

## Opinion No. 22-3519

July 11, 1922

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** General Henry Rolfe Brown, Adjutant General, Gallup, New Mexico.

### **Right of National Guard Officers to Commutation, Light, Heat and Quarters When in Active Service.**

#### **OPINION**

{\*167} I have made considerable investigation and examination of authorities in connection with the question of the right of the officers of the National Guard to receive commutation of quarters, light and heat from the state while engaged in the service of the state under the conditions existing at Gallup.

Heretofore, on June 9th, I advised Captain Edward L. Safford, that, in my opinion, commutation could not be allowed because by the provisions of Section 3886, Code 1915, when on duty, or assembled in case of riot, tumult, breach of the peace, insurrection, invasion or war, and whenever called in aid of the civil authorities "officers shall receive regular U. S. Army pay for officers of like grade for their services," and ruled that commutation of quarters, light and heat was received in the nature of an allowance and not as pay.

Upon further consideration of the question, however, and after the investigation above mentioned, I have come to the conclusion that my opinion first rendered is subject to criticism for the reason that the wording of Section 3886 might possibly include such commutation in the pay to be received because commutation might be considered as "pay for officers of like grade for their services."

If officers of the regular army, in rendering the same service that is being rendered by the present officers of the Guard at Gallup would be entitled to commutation of quarters, light and heat, I now believe that officers of the Guard would also be entitled to such allowance.

Therefore, I revise my former opinion rendered to Captain Safford and hold that the officers stationed at Gallup during the present proclamation of the Governor ordering the Guard to that place, are entitled to commutation of quarters, light and heat, in an amount equal to that received by U. S. Army officers of like grade.

I am sending a copy of this letter to Honorable A. G. Whittier, State Traveling Auditor, so that he may, if he sees fit, take any steps to enjoin the payment of the commutation, in order to test the legality of the proposed action in using the state funds for the above mentioned purpose.