

Opinion No. 14-1238

May 26, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. C. Royall, Silver City, New Mexico.

NATIONAL GUARD.

Right to imprison member of the national guard under commitment issued by the military authority of the state.

OPINION

{*100} Your letter of the 23rd inst. was received yesterday, but I had no time to answer until this morning.

You say that a member of the National Guard of Silver City sometime ago was sent to the county jail under a commitment issued by the military authority of the state, and when you were asked by what authority he could so be confined, you wrote to the Adjutant General for information and in response he referred you to Section 7 of Chapter 88 of the Laws of 1901 and Section 88 of Chapter 101 of the Laws of 1905. You say, however, that those sections fail to show you the right of the sheriff to receive a prisoner and hold him in the county jail under such a commitment, and you ask me to explain the matter.

By reference to Section 87 of Chapter 101 of the Laws of 1905, you will see that the Governor is authorized to make such rules and regulations as he may deem expedient but they must conform to the act and as nearly as practicable to those governing the United States Army, and when promulgated shall have the same force and effect as the provisions of the statute.

On April 21, 1913, rules and regulations as to the punishment of members of the National Guard convicted by courts martial were promulgated and among other things it was provided that when the sentence was confinement, or when the convicted person refuses to pay a fine, he should be confined in the jail of the county where his organization is located and that a commitment should issue to the sheriff. It must be that the man about whom you write was confined under the provisions of these regulations.