

GENERAL STATUTES ³⁶
OF THE
STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

COMPLETE IN TWO VOLUMES.

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

ST. PAUL:
WEST PUBLISHING CO.
1888.

CHAPTER 12.

MILITIA.*

***§ 8a. Military store-keeper—Salary.**

The salary of the military store-keeper is hereby fixed at twelve hundred dollars per annum from the first day of January, A. D. eighteen hundred and eighty-three. (1883, c. 149.)

MILITARY CODE†

ARTICLE 1.

***§ 16. National guard.**

The National Guard of the State of Minnesota shall consist of two regiments of infantry and one battery of artillery, and one troop of cavalry; and all other provisions of said Code relating to the battery of artillery shall apply in like manner to the troop of cavalry. (1883, c. 74, art. 1, § 1, † as amended 1885, c. 92.)

***§ 17. Regiment—How constituted.**

Each regiment of infantry shall consist of one colonel, one lieutenant colonel, and one major; one surgeon with the rank of major; one chaplain with the rank of captain; one adjutant, one quartermaster, one commissary of subsistence, one inspector of rifle practice, two assistant surgeons, one judge advocate, each with the rank of first lieutenant; one sergeant major; one quartermaster sergeant; one commissary sergeant; one hospital steward; one chief musician; two color sergeants; two general guides; not less than eight nor more than ten companies; and one band of not more than twenty musicians. (*Art. 1, § 2, as amended 1883, c. 75, § 1; 1885, c. 91, § 1; 1887, c. 95, § 1.*)

***§ 18. Company—How constituted.**

Each company of infantry shall consist of one captain; one first lieutenant; one second lieutenant; five sergeants; six corporals; two musicians; and not less than thirty nor more than sixty privates. (*Art. 1, § 3.*)

***§ 19. Battery of artillery—How constituted.**

The battery of artillery shall consist of one captain; one first lieutenant; one second lieutenant; seven sergeants; eight corporals; two musicians; and not less than twenty-six nor more than fifty-six privates. (*Id. § 4.*)

*For the duties of the adjutant general in relation to the Renville Rangers, see Gen. Laws 1885, c. 219.

†Compare Gen. Laws 1881, c. 116, § 1, providing as follows:

§ 1. The uniformed militia of this state, and such volunteers as shall hereafter enlist therein, shall constitute the national guard of the state of Minnesota. The aggregate force of the same, in time of peace, fully uniformed, armed, and equipped, shall not exceed ten companies of infantry, two troops of cavalry, and two sections of light artillery; but the commander in chief shall have power, in case of war, insurrection, or invasion, or imminent danger thereof, to increase said force beyond the limit aforesaid, and to organize the same as the exigencies of the service may require. The adjutant general shall cause to be prepared a proper muster roll, which shall be signed by every member of each company, troop, or section, now or hereafter to be organized, and said rolls, when so signed, shall be returned to his office.

‡"An act to provide for the organization of the National Guard of the State of Minnesota, and the maintenance thereof, and entitled the 'Military Code.'" Approved February 14, 1883. By art. 10, § 4, "all acts and parts of acts inconsistent with this act are hereby repealed."

Compare Gen. Laws 1881, c. 116.

***§ 20. Brigade—Officers—Staff officers.**

The commander in chief may, at his discretion, form the National Guard into a brigade, in which case he shall order an election for a brigadier general to be elected by the field officers of said brigade and the captain of the battery of artillery. Said brigadier general shall have power to appoint the following staff officers: One assistant adjutant general, with the rank of lieutenant colonel; one brigade inspector; one brigade quartermaster; one brigade judge advocate; one commissary of subsistence; one inspector of rifle practice; and one aid-de-camp,—each with the rank of captain. Said staff officers shall hold office during the pleasure of said brigadier general. (*Id.* § 5, as amended 1887, c. 95, § 2.)

ARTICLE 2.

***§ 21. Company and battery officers — Election and appointment.**

Commissioned officers of companies and of the battery shall be elected by the votes of the officers, non-commissioned officers, and privates of their respective companies or battery.

Company non-commissioned officers shall, on the recommendation of the captains of their respective companies, be appointed by the colonel of the regiment to which their respective companies belong, and shall be subject to reduction to the ranks by the captain of their company, with the approval of the colonel of their regiment.

Non-commissioned officers of the battery shall be appointed by the captain thereof, and be subject to reduction to the ranks by him, with the approval of the commander in chief. (*Art.* 2, § 1.)

***§ 22. Regimental field and staff officers.**

Field officers of regiments shall be elected by the votes of the field and line officers of their respective regiments. Regimental staff officers shall be similarly elected, subject to the approval of the colonel of his regiment. Regimental non-commissioned staff officers shall be appointed by the colonel of each regiment from among the non-commissioned officers or men of some company or companies in the regiment. (*Id.* § 2.)

***§ 23. Elections—How ordered—Notice.**

Elections for general and field officers and for officers of the battery shall be ordered by the commander in chief. Elections for line officers of infantry companies and staff officers of regiments shall be ordered by the commanding officer of the respective regiments. Five days' notice of the holding of any election must be given. (*Id.* § 3, as amended 1885, c. 91, § 2.)

***§ 24. Same—Presiding officer.**

The officer ordering an election shall preside thereat in person, or shall designate some other officer to perform the duty. In the absence of the presiding officer, the chair shall be taken by the senior officer present; but no officer shall preside at any election at which he is a candidate for any office to be filled thereat. (*Id.* § 4.)

***§ 25. Ballots—Majority vote.**

All voting shall be by ballot, and a majority of all the votes cast shall be necessary to a choice: *provided, however*, that a majority of those entitled to a vote at such election are present and voting. (*Id.* § 5.)

***§ 26. Enlistment—Term—Re-enlistment.**

Every person who shall enlist in the National Guard shall be mustered in the service of the state for the term of five years, unless sooner discharged by competent authority, and any person who, prior to the passage of this act,

shall have enlisted for three years, may, at the expiration of his term of service, be re-enlisted for two years. After the organization of a company, recruits shall sign their names in a book of enlistment kept by the company for that purpose, which signing shall be a legal enlistment. Any person who shall have faithfully served for five years, and be entitled to an honorable discharge, may be re-enlisted for such further term of one year each as his commanding officer shall elect. (*Art. 2, § 6, as amended 1887, c. 95, § 3.*)

***§ 27. Discharges.**

Discharges, except upon expiration of term of service, shall only be granted in case of permanent removal from the state, or from the city or town in which the company of the member seeking the discharge is located, or for physical disability, or for the good of the service. The commanding officer of each regiment is hereby authorized to pass upon and issue such discharges for enlisted men of his regiment, and also to grant an honorable discharge to any person who, prior to the passage of this act, shall have enlisted for a second term of three years, and shall have faithfully served for two years of said enlistment. Discharges from the battery can only be issued by the commander in chief. (*Id. § 7.*)

***§ 28. Commissions.**

Officers of the National Guard shall be commissioned by the commander in chief, with rank from date of their election or appointment. The commander in chief may, at his discretion, withhold the commission of any officer until he can determine the qualifications of such officer for the office to which he may have been elected or appointed; and, for the purpose of so determining, the commander in chief shall convene a board of officers of the National Guard, who shall examine into the qualifications of said officer, and report thereon to the commander in chief: *provided, however*, that no member of said board shall be inferior in rank to said officer. Should the said board report that the person so elected or appointed is incompetent to perform the duties of the office to which he shall have been elected or appointed, the commander in chief shall have power to annul said election or appointment. (*Id. § 8, as amended 1887, c. 95, § 5.*)

***§ 29. Resignations.**

Resignations of officers shall be in writing, directed to the adjutant general, and transmitted immediately through and by all intermediate commanders, who will indorse the same with their approval or disapproval. No officer shall be considered out of the service until his resignation is accepted by the commander in chief. (*Art. 2, § 9.*)

***§ 30. Examining board—Canceling commissions.**

On the application of the colonel of any regiment, or the captain of the battery, the commander in chief is authorized to appoint an examining board of three officers, who shall inquire into the capability of any subordinate officer who may be sent before said board by the officer making the application; and should said board find the officer thus sent before them to be incompetent to fill the position held by him, the commander in chief shall cancel the commission of the officer thus found incompetent. (*Id. § 10.*)

***§ 31. Second commission.**

No officer shall hold two commissions in the National Guard at the same time, and the acceptance of a second commission by any officer shall be considered as a resignation of the first. (*Id. § 11.*)

***§ 32. Staff officers.**

No staff officer can assume or be placed in command of any troops. (*Id. § 12.*)

ARTICLE 3.

***§ 33. Staff of commander in chief.**

The staff of the commander in chief shall consist of one adjutant general, one inspector general, one quartermaster general, one surgeon general, one judge advocate general, and one commissary general, each with the rank of brigadier general; two aids-de-camp, each with the rank of colonel. They shall be appointed by the commander in chief, and their commissions shall expire with the term for which the commander in chief appointing them shall have been elected, except that the adjutant general shall continue to hold office until his successor has been appointed and commissioned. (*Art. 3, § 1.*)

***§ 34. Same—Assistants.**

When the service requires, each of the general officers named in section one shall have power, with the approval of the commander in chief, to appoint one assistant in his department, with the rank of lieutenant colonel, who shall hold office during term of his chief. (*Art. 3, § 2, added 1885, c. 91, § 3.*)

ARTICLE 4

***§ 35. Annual inspection.**

There shall be an annual inspection of the National Guard by the inspector general, at such time and place as may be directed by the commander in chief. (*Art. 4, § 1.*)

***§ 36. Tactics—Roll and roster.**

At such inspection the regiments, companies, or battery, as the case may be, shall be exercised by their respective commanders in the manual of arms, and in Upton's tactics generally, and shall be carefully counted by the inspector general. A roll of each company or battery, certified to by the captain thereof, shall be delivered to the inspector general, prior to such inspection. The adjutant of each regiment shall deliver to the inspector general, prior to such inspection, a roster of the field, staff, and non-commissioned staff officers, and of the band of said regiment. (*Id. § 2.*)

***§ 37. Inspector general—Report.**

The inspector general shall report to the commander in chief the result of said inspections, and shall certify to the number of troops present, the condition of their uniforms, arms, accouterments, and as to their proficiency in drill. (*Id. § 3.*)

***§ 38. Drills.**

Every company or battery of the National Guard of this state shall make at least thirty company drills or parades in each year, exclusive of camp and actual service. (*Id. § 4, as amended 1885, c. 91, § 4.*)

ARTICLE 5.

***§ 39. Annual allowance.**

There shall be paid annually to each regiment of infantry, battery of artillery, and troop of cavalry, the sum of seven dollars for each officer, non-commissioned officer, musician, and private, as shall be inspected by the inspector general at the annual inspection provided for in article four, and shall be found to be fully uniformed, armed, and equipped according to law. But no allowance or payment shall be made to any company, battery, or troop which, at said annual inspection, shall not in members present and members accounted

for, to the satisfaction of the inspecting officer, muster at least the minimum number of men as provided for in this act: *provided*, that battery of artillery and the troop of cavalry shall be entitled to the same allowance for each horse actually used for military purposes in such battery and troop respectively as is allowed for each member of the same. But said allowance for horses shall not exceed the sum of three hundred dollars per annum for the battery and three hundred dollars per annum for the troop. (*Art. 5, § 1, as amended 1887, c. 95, § 4.*)

***§ 40. Same—To whom payable.**

The money thus due to each company or battery shall be paid to the commander thereof, and the money thus due to the field and staff and non-commissioned staff officers, and the band of each regiment, shall be paid to the commanding officer of said regiment, upon his requisition upon the adjutant general. The money so paid shall be used only for the purchase of uniforms, the expense of armory and care of arms, and for other necessary expenses of the regiments, companies, and battery. (*Art. 5, § 2.*)

***§ 41. Same—How drawn.**

Upon the receipt of said requisition the adjutant general shall certify to the state auditor the amount of money which such regiment, company, or battery is entitled to receive under the provisions of this act, and said state auditor shall thereupon draw his warrant on the state treasurer for said amount, in favor of said regiment, company, or battery, or of the person designated in said requisition, and the same shall be paid by said state treasurer upon presentation of said warrant, properly indorsed. (*Id. § 3.*)

***§ 42. Arms and ammunition.**

Arms, accouterments, and ammunition shall be issued to the regiments and to the battery, on the order of the commander in chief, subject to such regulations as he may make. (*Id. § 4.*)

***§ 43. Armory exempt from taxes.**

The armory owned by any company, regiment, or incorporated military association, and used exclusively for the benefit of such organization, shall be exempt from all taxes or assessments. (*Id. § 5.*)

ARTICLE 6.

***§ 44. Encampment.**

The commander in chief shall order both regiments of infantry and the battery of artillery and troop of cavalry into camp for a period not to exceed ten days in each year, at such times and places as he may deem best. (*Art. 6, § 1, as amended 1887, c. 95, § 6.*)

***§ 45. Per diem while in camp.**

There shall be paid to each and every enlisted man of the National Guard, when ordered into camp by the commander in chief, the sum of one dollar and fifty cents per day during the time of such encampment, including the time of going to and returning from the place of such encampment: *provided, however*, that such payments shall only be made to the men present at and doing duty in such camp. In addition thereto, free transportation shall be furnished by the state. A deduction of fifty cents per day from the pay of each enlisted man shall be made for subsistence, if furnished by the state. The pay herein granted shall be drawn and paid in the same manner as the annual allowance provided for in article five of this act. (*Art. 6, § 2, as amended 1887, c. 95, § 7.*)

***§ 46. Per diem while in actual service.**

That whenever the National Guard of this state, or any portion thereof, shall be called into actual service by the commander in chief, each and every enlisted man so called into such service, and who shall respond thereto, shall have and receive for such service the sum of two dollars per day for the time he shall be engaged in such service, including the time of going to and returning from the place of such service, to be paid from the treasury of the state, upon the requisition of the commander in chief. (*Art. 6, § 3, as amended 1885, c. 91, § 5.*)

***§ 47. Officers—Compensation.**

That each and every officer of the National Guard, while in any service under orders of the commander in chief, shall receive the same rate of compensation as is allowed officers of similar rank in the United States army, except officers whose salaries are otherwise provided by law. (*Added 1885, c. 91, § 5, as amended 1887, c. 95, § 8.*)

ARTICLE 7.

***§ 48. Exemption from jury duty.**

Every officer and enlisted man of the National Guard shall, during his term of service, be exempt from duty as a juryman in any court of this state. (*Art. 7, § 1.*)

***§ 49. Same—Discharged soldiers.**

Every person who shall have received an honorable discharge from the National Guard, after a continuous service of not less than five years, shall be forever thereafter exempt from jury duty in any court of this state. (*Id. § 2.*)

***§ 50. Attachment—Exemption.**

The uniforms, arms, and equipments of any member of the National Guard shall not be liable to attachment or sale on any final process of any court in this state. (*Id. § 3.*)

***§ 51. Arrest—Exemption.**

No member of the National Guard shall be arrested while going to, remaining at, or returning from any place at which he may be required to attend for the performance of military duty; but nothing contained herein shall be construed to prevent an arrest by order of the commanding officer of the regiment, company, or battery to which such member may belong, or for felony or for breach of the peace. (*Id. § 4.*)

ARTICLE 8.

***§ 52. Constitution and by-laws—Company and battery.**

Each company or battery of the National Guard may make a constitution and by-laws for its government, which shall be binding on its members: *provided*, that the same shall not be in conflict with the Military Code of this state, or with any rules and regulations governing the National Guard thereof, and issued by the commander in chief. Such constitution and by-laws may prescribe the amount of dues to be paid by each member, and the fines and penalties for absence from, or tardiness at, any drill, meeting, or parade ordered by the commandant of such company or battery, or for disobedience of orders, or for acts prejudicial to military discipline. A copy of such constitution and by-laws, properly attested by the commandant of such company or battery, shall be competent evidence of the provisions thereof in any action or proceeding in any court of this state. (*Art. 8, § 1.*)

***§ 53. Same—Regiment.**

It shall be the duty of the commissioned officers of each regiment to make a constitution and by-laws for such regiment. Said constitution and by-laws shall prescribe the amount of fines and penalties to be imposed on the officers, non-commissioned officers, musicians, and privates of such regiment for non-attendance or tardiness at any drill or parade ordered by the commandant of such regiment, or for acts prejudicial to military discipline. A copy of such constitution and by-laws, properly attested by the commandant of such regiment, shall be competent evidence of the provisions thereof in any action or proceeding in any court of this state. (*Art. 8, § 2.*)

***§ 54. Dues—Collection.**

Each regiment, or company, or battery shall have, and is hereby granted, full power and authority to sue and recover, in its regiment, company, or battery name, in any court of competent jurisdiction in this state, any and all dues which may be owing it under its constitution and by-laws from any member thereof; and said court shall proceed and shall issue its processes for the collection of, said dues as in other civil actions. (*Id. § 3.*)

***§ 55. Breach of discipline.**

In case any member of such regiment, company, or battery shall have incurred any of the fines or penalties prescribed in its said constitution and by-laws, by reason of his failure or neglect to perform his duty as a member of said regiment, company, or battery, or by disobedience of orders, or by acts of insubordination, or conduct prejudicial to military discipline, such failure or neglect is hereby declared to be a misdemeanor, and the commandant, or other proper officer of such regiment, company, or battery, shall make complaint against such member before any justice of the peace or any court of competent jurisdiction within the county in which such member of such regiment, company, or battery may reside. Said justice or court shall thereupon proceed to hear and determine said complaint and matter in the same manner as in the trial and hearing of cases of misdemeanor under the laws of this state. Such member shall, upon conviction of such misdemeanor, be punished by a fine not exceeding ten dollars, together with the costs of such proceeding, and shall be committed to the county jail of said county until said fine and costs are paid, for a period not to exceed ten days. Said complaint shall be made and proceedings taken thereunder in the name of the state of Minnesota, but without cost to said state; and all fines paid thereunder shall be paid into the treasury of such regiment, company, or battery, as the case may be, for the benefit of its military fund. (*Id. § 4.*)

ARTICLE 9.

***§ 56. Service uniforms.**

The commander in chief shall appoint a board of five officers, who shall examine into and report the most suitable service uniform for the National Guard, and the uniform so reported shall, when approved by the commander in chief, be the service uniform for the National Guard of this state. The commander in chief shall give such time as he may see fit, not to exceed six months, for the several regiments and the battery to make such changes from their present service uniform as may be necessary in order to comply with the provisions of this section. (*Art. 9, § 1.*)

ARTICLE 10.

***§ 57. Rules and regulations by commander in chief.**

The commander in chief is hereby authorized to make such rules and regulations for the government of the National Guard as he may deem for the

good of the service: *provided*, same shall not be inconsistent with this act. (*Art. 10, § 1.*)

***§ 58. Courts-martial.**

The commander in chief is hereby authorized to appoint courts-martial for the trial of officers of the National Guard against whom charges may be preferred to him. Such courts-martial shall be conducted in accordance with the regulations of the army of the United States, and the findings shall be submitted to the commander in chief, who shall approve or disapprove them; and in the former case he is hereby authorized to carry them out, or to modify any sentence that may have been imposed. The colonel of each regiment and captain of the battery is authorized to appoint courts-martial for the trial of enlisted men of his command against whom charges may be preferred to him, and such courts-martial shall have the same jurisdiction as regimental courts-martial in the United States army, and shall be conducted in accordance with the regulations, and the findings shall be submitted to the officers appointing the court, who shall approve or disapprove them, and, in the former case, he is hereby authorized to carry them out, or to modify any sentence that may have been imposed; but no part of such sentence shall be executed until after the time allowed for appeal has expired, nor pending the adjudication of an appeal taken, and he shall transmit the record of the court proceedings and sentence, with his approval or disapproval thereof, to the adjutant general, to be kept in his office. The right of appeal in all cases to the commander in chief, as it now exists by military usage, is reserved; but no appeal shall be entertained unless made within twenty days after the decision appealed from is made known to the person appealing. (*Id. § 2, as amended 1885, c. 91, § 6.*)

***§ 59. Appropriation.**

There is hereby appropriated, out of any moneys in the state treasury belonging to the general fund, the sum of twelve thousand dollars per annum, or so much thereof as may be necessary for the purpose of carrying out the provisions of this act, but no indebtedness shall be created hereunder in excess of the appropriations herein made, except for extraordinary expenses, in case of insurrection, invasion, or rebellion. (*Id. § 3.*)

***§ 60. Same.**

There is hereby appropriated out of the general fund such sum of money, not exceeding two thousand five hundred dollars annually, or so much thereof as may be necessary to carry into effect the provisions of this act. [See *§ 17, *ante.*] (1883, c. 75, § 2.)

***§ 61. Same.**

That an additional sum of five thousand five hundred dollars be and is hereby appropriated out of the general fund for the current fiscal year, and annually thereafter, for the purpose of carrying out the provisions of the said Military Code of one thousand eight hundred and eighty-three, and amendments thereto. (1885, c. 91, § 7.)

***§ 62. Same.**

That the sum of ten thousand dollars be and is hereby appropriated out of the general fund for the current fiscal year; and annually thereafter, for the purpose of carrying out the provisions of the said Military Code of one thousand eight hundred and eighty-three, and amendments thereto. Such sum to be in addition to all appropriations heretofore made for the purposes aforesaid. (1887, c. 95, § 9.)