

Opinion No. 20-2521

March 19, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: General James Baca, Adjutant General, Capitol Building, Santa Fe, N.M.

Compliance With National Defense Act.

OPINION

We have your oral request accompanied by all the correspondence in regard to the question raised by the army authorities concerning the compliance of the State of New Mexico with that part of Section 110 of the National Defense Act prescribing certain qualifications for and method of appointments of the staff and other officers designated in the said National Defense Act, and in reply would advise you as follows:

In our opinion that part of Section 1 of Chapter 4, Laws Extraordinary Session 1917, which provides, "and will observe and comply with all the requirements of said act;" referring to the said National Defense Act, is such a compliance with the mandatory provisions of Section 110 as to bind the State of New Mexico not to deviate from the regulations therein specifically enumerated.

It is within our personal knowledge that it was the intent of the State Legislature of New Mexico to take action when it passed the said act (Chapter 4, Extraordinary Session, 1917), which would comply strictly and in every respect and particular with the requirements of the National Defense Act, and if, in the opinion of the War Department, the general covenant in the section of the act providing for observances and compliance with all of the requirements of the National Defense Act, is not sufficient, I am quite certain that the next session of the Legislature, which meets in January 1921, will cure any defects that the Department may feel are now existing.

In the meantime, however, we believe that the State has shown its good faith in the legislation that has already been passed and that the War Department should, with this in mind, render the aid provided for in the act to the State upon the assurance of your office and of this office that any technical defects will be corrected by the next legislature.

We do not admit, however, that there are defects in this particular respect, but submit that Section one is sufficient to show an intent to comply with the National Defense Act and to bind the State to do so in the event that the War Department should co-operate with the State and render the aid provided for in that act.

We are returning to you herewith all of the correspondence submitted in connection with the matter.