



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN
ATTORNEY GENERAL

February 21, 1968

Maj. Gen. Thomas S. Bishop
Adjutant General of Texas
Camp Mabry
Austin, Texas

Opinion No. M-204

Re: Eligibility requirements
for membership on the
Texas National Guard
Armory Board.

Dear Mr. Bishop:

Your request for an opinion reads as follows:

"Article 5931-1 T.R.C.S., Acts of the 60th Legislature, Regular Session, creates the Texas National Guard Armory Board. The Act specifies that the Board will be composed of the Commanding General of the 36th Infantry Division, Texas National Guard, the Commanding General of the 49th Armored Division, Texas National Guard and the Chief of Staff for Air, Texas Air National Guard.

"Reorganization authority Number 66-67, National Guard Bureau, dated 4 December 1967 reorganizes the Texas Army National Guard in part on 15 December 1967 and the remainder on 15 January 1968. The provisions of the above referenced reorganization authority deletes the 36th Infantry Division from the Troop allotment to the State of Texas and reorganizes the Headquarters and Headquarters Company, 36th Infantry Division and other 36th Infantry Division units into the Headquarters and Headquarters Company (-) 71st Infantry Brigade (Airborne) effective 15 January 1968; deletes the 49th Armored Division from the Troop Allotment to the State of Texas and reorganizes the Headquarters and Headquarters Company, 49th Armored Division into the Headquarters and Headquarters Company (-), 72nd Infantry Brigade (Mechanized), effective 15 January 1968. After 15 January, 1968, the 36th Infantry Division and 49th Armored Division will no longer exist but their successors in function, i.e., the

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71st Infantry Brigade (Airborne) and the 72nd Infantry Brigade (Mechanized) will exist and supersede the 36th Infantry Division and 49th Armored Division respectively, as their successors in function.

". . .

"Due to the above factual situation the following questions are submitted to you for your legal opinion:

"1. By virtue of the reorganization of the Texas National Guard and the resulting elimination of the 36th Infantry Division and the 49th Armored Division, who should be certified by the Adjutant General to the Secretary of State for membership on the Texas National Guard Armory Board?

"2. Is an Officer of the National Guard, otherwise qualified, whose civilian occupation is District Attorney of Travis County, Texas, eligible to serve as a member of the Texas National Guard Armory Board?

"3. Should any officer fail to qualify as a member of the Texas National Guard Armory Board under the provisions of the State Constitution or the State statutes, then in that event, who should be certified by the Adjutant General to the Secretary of State for membership on said Board?

". . ."

Article 5931-1, Vernon's Civil Statutes, provides in part:

"There is hereby created the Texas National Guard Armory Board to be composed of the Commanding General of the 36th Infantry Division, Texas National Guard, the Commanding General of the 49th Armored Division, Texas National Guard, and the Chief of Staff for Air, Texas Air National Guard. The board shall be composed of three members and the term of office for members of the Texas National Guard Armory Board shall be of six years' duration except that in the event of

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a vacancy, the person qualifying for the position shall complete the unexpired term of his predecessor. . . .

". . .

". . .

"It is further provided that none of the members of this board shall at the same time hold any other office or position of honor, trust, or profit under the state or federal government, except as a member of the Texas National Guard or as a member of the Texas State Guard operating as successor in military function.

"Should any officer fail to qualify as a member of the board under the provisions of the State Constitution or the provisions of this Act, the next senior officer in military rank of the respective military units to qualify shall be certified by the Adjutant General of Texas to the secretary of state as provided in this Act."

Under the facts stated in your request, the 71st Infantry Brigade (Airborne) is the successor to the 36th Infantry Division, Texas National Guard, and the 72nd Infantry Brigade (Mechanized) is the successor to the 49th Armored Division, Texas National Guard.

It is our opinion that the Texas National Guard Armory Board, created pursuant to the provisions of Article 5931-1, was intended to be composed of the senior officers who command the highest ranking military units. Therefore, it is our opinion the phrase "36th Infantry Division, Texas National Guard," now refers to the 71st Infantry Brigade (Airborne), since the 71st Infantry Brigade (Airborne) is the successor to the 36th Infantry Division. Likewise, the phrase "49th Armored Division, Texas National Guard," now refers to the 72nd Infantry Brigade (Mechanized), since it is the successor to the 49th Armored Division. You are therefore advised in answer to your first question, that you should certify for membership in the Texas National Guard Armory Board the senior officers of the 71st Infantry Brigade (Airborne) and the 72nd Infantry Brigade (Mechanized), provided such officers

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are qualified under the provisions of Article 5931-1.

Article 5931-1 specifically provides, in part:

". . . that none of the members of this board shall at the same time hold any other office or position of honor, trust, or profit under the state or federal government, except as a member of the Texas National Guard or as a member of the Texas State Guard operating as successor in military function." (Emphasis added.)

The office of District Attorney of Travis County is such an office. Tex.Const. Art. V, Sec. 21, Articles 322 and 322A, V.C.S.

In view of the prohibition contained in Article 5931-1, you are advised that in answer to your second question, the District Attorney of Travis County is not eligible to serve as a member of the Texas National Guard Armory Board.

In answer to your third question, you are advised that since the Commanding General of the 71st Infantry Brigade (Airborne) is the District Attorney of Travis County, and therefore not eligible to serve as a member of the Texas National Guard Armory Board, you should certify the next senior officer in the military rank of the 71st Infantry Brigade (Airborne) for membership.

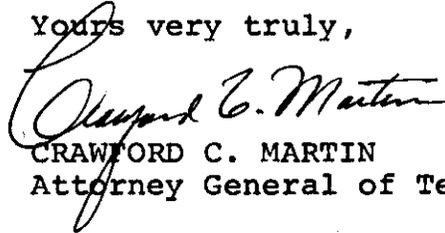
S U M M A R Y

Under the present reorganization of military units in Texas, the Texas National Guard Armory Board is to be composed of the Commanding Generals of the 71st Infantry Brigade (Airborne) and the 72nd Infantry Brigade (Mechanized), successors to the 36th Infantry Division and 49th Armored Division and the Chief of Staff for Air, Texas Air National Guard. Since the Commanding General of the 71st Infantry Brigade (Airborne) is ineligible to serve as a member of the Texas National Guard Armory Board by reason

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of holding the office of District Attorney of Travis County, Texas, the next senior officer in military rank of the 71st Infantry Brigade (Airborne) should be certified by the Adjutant General for membership on the Texas National Guard Armory Board, pursuant to the provisions of Article 5931-1, Vernon's Civil Statutes.

Yours very truly,



CRAWFORD C. MARTIN
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Prepared by John Reeves
Assistant Attorney General

APPROVED:
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