

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 33

EMERGENCIES - Funding for National Guard when called to active duty in emergencies;

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NATIONAL GUARD - Funding when called to active duty in emergency;

MONTANA CODE ANNOTATED - Sections 10-1-501, 10-3-302, 10-3-311, 10-3-312;

MONTANA CONSTITUTION - Article VI, section 13, article VIII, section 14.

HELD: Expenses incurred in the mobilization of the Montana National Guard are funded through section 10-3-312, MCA, when the Guard is mobilized pursuant to a declaration of emergency under section 10-3-302, MCA.

1 October 1981

David M. Lewis, Director
Budget and Program Planning
Office of the Governor
Capitol Station
Helena, Montana 59620

Dear Mr. Lewis:

You have inquired whether the \$750,000 limitation on expenditure of general fund money for emergency and disaster relief codified in section 10-3-312, MCA, applies to funds expended under section 10-1-501, MCA, for the support of the Montana National Guard when called to active duty in an emergency. The 1981 Legislature appropriated \$750,000 for disaster relief under section 10-3-312, MCA, but made no explicit appropriation for expenses incurred by the National Guard when called into active duty. Since no money may be paid out of the general fund unless appropriated by the Legislature, Mont. Const. art VIII, § 14, the substance of your question is whether there are currently appropriated funds to support the National Guard in the event of an emergency mobilization.

The budgetary limitation in section 10-3-312, MCA, was enacted as section 2 of ch. 409, Laws of 1971. Section 1 of that bill, § 10-3-311, MCA, authorized the Governor to declare an emergency and expend state funds when an emergency exists which cannot be dealt with through the resources of local governments. One resource available to aid in coping with an emergency is the Montana National Guard. In my opinion, when the Guard is

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mobilized pursuant to a declaration of emergency under section 10-3-302, MCA, the payment of Guard expenses is governed by section 10-3-312, MCA.

There may be situations, however, in which the Guard is mobilized without a declaration of emergency under section 10-3-302, MCA. That section deals exclusively with emergencies which place a burden on local government services, such as floods, earthquakes, epidemics, and riots. Other emergencies may arise which are unrelated to local government services, such as disruptions in state services caused by strikes of state employees, which may justify the Governor in mobilizing the Guard under Article VI, section 13, 1972 Montana Constitution. The strike against the Department of Institutions in 1979 is a good example. In such a situation, a declaration of emergency under section 10-3-302, MCA, might well be inappropriate, and the budgetary limitation of section 10-3-312, MCA, would not apply.

THEREFORE, IT IS MY OPINION:

Expenses incurred in the mobilization of the Montana National Guard are funded through section 10-3-312, MCA, when the Guard is mobilized pursuant to a declaration of emergency under section 10-3-302, MCA.

Very truly yours

MIKE GREELY
Attorney General