

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

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Major General D. L. Corning, Adjutant General  
Camp Rapid  
Rapid City, South Dakota 57701

OFFICIAL OPINION NO. 67-68 pg. 47

**Statutes. Chapter 244, Laws of 1963.**

You have raised certain questions concerning the applicability of Chapter 244, Laws of 1963. This Chapter provides for a quarters allowance for members of the National Guard with dependents, who are not eligible to receive the Federal Basic Allowance for quarters during the annual active duty training period. Concerning this statute you have asked the following questions:

- "1. May more than one such payment be made to an individual during the year?
- "2. May this payment be paid for full time training duty other than summer field training, such as service schools, basic training, (6 months) and other short period of extended active duty?
- "3. May persons on advance or rear detachments receive this quarters allowance?"

Section 1 of the Act reads as follows:

"Enlisted men of the lower four (4) pay grades with dependents who are on active duty during the annual active duty training period, and not receiving Federal Basic Allowance for quarters, shall be paid a sum equal to the Federal Basic Allowance for quarters as provided by the Statutes of the United States for Reserve Enlisted Men."

The portion of this Chapter necessary of definition therefore is the phrase "the annual active duty training period". This is defined for the joint services including the United States Army in Army Regulation 320-5, Change 2, dated February 21, 1966, in part as follows:

"Annual Active Duty for Training (J, A) That period of active duty for training, of not to exceed 17 days, which is performed on an annual basis by many members of the Ready Reserve of the Reserve Components of the Armed Forces..."

This particular section relates more particularly to members of the Army Reserve but the definition seems applicable to the question at hand. The regulations of the National Guard NGR 45, Section 22, provides that all federal recognized units and personnel will participate in at least fifteen days field training annually.

Also National Guard Bureau Pamphlet 45-4, Section 8 speaks of the training period as normally fifteen days with additional time for travel, advance detachments, etc.

South Dakota National Guard Regulation 45-7, paragraph 6 refers to the "advance detachment" as a "group of individuals of a given command designated to arrive at a training site prior to the main body".

It seems clear, therefore, that Chapter 244 contemplates that which is generally known and referred to as Summer Camp, Summer Field Training, ANACDUTRA, and the like. It does not encompass every tour of active duty or period of the same which a member of the National Guard may be called on to perform. (Title 32, USCA Section 503, for authority for the performance of various types of assignments by members of the National Guard).

In 1951 a New Jersey Court was called on to interpret the term "Field Training" in a statute which provided certain members of the Reserve Components were entitled to special pay allowance while on field training. In the Case of Lynch v. Edgewater (1951) 14 N.J. Super 329, 82 A2d 446 the court stated generally: "The term in the field as employed in the Articles of War had been defined by the War Department to mean service in mobilization, concentration, instruction, or maneuver camps, as well as service in campaign, simulated campaign, or on the march and it held the purpose of the plaintiff's temporary active duty was, therefore, undeniably to engage in 'field training'. The defendant employer had contended the term meant the fifteen day maximum period for which a reservist could be called to serve in any one year." (22ALR 2d 1141) In my opinion there is a distinction to be taken between the cited case and the matter and law at hand. There the definition was given of "field training" a broad term; here we must resolve what is meant by the words "the annual active duty training period". In my opinion this phrase refers only to that period of time in any year, members of organized units of the National Guard are ordered to perform not less than fifteen days training. I would include travel time in such definition, but would exclude the time allocated for advance and rear detachments and voluntary periods of school training or other service except when similar to, and in lieu of, the normal annual training period. I feel the legislative intent is, that there is only one such period which can be called "the annual active duty training period." Consequently one person would not be entitled to more than one payment in any year of training. It is possible, as I understand it, however, for there to be more than one annual training period for the state's guard units in a fiscal year. This could come about and has, in fact, done so when units have gone to camp in August of one year and in June of the succeeding year. In this case I believe the enlisted persons

within the class to be benefited should receive their allowances since the training is in different calendar years.

Your remaining two questions are answered in the negative as discussed above. .