THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

Gerald C. Mann
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~~FIRST ASSISTANT~~

Hon. Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Opinion No. O-5045
Re: Are the members of the Texas State Guard entitled to a military poll tax receipt under Article 5840 and Article 5841 of the Revised Civil Statutes of Texas/

Dear Sir:

Your request for opinion is as follows:

"Please advise this department whether or not members of the Texas Defense Guard are entitled to a military poll tax receipt referred to in Articles 5840 and 5841, if the commanding officer files a list with the tax assessor-collector as required by said articles. In other words, is the Defense Guard a part of the State Militia?"

Article 5765, Revised Civil Statutes of Texas, read as follows:

"The militia of this State shall be divided into two classes, the active and reserve militia. The active militia shall consist of the organized and uniformed military forces of this State, which shall be known as the Texas National Guard; the reserve militia shall consist of all those liable to service in the militia, but not serving in the Texas National Guard."

Said Article 5765, as amended by House Bill No. 585, 48th Legislature, effective May 12, 1943, in part reads as follows:

"Article 5765. Active and Reserve.

"The militia of this State shall be divided into two classes, the active and reserve militia. The active militia shall consist of organized and uniformed military forces of this State, which shall be known as the Texas National Guard or the Texas State Guard as the case may be; the reserve militia shall consist of all those liable to service in the militia, but not serving in the Texas National Guard or the Texas State Guard . . . Whenever any part of the National Guard of this State is in active federal service, the governor is hereby authorized to organize and maintain within this State during such period, under such regulations as the Secretary of War of the United States may prescribe for their organization, standards of training, instruction and discipline, such military forces as the governor may deem necessary to defend

> the State. . . Such forces shall be a part of the active militia and a component part of the military forces of Texas and shall be additional to and distinct from the National Guard and shall be known as the Texas State Guard." (Emphasis ours)

In our opinion No. O-4602, written by Hon. R. W. Fairchild, Assistant Attorney General, we held as follows:

> ". . .
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> "The Texas Defense Guard is designed to take the place of the Texas National Guard while the latter is in federal service. During this period, it constitutes the active militia of Texas. As such, it is designed to provide the State with an armed force trained and prepared to resist attack or invasion."

By force of legislative enactment that portion of the active militia of Texas heretofore known as the Texas Defense Guard is now designated the "Texas State Guard".

Article 5840, Revised Civil Statutes of Texas, reads as follows:

> "All officers and enlisted men of the active militia of this State, who comply with their military duties as prescribed by this chapter, shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the Constitution for the support of the public schools; exemption from the payment of any road or street tax, and from any road duty whatsoever under the laws of this State, and exemption from jury service or duty of every character or description."

Article 5841, Revised Civil Statutes of Texas, reads as follows:

> "To entitle any troop, battery, company, signal corps, or band of the active militia of this State to the exemption from the payment of poll taxes as specified in the preceding article, the commanding officer of such organization shall, between the first days of January and April of each year, file with the assessor of taxes for his county a list of all members of his command who have discharged the military duties required of them for the preceding year, and who have been present for at least twenty-four drills or parades, or have been excused for non-attendance thereon by reason of illness or other necessary cause; such lists shall be certified to by such commanding officer, and the persons whose names appear on such lists, shall not be assessed for any poll taxes whatever, other

> then the poll tax of $1.00 prescribed by the Constitution for the support of public schools for the current year; and each assessor with whom such lists are filed shall note the exemptions on his assessment roll as set forth in such lists, and furnish such information to all concerned as may be necessary in carrying out the provisions of this article."

You are therefore advised in answer to your question that members of the active militia of Texas, formerly known as "The Texas Defense Guard" and now known as the "Texas State Guard" are entitled to a military poll tax receipt under Articles 5840 and 5841, Revised Civil Statutes of Texas, when the law set forth in said articles has been complied with.

APPROVED MAY 28, 1943
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: BWB, CHAIRMAN

Yours very truly
ATTORNEY GENERAL OF TEXAS

By /s/ Geo. P. Blackburn
Geo. P. Blackburn, Assistant

GPB:AMM:wb