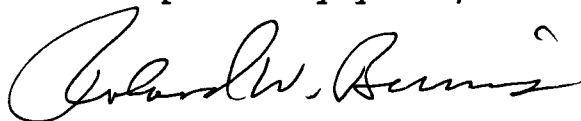
The National Guard is a lineal descendant of the militia (Zitser v. Walsh et al. (D. Conn. 1972), 352 F. Supp. 438), and the oath taken upon enlistment binds one as a soldier to both the nation and the State. (Ex parte Dostal (N.D. Ohio 1917), 243 F. 664; Croaff v. Harris (S. Ct. Ariz. 1926), 77 Ca. A. 18; State v. Johnson et al. (1925), 186 Wis. 1; Neiweem et al. v. Illinois (1950), 19 Ill. Ct. Cl. 82.) The blending of the militia and the army began with Congress' enactment of the National Defense Act in 1916, and in 1933 the dual enlistment concept was enacted, wherein an enlistee simultaneously joins both his State's National Guard (an organized militia) and the National Guard of the United States (a reserve component of the U.S. Army). (Johnson et al. v. Powell et al. (5th Cir. 1969), 414 F.2d 1060; Price v. United States (1951), 100 F. Supp. 310; Drifka v. Brainard (W.D. Wash. 1968), 294 F. Supp. 425.) Thus, history, as well as Federal statutory law, supports the conclusion that the phrase "any reserve component of the United States Armed Forces" in section 1 of the Military Leave of Absence Act encompasses National Guard units of other States, as well as the units of the State of Illinois.

Therefore, since National Guard units of other States are reserve components of the United States Armed Forces, it is my opinion that employees of the State of Illinois who are

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members of National Guard units of other States are entitled to all of the employment benefits conferred by the Military Leave of Absence Act.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name.

ROLAND W. BURRIS
ATTORNEY GENERAL