



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

March 11, 1968

Lt. Col. Harry B. Kelton  
Director, Texas National  
Guard Armory Board  
West Austin Station  
Austin, Texas 78703

Opinion No. M-210

Re: Membership of the  
Texas National Guard  
Armory Board after  
change of commanding  
officers of units of  
the Texas National  
Guard.

Dear Lt. Col. Kelton:

Your request for an opinion on the above sub-  
ject matter poses the following questions:

"Is there a vacancy created by re-  
organization of military units other  
than where a member is unable to serve  
because of the above described induc-  
tion into federal service and 'there-  
after the military successor in func-  
tion of the Texas National Guard  
shall qualify as a member of the  
board?'

"If there is no vacancy, can the  
Secretary of State legally accept the  
constitutional oath of office of such  
officers certified in addition to the  
three incumbent members certified  
July 11, 1967?

"Was it intended that Attorney  
General's Opinion M-204 resolve only  
the question of legal succession in  
the event a vacancy were to occur as  
provided in Article 5931-1, T.R.C.S.,  
Acts of the 60th Legislature, Regular  
Session?'"

You state in your request that Major General  
Everett S. Simpson, Brigadier General Kelly Arnold and  
Colonel Charles A. Francis were certified to the Secre-  
tary of State on July 11, 1965. On February 28, 1968,

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the Adjutant General certified to the Secretary of State the following for membership on the Texas National Guard Armory Board - Brigadier General D. A. Thompson, Commanding General, 72nd Infantry Brigade, and Colonel Lewis E. Bracy, Jr., Executive Officer, 71st Infantry Brigade, and further certified that Colonel Charles A. Francis, highest ranking officer of the Texas Air National Guard, will continue to serve on the Texas National Guard Armory Board.

This certificate by the Adjutant General of Texas was made as a result of reorganization of units of the Texas National Guard. As a result of the reorganization, the 71st Infantry Brigade is the successor to the 36th Infantry Division, Texas National Guard, and the 72nd Infantry Brigade is the successor to the 49th Armored Division, Texas National Guard. 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 a vacancy, the person qualifying for the position shall complete the unexpired term of his predecessor. . . ."

It was held in Attorney General's Opinion M-204 that:

"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 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."

Under the facts submitted by you, the highest ranking officer of the 72nd Infantry Brigade is Brigadier General D. A. Thompson. Since the Commanding General of the 71st Infantry Brigade is ineligible to serve as a member of the Texas National Guard Armory Board, the next highest ranking officer of the 71st Infantry Brigade is Colonel Lewis E. Bracy, Jr., and the highest ranking officer of the Texas Air National Guard is Colonel Charles A. Francis.

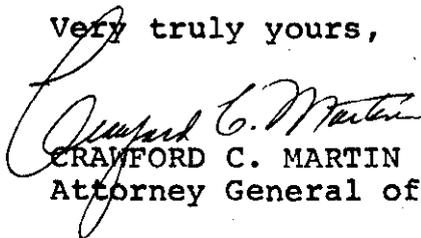
Since Article 5931-1 requires the Texas National Guard Armory Board to be composed of these officers, it is our opinion that vacancies were created by the change of the commanding officers which occurred as a result of the reorganization of units of the Texas National Guard. Therefore, you are advised, under the facts submitted, that the above mentioned highest ranking officers are the officers eligible to serve at the present time on the Texas National Guard Armory Board.

#### S U M M A R Y

Under the facts submitted, the highest ranking officers eligible for membership on the Texas National Guard Armory Board are Brigadier General D. A. Thompson, Commanding General, 72nd Infantry Brigade, Colonel Lewis E. Bracy, Jr., Executive Officer, 71st Infantry Brigade, and Colonel Charles A. Francis, Texas Air National Guard.

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Very truly yours,



CRAWFORD C. MARTIN

Attorney General of Texas

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Assistant Attorney General

APPROVED:  
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