

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 190.08 MILITARY AND NAVAL AFFAIRS

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c 443 s 4; GS 1913 s 2360; 1921 c 506 s 14; GS 1923 s 2408; 1927 c 339 s 2; MS 1927 s 2408; 1939 c 175 s 3; 1943 c 108 s 9; 1953 c 269 s 1.

### 190.08 PAY, ALLOWANCES

HISTORY. 1913 c 400 s 1; GS 1913 s 294; GS 1923 s 252; MS 1927 s 252; 1921 c 506 s 66; GS 1923 s 2460; 1927 c 339 s 12; MS 1927 s 2460; 1939 c 175 s 11; 1943 c 108 s 30; 1947 c 125 s 2.

### 190.09 POWERS, DUTIES

The adjutant general is without authority to execute on behalf of the state a contract covering property previously granted to the state by the federal government to operate prospectively as to property acquired with the aid of federal funds. OAG Jan. 13, 1949 (2).

### 190.11 CAMP GROUNDS AND MILITARY RESERVATIONS

HISTORY. 1891 c 55 s 1; GS 1894 s 1769; 1897 c 118 s 106; 1903 c 52 s 12; RL 1905 s 1085; GS 1913 s 2398; 1921 c 506 s 56; GS 1923 s 2450; 1927 c 339 s 9; MS 1927 s 2450; 1939 c 175 s 9.

The adjutant general cannot execute a document on behalf of the state purporting to cover property previously acquired without imposing a condition therein whereby the state would be bound for a specified period of years to devote the property to the exclusive use for the quartering and training of army and air force units of the national guard, federal funds having been spent in the improvements thereon. OAG Jan. 13, 1949 (2).

190.14, 190.15 Repealed, 1943 c 108 s 44.

## CHAPTER 192

### NATIONAL GUARD

#### ORGANIZATION

### 192.01 MINNESOTA NATIONAL GUARD; WHO COMPOSE

HISTORY. 1858 c 77 s 1; PS 1858 c 120 s 1, 8; Ex1862 c 4 s 1; 1865 c 51 s 1; 1867 c 59 s 1; 1870 c 22 s 1; 1871 c 11 s 1; 1874 c 114 s 1; 1877 c 16 s 1; GS 1878 c 12 s 1-15; 1883 c 74 art 1 s 1; 1883 c 75 s 2; 1885 c 91 s 5, 7; 1885 c 92 s 1; 1887 c 95 s 9; 1887 c 222 s 1; GS 1878 Vol 2 (1888 Supp) c 12 s 16; 1889 c 114, 115; 1889 c 249 s 1-5; 1889 c 231 s 5, 8; 1891 c 5 s 1; GS 1894 s 1714; 1897 c 118 s 14; 1901 c 162 s 3, 4; 1901 c 213 s 1; 1901 c 289 s 1; 1903 c 52 s 1; 1903 c 182 s 1; 1905 c 225 s 3, 4, 6; RL 1905 s 1048; 1907 c 443 s 1; 1909 c 56; 1911 c 303 s 2-4; 1913 c 44 s 3; GS 1913 s 2361; 1917 c 400 s 12; 1921 c 506 s 15; MS 1927 s 2409; 1943 c 108 s 10; 1947 c 125 s 3.

The powers granted to congress under the federal Constitution relating to organizing, arming and disciplining the militia are plenary and exclusive and they may supplement the laws and regulations provided by congress only to the extent that the congress has not as yet exercised control. The utilization of Negro manpower in postwar army policy is controlled by Circular No. 32 of the department of the army, dated Oct. 30, 1947. In the organization of the Minnesota national guard there must be compliance with the federal laws and regulations and no state executive order which conflicts with the federal regulations may be legally issued. OAG July 13, 1948 (310-H).

### 192.07 STAFF CORPS; OFFICERS; HOW APPOINTED

HISTORY. 1897 c 118 s 14, 15; 1903 c 52; RL 1905 s 1049; 1909 c 56 s 1; GS 1913 s 2362; 1921 c 506 s 20; 1927 c 339 s 4; MS 1927 s 2414; 1943 c 108 s 12.

## 192.17 OFFICERS MAY BE PLACED IN INACTIVE NATIONAL GUARD

HISTORY. 1917 c 400 s 23; 1921 c 506 s 25; GS 1923 s 2419; MS 1927 s 2419.

## 192.26 STATE AND MUNICIPAL OFFICERS AND EMPLOYEES NOT TO LOSE PAY WHILE ON MILITARY DUTY

School board may abolish a position if the action is taken in good faith and not for the purpose of circumventing a civil service rule or a statute granting veterans preference. OAG Sept. 22, 1947 (85-F).

If a promotional examination was held while the patrolman was in military service, upon his return he would be reinstated to his old position but would have a right after reinstatement to take the promotional examination, and if successful would be eligible to whatever rights would accrue from that examination. OAG Feb. 13, 1947 (120).

Soldier returning to his position as chief of police is entitled to the vacation which he would otherwise have earned if he takes such vacation while he is still chief of police. But he cannot be paid for both working and being on vacation. If he resigns, without first taking his vacation, he cannot receive vacation pay after his resignation. OAG Jan. 23, 1948, Feb. 2, 1948 (120).

A teacher who is a member of a unit of the army or navy is entitled to 15 days training period each year with pay at the expense of the employing district. OAG March 14, 1949 (174-A).

Section 192.26 does not apply to reserve officers who are called to actual duty for over 15 days. OAG Oct. 6, 1948 (310-H-1-A).

A municipal employee is entitled to 15 days leave with pay during each calendar year for military duty. If he devotes more than 15 days to such military duty, he is not entitled to pay during the excess period, or the extra time may possibly be deducted from his vacation allowance. OAG Sept. 19, 1950 (310-H-1-A).

A policeman is entitled to pay only for the period he actually serves in the military reserve, not exceeding 15 days. OAG Dec. 26, 1950 (310-H-1-A).

A public employee who is a member of the national guard, called to active service for an extended period, is entitled to leave with pay for the first 15 days of such service and thereafter is on leave without pay. He is entitled to reinstatement to his position when his military service is ended and upon such reinstatement is entitled to credit for accumulated vacation in the same manner as provided in section 192.261. OAG June 10, 1952 (310-H-1-A).

A temporary employee of a city is entitled to a leave of absence with pay for a period not exceeding 15 calendar days in any year while engaged in training with the national guard, and to be paid for such leave at the same compensation which he received from the city during the period immediately prior to being called for military duty. Such temporary city employee is entitled to receive his military pay while in training with the national guard, together with the leave pay granted him from the city. OAG Aug. 4, 1953 (310-H-1-A).

A highway patrolman applying for retirement is entitled to credit for the four years he served in the military service. OAG Nov. 28, 1950 (331-F).

Temporary appointees, seasonable employees, and emergency appointees under civil service are entitled to benefits provided for under section 192.26 when called into training or active service. OAG Sept. 19, 1949 (644-D).

## 192.261 LEAVE OF ABSENCE

Persons on an eligible list for employment in the Minneapolis police department but who were not actually discharging duties of policemen because they had not been hired, were not "employees" within the provisions requiring reinstatement of municipal employees upon their return from military service. *Arlandson v Humphrey*, 224 M 49, 27 NW(2d) 819.

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## 192.262 NATIONAL GUARD

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Where a police officer upon being reinstated into his position claimed accumulated vacation rates while in the military service, the city may determine upon what basis payment shall be made for the vacation period. OAG Nov. 7, 1946 (120).

Right of veterans for appointment on police force under section 197.45 is governed by decision in *State ex rel v Matson*, 155 M 137, 193 NW 30. Rights of veterans for promotional examination for police department is governed by provision of section 192.261. OAG Aug. 13, 1947 (120).

Soldier returning to his position as chief of police is entitled to the vacation which he would otherwise have earned if he takes such vacation while he is still chief of police. But he cannot be paid for both working and being on vacation. If he resigns, without first taking his vacation, he cannot receive vacation pay after his resignation. OAG Jan. 23, 1948, Feb. 2, 1948 (120).

A temporary appointment to fill a vacancy caused by a police officer being on leave of absence, can only be for 30 days, at the end of which time a selection must be made from the proper register. The provision found in section 419.06 relating to temporary appointments until 60 days after the cessation of hostilities is no longer in force in view of the presidential proclamation of Dec. 31, 1946. OAG Feb. 5, 1951 (120).

Public employees upon their return from military service do not accumulate as benefits time for holidays they missed while in the armed forces. OAG March 5, 1951 (120).

Leave of absence granted by section 192.261 is without pay. Consequently, the employees cannot be considered to be on vacation during their leave of absence. Money may not be paid to a public employee in lieu of a vacation to which the employee was entitled but which he did not take. A vacation may be taken by a veteran after his return from service in the armed forces. Time off must be during the period of employment. OAG Nov. 16, 1950 (174-A).

Where military leave was granted to the clerk of the municipal court of the city of Duluth under the provisions of section 192.361 the continuity of his term of office was not broken but he enjoyed a leave of absence from his duties as clerk and the acting incumbent during his absence was a substitute under section 192.263. OAG Sept. 23, 1947 (308-A).

Civil service employees of a city who are reserve officers are entitled to military leave without pay when called into service by a government agency. OAG Oct. 6, 1948 (310-H-1-A).

A public employee on military leave whose military service is continuous and extends beyond the cessation of hostilities is still entitled to reinstatement upon the completion of the military service prior to the proclamation of peace. OAG Dec. 1, 1949 (310-H-1-A).

A veteran returning to his position upon discharge from the armed forces of the United States upon reinstatement is entitled to accrued vacation as provided for in section 192.261. He cannot, however, be paid for both working and being on vacation at the same time. OAG Jan. 8, 1953 (310-H-1-A).

A widow of an air national guard officer, who died while on duty, is entitled to workmen's compensation benefits from the date of her husband's death to the date of remarriage. OAG Oct. 5, 1951 (310-H-3).

The provisional employee on military leave may be reinstated to his position upon his discharge from the armed services providing the term of the provisional appointment has not expired. Upon the expiration of the term of the provisional appointment fixed by Laws 1951, Chapter 685, the provisional employee cannot be reinstated. OAG Aug. 12, 1952 (644-D).

## 192.262 OFFICERS AND EMPLOYEES TO PRESERVE PENSION AND RETIREMENT RIGHTS

Under annuity disability provisions of the State Employees Retirement Act the period of military service must be included in determining the applicant's eligibility. OAG March 7, 1952 (331-A-3).

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NATIONAL GUARD 192.60

The period of military service of an employee of the state must be included in determining his eligibility under annuity disability provisions of the state by Employees Retirement Act. OAG March 7, 1952 (331-A-3).

## 192.263 VACANCIES TO BE FILLED TEMPORARILY

Unless the appointment of chief of police is temporary and not to exceed a 30-day period, the appointment of the acting incumbent to fill the chief of police vacancy must be from an eligible list. OAG Jan. 19, 1951 (120).

A fire captain appointed from the eligible register temporarily as an acting incumbent is entitled to be placed on a reemployment list in conformity with firemen's civil service rule No. 5 upon incumbent fire captain's return from the military service. A vacancy in the fire department is not required to be filled by the city unless it so desires. OAG Aug. 19, 1953 (120).

Where military leave was granted to the clerk of the municipal court of the city of Duluth under the provisions of section 192.361 the continuity of his term of office was not broken but he enjoyed a leave of absence from his duties as clerk and the acting incumbent during his absence was a substitute under section 192.263. OAG Sept. 23, 1947 (308-A).

The sheriff may act through his deputy during his absence in the armed forces; and if the sheriff fails to appoint a deputy, the county board may appoint an acting incumbent sheriff. OAG Dec. 22, 1950 (310-H-1-A) (390-B-1).

## 192.265 STATUS WHILE IN MILITARY TRAINING

Status of employees while serving in military training. 33 MLR 41.

## 192.43 DISTRIBUTION OF EQUIPMENT

HISTORY. 1897 c 118 s 125; RL 1905 s 1072; 1907 c 443 s 2; GS 1913 s 2345; 1917 c 400 s 39; 1921 c 506 s 44; GS 1923 s 2438; MS 1927 s 2438; 1947 c 125 s 9.

192.50 Repealed, 1947 c 125 s 22.

## 192.51 CAMP PAY FOR ENLISTED MEN

HISTORY. 1921 c 506 s 62; 1943 c 108 s 26; 1947 c 125 s 8; 1949 c 459 s 1.

192.53 Repealed, 1947 c 125 s 22.

## 192.55 PAYMENTS TO BE MADE THROUGH ADJUTANT GENERAL

HISTORY. 1921 c 506 s 65; Mason's 1927 c 2459; 1949 c 459 s 5.

## 192.56 COMPANY, A CORPORATE BODY

HISTORY. 1921 c 506 s 39; 1953 c 192 s 1.

## MILITARY COURTS

### 192.60 COURTS-MARTIAL

The statute authorizing suit against the United States for erroneous conviction is remedial and covers a conviction in court martial. The federal district has concurrent jurisdiction with the court of claims of all cases not sounding in tort where the amount involved does not exceed \$10,000. The action of the secretary of the navy in reviewing court martial cannot be further reviewed in a civil court and is res judicata. McLean v United States, 73 F. Supp. 775.