

# THE MILITIA.

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## CHAPTER 100.

### MILITARY CODE OF THE TERRITORY OF DAKOTA.

AN ACT To Amend an Act, Entitled "an Act to Amend Chapter Thirty (30) of the Political Code," Relating to the Territorial Militia.

*Be it Enacted by the Legislative Assembly of the Territory of Dakota:*

§ 1. WHO COMPOSE MILITIA.] All able bodied male citizens residents of this Territory, being eighteen years of age and under the age of forty-five years, excepting persons exempt by law, shall be enrolled in the militia, and perform military duty in such manner, not incompatible with the constitution and laws of the United States as hereinafter prescribed.

§ 2. ASSESSOR MAKE LIST OF PERSONS.] It shall be the duty of the assessor of each of the counties of this Territory, when making the assessment of their respective counties, to make out a list containing the names of all persons in their respective counties liable to perform military duty, and file a copy of such list with the register of deeds in the county, to be by him kept as a matter of reference, and also to transmit to the Secretary of the Territory a copy, to be by him kept as a matter of reference in his office, which copy shall be filed in the offices of the persons afore mentioned on or before the first day of January in each year.

§ 3. WHEN AND HOW MILITIA CALLED INTO SERVICE.] The militia thus enrolled shall be subject to perform no active military duty, save and except in case of war, invasion, or to prevent invasion, riot or insurrection. In such case, the commander-in-chief is hereby authorized to order out, from time to time, for actual service, as many of the militia thus enrolled as necessity may require, and to provide for their organization in the manner hereinafter prescribed for the organization of volunteer militia; *Provided*, That in all such cases the organized volunteer militia shall first be ordered into service. The militia, while in active service shall be governed by the military law of the Territory, and the rules and articles of war of the United States; and when any troops are in the field for the purposes aforesaid in this section, the senior ranking officer of the troops present shall take command; *Provided*, That no person shall be eligible to a command

in the militia of this Territory, except citizens of the United States, or persons having declared their intention to become such.

§ 4. DAKOTA NATIONAL GUARD—HOW COMPOSED.] The organized militia of this Territory shall be known as the Dakota National Guard and shall consist of:

A battalion of artillery.

A battalion of cavalry.

Two regiments of infantry.

An adjutant general's department.

An inspector and judge advocate department.

A supply department.

An engineer and ordnance department.

A medical department, and such staff officers as may be necessary; *Provided*, That in the discretion of the Governor of the Territory but one battery of artillery and one troop of cavalry may be organized; and *Provided further*, That in the discretion of the Governor the troop of cavalry may be dispensed with.

§ 5. GOVERNOR, COMMANDER-IN-CHIEF—BRIGADIER GENERAL MAY SELECT AIDES-DE-CAMP.] The Governor of the Territory shall be the commander-in-chief of the militia, and may appoint as many aides-de-camp as he may deem necessary who shall have the rank of colonel. He may at his discretion organize the Dakota National Guard into a brigade, in which case he shall appoint a brigadier general to command the same. The brigadier general may select two aides-de-camp from the captains or lieutenants of the National Guard.

§ 6. COMMISSIONS—HOW ISSUED—TENOR OF.] All commissions shall be issued by the Governor, and shall continue during good behavior, or during the pleasure of the Governor.

§ 7. HOW EQUIPPED AND ORGANIZED—MAY BE INCREASED—WHEN.] The troops of the line that may be uniformed and equipped may at the discretion of the Governor be organized into a brigade under the command of the brigadier general, or senior officer, but the commander-in-chief shall have power to change the brigade organization, and in case of riot, invasion, or other imminent danger beyond the control of the civil authorities, to increase the numerical strength of existing organizations, or form new brigades, regiments and companies, as the exigencies of the service may require.

§ 8. ARTILLERY BATTALION—WHAT TO CONSIST OF.] The battalion of artillery shall consist of two batteries of two guns each, one major, one assistant surgeon with the rank of captain, one adjutant and one commissary of supply, each with the rank of first lieutenant, one sergeant-major, one sergeant of supply, one hospital sergeant and one chief trumpeter; *Provided*, That two batteries are organized.

§ 9. ARTILLERY BATTERY—WHAT TO CONSIST OF.] Each battery of artillery shall consist of two guns with one captain, one first lieutenant, one second lieutenant, one first sergeant, four ser-

geants, four corporals, two musicians, two teamsters, and not less than twenty nor more than forty privates, except as the commander-in chief may direct; *Provided*, That two troops are organized.

§ 10. CAVALRY BATTALION—WHAT TO CONSIST OF.] The battalion of cavalry shall consist of two troops, one major, one assistant surgeon with rank of captain, one adjutant and one commissary of supply, each with rank of first lieutenant, one sergeant-major one hospital sergeant and one chief trumpeter.

§ 11. CAVALRY TROOP—WHAT TO CONSIST OF.] Each troop of cavalry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, four corporals, two musicians, one farrier, one saddler, two teamsters, and not less than twenty nor more than forty privates, except as the commander-in-chief may direct.

§ 12. INFANTRY REGIMENTS—WHAT TO CONSIST OF.] Each regiment of infantry shall consist of ten companies, one colonel, one lieutenant colonel, one major, one surgeon with rank of major, one adjutant, one commissary of supply, one assistant surgeon, and one chaplain, each with rank of captain, one sergeant major, one sergeant of supply, one hospital sergeant, one chief musician, one principal musician, one drum major, two color sergeants, and not more than twenty musicians.

§ 13. INFANTRY COMPANY—WHAT TO CONSIST OF.] Each company of infantry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, four corporals, two musicians, and not less than twenty nor more than forty privates, except as the commander-in-chief may direct.

§ 14. COMMANDER-IN-CHIEF MAY DISCHARGE OR CONSOLIDATE—WHEN.] Whenever any troop, battery or company shall have less than the minimum number of privates fixed for each organization, the commander-in-chief may at his discretion discharge or consolidate such organizations, and all officers and men honorably discharged under the provisions of this section shall have given them a certificate of discharge, showing length of service, which time shall be credited to them in case of re-entering the service.

§ 15. WHO MAY ENLIST IN THE DAKOTA NATIONAL GUARD.] Able bodied men of good character and proper age may be enlisted in the National Guard for a term of three years, and after the expiration of first enlistment they may re-enlist at any time thereafter for terms of one or more years, at their option. And any person having an honorable discharge from the regular or volunteer service of the United States, or militia of this Territory may on enlisting in the National Guard be credited with length of service as shown by such discharge, but no person over forty-five years of age shall be re-enlisted except with the approval of the surgeon, and no enlisted man shall leave one organization to join another unless he shall be duly transferred.

§ 16. ENLISTED MEN ENTITLED TO DISCHARGE—WHEN.] Every

officer and enlisted men shall be held as in the service until properly discharged; and every enlisted man shall be entitled to, and receive his discharge and certificate of service on the expiration of his term of enlistment from his immediate commanding officer.

§ 17. OFFICERS AND MEN MAY BE TRANSFERRED—WHEN—DISCHARGED—WHEN.] Officers and men moving from one location to another in the Territory, may be transferred from one organization to another on application to the adjutant general, approved by their respective commanding officers. Any member of the guard moving permanently out of the Territory or the vicinity of the station of the organization to which he belongs, may be discharged and certificate of service furnished upon his own application, but any member of the National Guard who may move away from the vicinity of his company, or other permanent headquarters, or absent himself from all duty for six months, shall, unless proper explanation is accepted by his immediate commanding officer, be dropped from the rolls without discharge or certificate of service.

§ 18. ADJUTANT GENERAL DEPARTMENT.] The adjutant general's department shall consist of one adjutant general with the rank of brigadier general.

§ 19 DUTIES OF ADJUTANT GENERAL.] The adjutant general shall keep a register of all the officers and enlisted men of the military forces of the Territory; he shall make a full report on or before the first day of December in each year to the commander-in-chief upon the condition of the National Guard, and a detailed statement of all duty performed by them during the preceding year; he shall publish from time to time, as may be necessary, at the expense of the Territory; all laws, rules, regulations and orders relating to the military forces thereof, and distribute one copy to each commissioned officer and organization of the National Guard, and to such officers of the Territory as may be affected thereby; he shall cause to be prepared and issue all blanks, books, forms, and notices required for his office, or for the use of the National Guard, and all books and forms so furnished shall be the property of the Territory. The established seal of the office shall be transferred to his successor in office, and all copies of papers or records in his office, duly certified and authenticated under the said seal, shall be evidence in all cases in like manner as if the originals were produced. And on the certificate of the adjutant general the Auditor is hereby directed to draw his warrant on the Treasurer of the Territory, to be paid from the general fund, for the expenses incurred in carrying out the provisions of this section.

§ 20. ADDITIONAL DUTIES.] The adjutant general shall, in addition to his other duties, organize and conduct a "Bureau of Pensions" for the purpose of assisting ex-soldiers or sailors, residents of the Territory, who may apply for pensions for wounds or disability incurred in the service of the United States, in estab-

lishing their claims, without fee or commissions. The salary of the adjutant general shall be fifteen hundred dollars annually, which, with the necessary expenses incurred in conducting the bureau of pensions, office and clerk hire, furniture, fuel, lights, postage and stationery, not to exceed five hundred dollars per annum, shall be paid from the general fund by warrant drawn by the Auditor on the Treasurer of the Territory, on the order of the Governor.

§ 21. INSPECTOR AND JUDGE ADVOCATE GENERAL DEPARTMENT.] The inspector and judge advocate's department shall consist of one inspector and judge advocate general, with the rank of colonel. He shall perform such duties as directed by the commander-in-chief.

§ 22. SUPPLY DEPARTMENT.] The supply department shall consist of one chief of supply with rank of brigadier general, and two assistant (commissary of supply) with rank of major. The assistants shall be assigned to appropriate duties with the brigade.

§ 23. CHIEF OF SUPPLY—GIVES BOND—DUTIES OF.] The chief of supply, shall give a bond to the Territory in the sum of ten thousand (10,000) dollars in the usual form with two sureties, each in the amount of the bond, to be approved by the commander-in-chief, for the faithful discharge of his duties. He shall keep a just and true account of all expenses necessarily incurred for the military service of the Territory, and said accounts shall be paid on the order and approval of the commander-in-chief. He shall purchase and distribute to the National Guard all military stores and supplies authorized by law, shall pay all incidental expenses of the service, including transportation, freight, express, postage and telegrams on public business, shall pay the officers and members of the National Guard; shall furnish clothing, rations, tools, camp and garrison equipage, make contracts for and pay the rent for offices, armories, store houses, camp grounds, and such other duties authorized by law, as he may be directed to perform by the orders of the commander-in-chief.

§ 24. ENGINEER AND ORDNANCE DEPARTMENT.] The engineer and ordnance department shall consist of one chief of engineers and ordnance, with rank of colonel, and one assistant with the rank of major.

§ 25. DUTY OF OFFICERS.] It shall be the duty of the officers of this department to provide arms, ammunition and equipments for the National Guard, to inspect buildings, lay out camps, be inspectors of rifle practice, and to perform such other service as the commander-in-chief may direct.

§ 26. MEDICAL DEPARTMENT.] The medical department shall consist of one surgeon general with the rank of colonel, one medical purveyor with rank of lieutenant colonel, and one apothecary and storekeeper with rank of captain; but no person shall be appointed to this department or commissioned to similar duties in

this line unless he shall be a graduate of some legally incorporated school of medicine.

§ 27. DUTIES OF.] It shall be the duty of these officers, assisted by the medical officers of the line, to provide the necessary medical supplies, and care for the sick and wounded of the National Guard when on duty, and to perform such other service as the commander-in-chief may direct.

§ 28. GRADES BELOW THE RANK OF FIELD OFFICER TO BE FILLED BY ELECTION.] Every vacancy below the grade of field officer shall be filled by election, under such rules as the commander-in-chief may determine, and, in case of no election, he may appoint a suitable person to such office. The command-in-chief shall decide all appeals in election cases under this section, and order a new election in case he deem it necessary.

§ 29. RANK DETERMINED BY DATE OR ELECTION OF APPOINTMENT.] The respective rank of all officers shall be determined by the date of their election or appointment and the length of time of service, in the Dakota National Guard, as a commissioned officer of such rank; *Provided*, That in case of re-election or re-appointment his rank shall be determined by date of first commission.

§ 30. COMMANDING OFFICERS APPOINT THEIR STAFF—HOW. Commanding officers of regiments or battalions shall detail their staff officers from the officers or enlisted men of their command and appoint the non-commissioned officers of the organization by warrants. Staff officers so detailed will be dropped from the company rolls and the vacancy filled by promotion or appointment.

§ 31. COMPANY, TROOP OR BATTERY COMMANDERS APPOINT NON-COMMISSIONED OFFICERS—HOW.] Company, troop or battery commanders shall appoint non-commissioned officers of their commands, and forward the same to regimental or battalion headquarters, where a warrant shall be issued for the same, signed by the commanding officer.

§ 32. OFFICERS TO TAKE AND SUBSCRIBE OATH.] Every officer, before entering upon the duties of his office, shall take and subscribe to an oath of allegiance to the United States and the Territory of Dakota, which oath, duly executed, shall be filed in the office of the adjutant general.

§ 33. RECRUITS TO SIGN ENLISTMENT PAPERS—WHAT TO CONTAIN.] Every person recruited for the National Guard shall sign enlistment papers in triplicate, which shall contain an oath of allegiance to the United States and to the Territory of Dakota, and a resume of the duties to be performed. Said oath of allegiance shall be taken before the troop, battery, company or battalion commanders, and when duly executed one copy shall be forwarded to the adjutant general's office, one copy to the headquarters of the regiment or battalion, and the other copy filed with the official records of the organization to which the recruit is assigned.

§ 34. OFFICERS AND MEN MAY BE DISCHARGED—WHEN.] Offi-

cers and enlisted men of the National Guard may be discharged for physical or mental disability on the certificate of a surgeon, and under such rules and regulations as may be determined upon, but no honorable discharge shall be given any member of the National Guard until he shall produce a certificate from his immediate commanding officer that he has returned, or satisfactorily accounted for all the money or other property of the Territory or any organization of the National Guard issued to him or coming into his possession, and provided, no certificate of service shall include the time any member was absent from duty without leave, which time of absence shall in no case be allowed in computing length of service.

§ 35. DRILL, DISCIPLINE AND UNIFORM.] The drill, discipline and uniform of the National Guard shall be the same as that of the army of the United States; *Provided*, That nothing in this section shall be so construed as to require companies now uniformed to supply new uniforms in the place of those now worn, until such time as it shall become necessary to provide a new uniform, which new uniform shall be the same as worn by the United States regular army. The regulations of the army, articles of war and acts of Congress of the United States shall be authority, and govern in all cases not provided for by the laws of the Territory, or regulations and orders of the commander-in-chief.

§ 36. COMMANDER-IN-CHIEF TO APPOINT BOARD OF OFFICERS TO CODIFY MILITARY LAW.] The commander-in-chief shall, as soon after the passage of this law as practicable, appoint a board of three officers to codify the laws, articles of war, rules, regulations and orders for the government of the National Guards, which codification, approved by the Governor, shall be published to the guard, and shall govern the same. The commander-in-chief may, however, from time to time, as he may deem expedient, change the rules and regulations, but such changes shall in no way conflict with the provisions of this act. The laws, rules, regulations and orders published and issued in this manner shall have the same force and effect as the provisions of this act.

#### MILITARY DUTY REQUIRED.

§ 37. ANNUAL ENCAMPMENT.] There shall be an annual encampment, inspection and muster of all organizations of the National Guard, for at least six consecutive days, at such time and place as the commander-in-chief shall order and direct. No person shall be mustered at such time or allowed to appear as a part of the National Guard, unless he shall be duly commissioned or enlisted in the same, nor any member who does not appear uniformed, armed and equipped as required by the provisions of this act. Any officer who, knowingly or wilfully shall place or cause to be placed on such muster roll the name of any person not regularly or lawfully commissioned or enlisted, or the name of any

man who is dead, or has been discharged, transferred, or dropped, or has lost his membership for any cause whatsoever, or one who has been convicted of a felony or has refused to do military duty for the six months immediately preceding the annual inspection, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than fifty, nor more than one hundred dollars, or he may be cashiered.

§ 38. WHAT REQUIRED OF EACH TROOP, BATTERY, OR COMPANY DURING THE YEAR.] In addition to the annual muster and inspection, each troop, battery or company, shall be obliged to perform during the year not less than five drills, parades, musters, and inspections. There shall also be not less than six additional drills, at such times as the commanding officer may determine. Other exercises may be had as the members of such organization shall prescribe in their by-laws by resolution. Any officer or man absent from any compulsory drill or parade, shall be fined or punished as fixed by the regulations.

§ 39. POWERS OF COMMANDING OFFICER.] The commanding officer at any parade, drill, muster, or other rendezvous, may cause those under his command to perform any military duty he may require, and may place in arrest during the time of such meeting, and confine under guard if necessary any officer or enlisted man who shall disobey the orders of his superior officer or in any way interrupt the exercises, and may remove any other person or persons who shall trespass on the parade ground or armory, or in any way interrupt the orderly discharge of duty of those under arms. He shall prohibit and prevent the sale or use of all spiritous liquors, wine, ale, or beer within the limits of the encampment, parade grounds or armory, and such limits shall be prescribed in orders by the officer commanding the parade or encampment, and also all hucksters, auction sales, gambling or games of chance, may at his discretion be abated as nuisances.

§ 40. TARGET PRACTICE.] To accustom the troops to the use of their arms, target practice must be encouraged. The commander-in-chief shall order such practice as the allowance of ammunition will permit, and he shall offer suitable medals, badges or trophies, to be inscribed and given in the name of the Territory to the persons and organizations, who upon competition shall show their superior attainments as marksmen. The provisions of this section shall be carried out under orders and regulations issued by the commander-in-chief; *Provided*, That not more than one hundred dollars shall be expended in any one year for the purchase of medals, badges, or trophies.

#### GENERAL PROVISIONS.

§ 41. OFFICERS AND MEN, HOW WARNED.] For the purpose of warning the officers, non-commissioned officers and other enlisted men for any parade, encampment or place of ren-



deztous, the commanding officer shall issue his orders, under his hand, to such number of non-commissioned officers as he may deem necessary, requiring them respectively to warn each and every person belonging to the organization to appear at the place of rendezvous, in compliance with the order. Each non-commissioned officer, to whom such order shall be directed shall warn every person whom he shall therein be required to warn, by reading the orders, or stating the substance thereof in the hearing of such person, or by leaving a notice thereof at his usual place of abode or business, as appears by the roster, with some person of suitable age and discretion or by sending the same to him by mail, directed to him at his residence or postoffice nearest thereto. The return of service made by such non-commissioned officer to his commanding officer, sworn to and certified, shall be good evidence on the trial of any person returned as delinquent. In cases of riot, tumult, breaches of the peace, and in aid of the civil authorities, a verbal warning or order shall be sufficient.

§ 42. WHEN MEMBER EXCUSED.] The officer ordering a rendezvous of his command may, upon good and sufficient grounds, excuse any member thereof from attendance at the same.

§ 43. POWER OF COMMANDER-IN-CHIEF IN CASE OF PUBLIC DISTURBANCE.] The commander-in-chief shall have power, in case of insurrection, invasion, or breaches of the peace, or imminent danger thereof, to order into the active service of the Territory any or all of the National Guard, militia or other military organizations of the Territory that he may deem proper, and no member thereof who shall be ordered out by proper authority for such duty shall be held answerable by any court, nor liable to civil prosecution for any act or acts done by them in discharge of their lawful military duty on such occasions; and in such cases the forces called into service shall receive the same pay and allowance as provided in section fifty-six of this act.

§. 44. SHERIFF OR MAYOR MAY CALL OUT TROOPS—WHEN.] In case of any breach of the peace, tumult, riot or resistance to process of this Territory, or such imminent danger thereof as will not admit of delay, it shall be lawful for any sheriff of any county, or the mayor of any city to call, in writing, under his hand and seal, for aid upon the commandant of the National Guard stationed therein or nearest thereto, and it shall be the duty of such commanding officer upon whom the call is made, to order out in aid of the civil authorities, such portion of his command, armed and equipped, as may be necessary to overcome the resistance and vindicate the supremacy of law, and he shall immediately report to the commander-in-chief all that has been done and the circumstances of the case, and the forces called into service by such orders shall receive the same pay and allowances as provided in section fifty-six of this act, and the amount of such pay and allowances shall be a portion of the county and city charges of said

county or city from the Territory, to be levied and raised as other charges are levied and raised.

§ 45. MEMBER OF NATIONAL GUARD DEEMED DESERTER—WHEN.] Any member of the National Guard ordered into service under the provisions of the two preceding sections who does not appear at the time and place fixed by his commanding officer, or who does not produce a certificate from a physician in good standing of physical disability shall be deemed a deserter, and punished according to the rules and articles of war.

#### COURTS MARTIAL.

§ 46. ARTICLES OF WAR OF THE UNITED STATES ADOPTED—WHEN.] The articles of war governing the Army of the United States, so far as they are practicable and not incompatible herewith, are hereby adopted for the government of the National Guard and Militia of this Territory with the following exceptions: The commander-in-chief is alone authorized to order general courts martial and courts of inquiry; batallion or other superior commanders may order garrison courts martial, which are authorized to try all offenders. The maximum number of members of these courts is fixed as follows: General courts, seven members, courts of inquiry and garrison courts martial, five members. Minimum number, general courts five members, and courts of inquiry and garrison courts, three members each, as the exigencies of the service permit.

§ 47. FINES—HOW DISPOSED OF.] Fines of offenders under the preceding section may be paid to the court or to the treasurer of the organization to which the offender or offenders belong. All fines imposed and collected shall be deposited to the credit of the clothing and equipment fund of the organization to which the member paying the fine belongs, or if a staff officer to the general fund of the Territory. A receipt for money so deposited will be forwarded for file with the proceedings of the court in such case.

§ 48. COURTS MARTIAL MAY COMPEL THE ATTENDANCE OF WITNESSES—ADMINISTER OATHS, ETC.] Any court authorized by this act shall have the same power as other courts of the Territory to compel the attendance of witnesses through the senior officer or president of the court, and to administer oaths to such witnesses, who shall issue subpoenas for all witnesses that may be deemed necessary by the court. He may issue attachment for the witness, and all sheriffs, jailors, and constables are hereby required to execute any precept issued by such president or court for that purpose. The person attached for non-attendance shall pay the usual fees for such service, besides the penalty provided, unless he satisfies the court that his failure to attend was excusable. Every witness not appearing in obedience to such subpoena when duly served with a copy of the same, and not having a sufficient excuse shall forfeit to the people of this Territory a sum not less

than one nor more than ten dollars, to be paid and credited as fines for similar offences before other courts of the Territory.

§ 49. POWER TO PUNISH FOR CONTEMPT.] Any person or persons behaving in a disrespectful manner, or using any insulting language before any military court, or to a member thereof in open court, intending to disturb or impair the authority of such court, may be punished for contempt of court by confinement in the jail of the county in which the court sits, by warrant under the hand of the president of such court. The warrant shall be directed to the sheriff, or any or either of the constables or marshals of any such county, or the officer attending the court, and shall set forth the circumstances of the offense adjudged to have been committed, and shall command the officer to whom it is directed to take the body of such person and commit him to jail of the county, there to remain without bail and in close confinement, for a limited time, not to exceed three days, and until the officer's fees for committing, and the jailor's fee, be paid. Such sheriff shall obey the warrant and keep the person as directed, unless he is discharged by a judge of a court of record in same manner and under the same rule as in cases of imprisonment under process of contempt from a court of common law jurisdiction.

§ 50. SHERIFF OF COUNTY MARSHAL OF COURT.] A military court sitting in any county shall be attended by the sheriff of the same, or some suitable person designated by him who shall be the marshal of the court and perform the usual duties of such marshals, and execute any process lawfully issued by such court, and perform all acts and duties by this act imposed on, and authorized to be performed by any sheriff, marshal or constable and the officer ordering the court shall furnish a copy of his order to the sheriff of the county where the court is directed to meet, which order shall be notice to the sheriff to appear, or designate some one as marshal of the court.

§ 51. CONVERSION OF MONEY BY MARSHAL—EMBEZZLEMENT—COMPENSATION OF MARSHAL.] To every marshal appointed to a military court, shall be paid two dollars for every day's attendance before the court, and actual necessary traveling expenses while engaged in serving subpoenas or executing any process of the court, the same to be paid on the certificate of the president of the court as to number of days employed and other duties performed, and in like manner with other accounts of the Territory, but no marshal shall receive any fees from the person served, and any refusal or neglect on the part of the sheriff or marshal to execute any warrant herein required, or make return and pay over all the money collected as fines, shall subject the officer so offending to double the amount of such fines and penalties. The conversion to his own use of moneys so collected by any sheriff or marshal shall be deemed embezzlement, and punished as such in any court of the Territory having jurisdiction of such cases.

§ 52. FINES—HOW COLLECTED.] For the purpose of collecting fines imposed by courts martial, the president of the court shall within twenty days after the proceedings of the court have been approved, make a list of all the persons fined, describing them distinctly and showing the sums imposed on each person, and not paid. He shall then draw his official warrant directed to the sheriff of the county, or the marshal of the court, commanding him to levy such fine, together with the costs, on the goods and chattels of the delinquent, sale thereof to be made as provided by law, and no property shall be exempt from payment of such fines and penalties. In default of sufficient goods and chattels to satisfy the same, then such sheriff, marshal or constable shall take the body of such delinquent and confine him in the county jail, whose jailor shall keep such delinquent closely confined without bail or mainprize for two days for any fine or penalty not exceeding five dollars and one additional day for every dollar above that sum, unless the fine with the costs and jailor's fees be sooner paid; but no such imprisonment shall extend beyond ten days, and the officer ordering the court may remit the fines and penalties imposed.

§ 53. WHEN MEMBERS OF GUARD REFUSE OR NEGLECT TO PAY FINE.] Any member of the National Guard fined by a general or other court martial who shall neglect or refuse to pay such fine within twenty days after the same was imposed, may be published in orders by the officer ordering the court, and dishonorably dismissed from the service without allowance of time he has served and disqualified from serving in the National Guard for three years. For offences against the by-laws, rules and regulations of any organization any dues may be collected by court martial as provided in this act.

§ 54. ACTION AGAINST MEMBERS OF MILITARY COURT.] No action shall be maintained against any member of a military court on account of the imposition of a fine or penalty, or for the execution of a sentence on any person, if such person shall have been returned as delinquent, and duly summoned before such court, or shall have appeared before such court to answer the charges made against him.

§ 55. NO ACTION, WHEN.] When a suit or proceedings shall be commenced in any court by any person against any officer of the National Guard of this Territory for any act done by such officer in his official capacity in the discharge of any duty under this act, or against any person acting under authority or order of such officer, or by virtue of any warrant issued by him pursuant to law. The judge advocate general, or some officer designated by the Governor shall appear for him, and the plaintiff in such suit may be required to file security for the payment of the costs that may be incurred by the defendant in such suit or proceedings. In case the plaintiff shall be non-suited, or have verdict or judgment rendered against him, the defendant shall recover treble

costs, and such attorney's fees as the court shall allow, which said fees shall in the first instance be paid by the Territory, and be refunded by defendant upon collection of the judgment.

§ 56. COMPENSATION OF OFFICERS AND MEN.] There shall be allowed and paid, as hereafter provided, to such officers and enlisted men as shall be ordered into active service, or to attend annual encampments, in pursuance of the provisions of this act, the following sum each, for every day actually on duty, or going to and returning from the same, and the certificate of the officer ordering the duty shall be evidence of such service.

To musicians, privates, and teamsters, seventy-five cents;

To corporals, farriers, and saddlers, one dollar;

To sergeants and drum-majors, one dollar and fifteen cents;

To first sergeants, principal musicians and chief trumpeters, one dollar and twenty-five cents;

To sergeant majors, sergeants of supply, hospital sergeants, and chief musicians, one dollar and fifty cents;

To second lieutenants, one dollar and seventy-five cents;

To first lieutenants, one dollar and seventy-five cents;

To captains and company commanders, two dollars;

To lieutenant-colonels, majors, or battalion commanders, two dollars and twenty-five cents;

To brigadier general and colonel, three dollars;

To staff officers the same as officers of like grade in the line or field.

§ 57. MEMBERS OF GUARD TO PROVIDE HORSES—COMPENSATION FOR SAME.] All members of the National Guard that are required to be mounted shall provide for their own use a horse and horse equipments, but shall be allowed forage for the same when on duty, and be paid the sum of one dollar for each day such horse may be on duty in the service of the Territory, or as may be provided in this act. And the sums, authorized by this section shall be paid by the chief of supply in such manner as the commander-in-chief may direct.

§ 58. COMPENSATION OF OFFICERS DETAILED ON COURTS OR UNDER ORDERS.] All officers detailed to serve on any board or commission ordered by the commander-in-chief, or on any court of inquiry, court martial or delinquency court ordered by the proper authority in pursuance of any provisions of this act, shall be paid their subsistence and actual traveling expenses, and for each and every day actually employed in said board or court or engaged in the business thereof or in travelling to and from the place of meeting of said board or court, a sum equal to one day's pay for field duty.

§ 59. COMPENSATION OF OFFICERS AND MEN ON DUTY.] All officers and enlisted men of the National Guard while on duty in camp, or assembled pursuant to the order of the commander-in-chief, or the sheriff of any county, or the mayor of any city, shall receive the compensation provided in section fifty-six of this act,

and also their subsistence in kind, or commutation thereof, and their transportation or mileage. The rates of commutation or mileage, to be fixed by order of the commander-in-chief.

§ 60. CLOTHING AND EQUIPMENT FUND—HOW CONSTITUTED.] On the certificate of the adjutant general each regimental headquarters, staff and band, battalion and staff, troop, battery or company shall be allowed annually a sum equal to seven dollars for each of its officers and men present for duty, based upon the percentage present for duty, for the year at the five compulsory parades required in section thirty-eight of this act, and the annual muster and inspection, which percentage shall be certified to by the adjutant general, which sums together with fines and penalties collected from delinquent officers and men, shall constitute the clothing and equipment fund of such organization and the clothing and equipment purchased with this fund shall be the property of the Territory.

§ 61. TRANSPORTATION.] The officers and members of the National Guard shall be allowed free transportation for themselves, their horses and equipments and the property of the Territory, going to and returning from any service authorized or directed by law, their subsistence in kind or commutation therefor and their quarters, tents and camp equipments, and the chief of supply and the officers of his department will at all times be prepared to furnish these things as may be required by orders of the commander-in-chief.

§ 62. PROPERTY EXEMPT FROM TAXATION.] All property belonging to any organization of the Dakota National Guard, shall be exempt from taxation, or assessment for any purpose whatever, and in case any such organization shall erect or purchase an armory or assembly room, the annual rent of the same authorized in section twenty-two of this act may be paid into the treasury of such organization.

§ 63. ARMORY RENT—HOW PAID.] The commanding officer of each company, troop, or battery, and the treasurer of each regimental band, shall provide suitable room or rooms at a convenient place in the town where each organization is located or stationed with the necessary furniture, fuel, lights, drawers, lockers, closets, and gun racks, for an armory, assembly and drill room for such organization, and said room or rooms shall be under the exclusive control of the commanding officer. There shall be an annual appropriation of three hundred dollars from the militia fund for the rent and furnishing of such armory or band quarters of each organization of the National Guard, to be paid of [by] the Territory.

§ 64. NATIONAL GUARD EXEMPT FROM JURY DUTY AND POLL TAX.] Every member of the Dakota National Guard shall be exempt from jury duty, and from the payment of poll tax.

§ 65. MEMBERS OF NATIONAL GUARD EXEMPT FROM ARREST ON CIVIL PROCESS WHILE ON DUTY—HAVE RIGHT OF WAY ON HIGH-

WAY.] No person belonging to the military forces shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty. Any portion of the National Guard, performing any duty, according to law, shall have the right of way in any street or highway through which they may pass; *Provided*, the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments, shall not be interfered with thereby.

§ 66. OFFICERS TO REPORT—WHEN.] Every officer who receives arms, accoutrements, clothing, camp equipage, rations or stores of any kind for the use of his command, or for issue to troops, shall render the chief of the department furnishing the same a report or return of such supplies, according to the forms which may be prescribed, and such reports shall be furnished when called for, but not oftener than once in two months.

§ 67. MILITARY OUTFITS OR SUPPLIES CANNOT BE SOLD OR GIVEN AWAY.] The clothing, arms, military outfits, accoutrements and stores furnished by the Territory to the National Guard shall not be sold, bartered, exchanged, pledged, loaned or given away and the possession of any such property by any person not a member of the Guard shall be prima facie evidence of such sale, barter, exchange, pledge, loan or theft. Such property may be seized and taken from any person not authorized to keep the same, by any officer, soldier, civil or military, of the Territory, and shall thereupon be delivered unto any officer of the Territory authorized to receive the same.

§ 68. LOST OR STOLEN PROPERTY—HOW VALUED.] All property of the Territory that may be lost, stolen, damaged or destroyed in the military service, shall be acted upon by a disinterested inspector or officer, detailed as such, who shall make full investigation and report of all the facts and circumstances of the case, and if any person is found or deemed responsible for the loss or damage of the property beyond reasonable wear and tear of the services, the inspector shall assess and fix a reasonable value on the property lost, damaged or destroyed, and such person shall pay the sum so assessed into the treasury of the Territory. And in event of such person's failure or neglect to reimburse the Territory, suit may be entered in the name of the Territory in any court of competent jurisdiction for the recovery of the same under such regulations as the Governor shall prescribe.

§ 69. APPROPRIATION.] For the purpose of camping out, the provisions of chapter thirty of the Political Code of the Territory of Dakota, as herein amended, there is hereby appropriated annually, in addition to the amount heretofore appropriated, the sum of three thousand (3,000) dollars, or so much thereof as may be necessary, out of any money in the Territorial Treasury not otherwise appropriated, and all warrants against said appropriation shall be drawn by the Territorial Auditor upon the Terri-

torial Treasurer, upon the certificate of the adjutant general, approved by the Governor.

§ 70. All acts or parts of acts conflicting with the provisions of this act are hereby repealed, and this act shall be known, entitled and referred to as the Military Code of the Territory of Dakota, and shall take effect on and after its passage and approval.

Approved, March 11, 1887.

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## CHAPTER 101.

### DEFICIENCY APPROPRIATION FOR ARMORY RENT.

AN ACT Entitled "An Act to appropriate Funds to Reimburse the Territorial Militia for Armory Rent and for Other Purposes."

*Be it Enacted by the Legislative Assembly of the Territory of Dakota:*

§ 1. RENT OF ARMORY—HOW PAID.] That there is hereby appropriated, out of any funds in the Territorial Treasury not otherwise appropriated, the sum of one hundred and fifty-five dollars for each company in the first and second regiments of the Territorial Militia, to pay for armory rent for the past two years for which no funds were provided by law.

§ 2. EXPENSES OF SUPPRESSING RIOTS AND INSURRECTIONS—HOW PAID.] That there be appropriated out of any funds in the Territorial Treasury not otherwise appropriated, a sufficient sum, not to exceed six thousand dollars, to pay any expenses which may be incurred by reason of the Territorial Militia being called out by the Governor of the Territory, for the purpose of suppressing riots, quelling insurrections, or executing the laws of the Territory; *Provided*, That such expenses are incurred within the boundaries of the Territory.

§ 3. TERRITORIAL AUDITOR TO DRAW WARRANT.] The Territorial Auditor is hereby empowered and required to draw his warrant upon the Territorial Treasurer, in favor of the commanding officer of each of the companies of the Territorial Militia, organized for one year past for the sum of one hundred and fifty-five dollars to carry out the provisions of section one of this act.

§ 4. This act shall take effect and be in force from and after the passage and approval of this act.

Approved, March 11, 1887.



## CHAPTER 102.

## DEFICIENCY APPROPRIATION FOR ARMORY RENT FOR REGIMENTAL BANDS.

AN ACT To Make an Appropriation for the Payment of Armory Rent of the Regimental Bands of the Dakota National Guard.

*Be it Enacted by the Legislative Assembly of the Territory of Dakota:*

§ 1. APPROPRIATED.] That the sum of three hundred (300) dollars be hereby appropriated to pay armory rent for the first regimental band of the Dakota National Guard for the year 1886, and the sum of (600) six hundred dollars to pay the armory rent of the second regimental band of the Dakota National Guard for the years 1885 and 1886.

§ 2. AUDITOR TO EXAMINE AND ALLOW CERTAIN CLAIMS.] The Auditor of the Territory of Dakota, is hereby authorized and empowered to hear, determine and audit certain claims of said bands for armory rent, and the said Auditor is empowered to issue his warrant in favor of the treasurer of said bands upon the Territorial Treasurer, for such sum or sums as he may allow said bands, and the Treasurer is hereby directed to pay the amounts named in such warrants out of any money in the treasury not otherwise appropriated.

§ 3. This act shall take effect and be in force from and after its passage and approval.

Approved, March 11, 1887.

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CHAPTER 103.

## APPROPRIATION FOR ENCAMPMENT HELD IN 1885.

AN ACT To appropriate Funds to pay Expenses Incurred by Territorial Militia, at Territorial Encampment Held at Fargo, Dakota, in September, 1885.

*Be it Enacted by the Legislative Assembly of the Territory of Dakota:*

§ 1. APPROPRIATION FOR TENTS.] The Auditor of the Territory of Dakota is hereby authorized and empowered to hear, determine, and to audit a certain claim against S. H. Jumper, A. A.

Rowley, John T. McChesney and H. M. Marple, to pay for the use of tents at the Territorial Militia encampment, held at Fargo, Dakota, in September and October, 1885, and for damage to the same, and freight paid thereon, not exceeding the sum of four hundred, ninety-one and fifty-two one-hundredths (491.52) dollars; and the said Auditor is empowered to issue his warrant upon the Treasurer for such sum or sums as he may allow said Jumper, Rowley, McChesney and Marple, and the Treasurer is hereby directed to pay the amount mentioned in such warrant out of any money in the Treasury not otherwise appropriated.

§ 2. This act shall take effect and be in force from and after its passage and approval.

Approved, March 11, 1887.

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## MUNICIPAL CORPORATIONS.

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### CHAPTER 104.

#### RELATIVE TO EXTENSION OR RESTRICTION OF CITY LIMITS BY ORDINANCE.

#### AN ACT To Provide for Extending or Restricting the Limits of Incorporated Cities and Towns.

*Be it Enacted by the Legislative Assembly of the Territory of Dakota:*

§ 1. LIMITS MAY BE EXTENDED.] That on petition in writing, signed by not less than three fourths of the legal voters, and by the owners of not less than three fourth (in value) of the property in any territory contiguous to any incorporated city or town, and not embraced within the limits thereof, the city council of the city or the board of trustees of the town, as the case may be, may by ordinance annex such territory to such city or town, upon filing a copy of such ordinance with an accurate map of the territory annexed, (duly certified by the mayor of the city or the president of the board of trustees of the town), in the office of the register of deeds of the county where the annexed territory, or the greater portion of it is situated, and having the same recorded therein.