



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

February 24, 1956

Honorable K. L. Berry
The Adjutant General of Texas
Austin, Texas

Opinion No. S-189

Re: Jury service by members
of the National Guard
under Articles 2135 and
5840, V. C. S.

Dear General Berry:

You have requested an opinion on the liability of members of the Texas National Guard for jury service. Your questions are as follows:

"1. Are members of the Active Militia of this State exempted from jury service under the provisions of Articles 5840-5844, Revised Civil Statutes?

"2. If the answer to question 1 above is in the affirmative, what restrictions, if any, are imposed against the exemption from jury service for members of the Active Militia of the State by the amendment to Article 2135 set out in House Bill No. 78, 54th Legislature, Regular Session?"

The amendment referred to exempts from jury service "all members of the national guard of this State under the provisions of the title 'Militia' during periods of time when they are actually on active duty." Art. 2135, Revised Civil Statutes, as amended by Ch. 288, Acts 54th Leg., 1955, p. 795.

Prior to 1931, Article 2135 provided that all competent jurors were liable to jury service except certain enumerated classes of persons, including the following:

"9. All members of the national guard of this state under the provisions of the title 'Militia.'"

In Title 94 (Militia), Article 5840 provided:

"All officers and enlisted men of the active militia [defined in Article 5765 as "the organized and uniformed military forces of this State, which shall be known as the Texas National Guard"], who shall comply with their military duties as prescribed in this chapter, shall be entitled to . . . exemption from jury service or duty of every character and description."

To be entitled to the exemption for any current year, a certificate had to be filed during January showing that the member had discharged the military duties required of him during the preceding year. Arts. 5841-5844. As the law then stood, members of the National Guard were exempted from all jury service during the year if their names had been certified as required in these articles.

In 1931, the Legislature repealed Subdivision 9 of Article 2135 (Ch. 221, Acts 42nd Leg., R. S., p. 375), thus making Article 2135 read that all competent jurors were liable to jury service except the enumerated classes, which did not include members of the National Guard. This Act impliedly repealed the jury service exemption provisions in Articles 5840-5844, since these provisions were in conflict with Article 2135 as amended and the later enactment was controlling. Townsend v. Terrell, 118 Tex. 463, 16 S. W. 2d 1063 (1929); Parker v. State, 208 S. W. 2d 380 (Tex. Civ. App. 1948, affirmed 147 Tex. 57, 212 S. W. 2d 132). Between 1931 and 1955, therefore, members of the National Guard were not exempted from jury service.

Chapter 288 of the 54th Legislature amended Article 2135 in numerous respects, including the restoration of the exemption of members of the National Guard in the language heretofore quoted. However, the portions of Article 5840-5844 relating to exemption from jury service were not revived by this amendment to Article 2135. Thomas v. Groebl, 147 Tex. 70, 212 S. W. 2d 625 (1948).

Under the present law, members of the National Guard are exempted from jury service during periods of time when they are actually on active duty, but it is not necessary that their names be certified as formerly required by Articles 5842-5844 (prior to the repeal of these provisions in 1931) in order for them to claim the exemption. If summoned for jury service for a period when he will be actually on active duty, a member may claim his exemption either upon his appearance in open court or by filing an affidavit as provided in Article 2137, which reads:

"All persons summoned as jurors in any court of this State, who are exempt by statutory law from jury service, may, if they so desire to claim their exemptions, make oath before any officer authorized by law to administer oaths, or before the officers summoning such persons, stating their exemptions, and file said affidavit at any time before the convening of said court with the clerk of said court, which shall constitute sufficient excuse without appearing in person."

Periods of time when members are actually on active duty include periods of active federal or state service referred to in Articles 5837a and 5838. We are of the opinion that they also include training periods as provided in Articles 5836 and 5837.

SUMMARY

Members of the Texas National Guard are exempted from jury service during periods of time when they are actually on active duty. Art. 2135, V. C. S., as amended by Ch. 288, Acts 54th Leg., 1955. Periods when members are actually on active duty include periods of active federal or state service referred to in Articles 5837a and 5838, V. C. S., and periods of training as provided in Articles 5836 and 5837, V. C. S.

The jury service exemption provisions in Articles 5840-5844, V. C. S., were repealed by Chapter 221, Acts 42nd Legislature, Regular Session, 1931, and were not revived by the 1955 amendment to Article 2135. It is not necessary that the names of members be certified as formerly required by these repealed articles in order for them to claim the exemption.

Yours very truly,

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APPROVED:

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