

National Guard, Money and Property of Companies Mustered Out.

Where a company is mustered out of service, all property and money of such company revert to the State. If there are outstanding debts of the company, they should first be paid out of the money of the company on hand. The balance of money, after payment of outstanding debts, is placed to the credit of the general fund of the State.

Helena, Montana, Nov. 17, 1905.

Hon. A. M. Alderson, Adjutant General, Helena, Montana.

Dear Sir:—Your letter of the 7th instant, requesting an opinion of this office, received. From the first question submitted it appears that Company E, of Livingston, was mustered out of service, and upon going out of service the company transferred a set of lockers to another company of the National Guard for the sum of \$80, which money was turned over to you. At the time Company E was mustered out there were outstanding debts against it to the amount of \$80. The question asked upon the above facts is, "may the outstanding accounts of Company E be paid therefrom?"

Company E no doubt used \$80 or more of its appropriation for the purpose of procuring these lockers, which are property of the State. If they had not used their appropriation for this purpose, they would have had money on hand to pay all their outstanding debts. It is only the balance on hand after paying outstanding debts of a company that reverts to the State upon the company being mustered out of service. Therefore, when they transferred their lockers to another company for money to the amount of \$80, we are of the opinion that Company E would have the right to use this money, or so much thereof as may be necessary, to pay the outstanding debts of the Company at the time it was mustered out of service. As this money was turned over to you, you are advised to pay the claims of this company, which have been properly audited, and get the receipts from the claimants and attach same to their claims, which are filed.

The second question submitted relates to Battery A, which was also mustered out of service. At the time Battery A was mustered out they had on hand the sum of \$242.46, the same being the balance of the money appropriated to them for the year 1904. Section 36, of senate bill No. 13, laws 1897, p. 155, provides that "when a company is disbanded or mustered out all property and money in the treasury of such company must revert

to the state." It is perfectly clear from the reading of this section, that all money remaining in the treasury of the company mustered out, where there are no outstanding debts against the company, must be turned over to the state, and as the section does not designate any particular fund to which it shall be credited, it must be placed to the credit of the general fund of the state.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.