

Opinion No. 15-1460

February 26, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Capt. G. Williams, U. S. A., Columbus, New Mexico.

As to whether it is a misdemeanor for a civilian to wear the uniform of the United States Army.

OPINION

{*47} I have today received your letter of the 24th instant in which you say that the army regulations state that New Mexico is one of the states in which it is a misdemeanor for a civilian to wear the uniform of the U. S. Army, except in the case of persons on the stage, and you inquire whether this means any part of the uniform or in its entirety.

I believe that the only statutory provision in New Mexico which approaches any such prohibition as you speak of is to be found in Section 80 of Chapter 101 of the Laws of 1905, which reads as follows:

"Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard, or in any manner pawn or pledge any arms, uniforms, equipments, or other military property, issued under the provisions of this chapter, and any person who shall wear any uniform or any device, strap, knot, or insignia of any design or character used as a designation of grade, rank or office, such as are by law or by general regulation, duly promulgated, prescribed for the use of the active militia or similar thereto, except members of the army and navy of the United States and the national guard of this or any other territory, officers of the independent military organizations so designated in section 82 of this chapter, members of associations wholly composed of soldiers honorably discharged from the service of the United States and members of the order of sons of veterans, shall be guilty of a misdemeanor, and upon conviction fined in any sum not less than five dollars nor more than one hundred dollars, before a justice of the peace or district court, and in addition thereto, shall forfeit to the people of this territory \$ 100 for each offense, to be sued for in the name of the people by the judge advocate. All moneys recovered by any action or proceeding under this section shall be paid to the adjutant general, who shall apply the same to the use of the active militia."

This section of the statute appears to relate only to the wearing of any uniform such as is "prescribed for the use of the active militia," but by Section 65 of the same act it is provided that every enlisted man shall be furnished "with a service uniform corresponding in make and general appearance to the service uniform of the United States army." It appears to me doubtful, however, whether any person could be successfully prosecuted under said Section 80 for wearing the uniform of the United

States Army. Such penal statutes are to be strictly construed, and this one does not seem to cover the use of the uniform of the United States Army.

{*48} As to the question which you ask, it is my opinion that the statute ought to be construed as extending to the wearing of such part of the uniform as would unmistakably indicate its character. I can imagine shoes, hats and shirts actually made for use as part of the uniform, might be worn in such condition that they would not be recognizable as parts of the uniform, and in that case it probably would not be considered an offense. The clear intention of the the statute is to prevent unauthorized persons from wearing a uniform or any device which would be calculated to impose upon others the belief that such unauthorized person was actually with the military service.