

ADJUTANT GENERAL'S DEPARTMENT

**Staff Report
to the
Sunset Advisory Commission**

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FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Adjutant General's Department, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

I. SUMMARY AND CONCLUSIONS

Local militia for the common defense were established prior to the creation of the Republic of Texas. In order to coordinate the activities of the volunteers, the Adjutant General's Department was established in 1840 under the Republic of Texas, and was continued after Texas became a state.

In 1903, Congressional action redefined the nature of the state militia, and created a dual responsibility of providing: 1) trained military units for state active duty in the protection of life and property and the preservation of law and order; and 2) trained military units for federal active duty in time of war or national emergency. In response to the federal action, Texas enacted legislation in 1905 to provide for the organization and discipline of the state's military forces under the command of an adjutant general, who is appointed by the governor for a two-year term. Activities of the agency are financed through general revenue appropriations and federal funds.

Review of agency operations indicated that the agency has been successful in achieving its major objectives in the area of providing trained and equipped military units for state and federal service. While the agency has generally operated in an efficient and effective manner, several areas of concern were identified during the review. In the financial area, agency special revenue funds, which total approximately \$20,000, are not maintained in the State Treasury. Purchases from these funds are not conducted through the State Purchasing and General Services Commission. In addition, billeting fees collected by the department are not clearly authorized by statute.

Review of agency procedures indicated that the Adjutant General's Department has made efforts to ensure that federal functions are performed with federal

personnel and funds. However, no federal reimbursement is currently being received for labor costs involved in state mail and printing services provided to various federal offices. Potential savings and reduced staff size could also be achieved by the agency by contracting for janitorial services at Camp Mabry.

With regard to personnel procedures, the department requires military membership as a job prerequisite in many cases, thereby potentially excluding capable individuals from employment. In addition, an employee of the department currently provides services for the National Guard Association on state time. The association is a private promotional and lobby organization. The review also indicated a close relationship between the Texas State Guard and the Texas State Guard Association, involving advertising for the association conducted at state expense.

Need for Agency Functions

Since 1905, the Adjutant General's Department has been responsible for providing trained and organized military units to assist in the national defense and to provide support to civil authorities in instances of natural disaster or civil disturbance. Conditions existing today have not eliminated the need for these agency functions. Although other non-military personnel provide support to local authorities, without the use of military forces there would not be sufficient equipment or trained personnel to adequately provide the support service necessary in times of civil disturbance or disaster.

The review indicated that the need to provide trained and organized military units can be most effectively met through an agency which performs an ongoing military function. In all states, including Texas, this need is met through an independent military agency. No feasible alternatives exist in Texas for the provision of military support to civil authorities. With regard to national guard

facilities, armory construction and maintenance functions currently performed by the National Guard Armory Board could be assumed by the Adjutant General's Department.

Alternatives

If the legislature determines that the department and its functions should be continued, the following alternatives could be considered:

1. CONTINUE THE DEPARTMENT AND ITS FUNCTIONS WITH MODIFICATIONS.

This approach would maintain an independent agency to provide command, administrative, and materiel support to the state's military forces. The review indicated that the following changes should be implemented if agency functions are to be properly performed:

- a) small special funds of the agency should be maintained in the State Treasury. Purchases made from these funds should be conducted through the State Purchasing and General Services Commission (page 11);
- b) a means should be provided through which the department could be authorized to contract for and be responsible for the construction, maintenance and operation of national guard facilities (page 19);
- c) the possibility of negotiating a federal reimbursement contract for state printing and mail services supplied to federal offices should be reviewed (page 13);
- d) the collection of billeting fees should be clearly authorized in statute (page 12);
- e) janitorial services at Camp Mabry should be supplied by contract (page 13);
- f) state employees of the department should not provide services for the National Guard Association (page 13);

- g) the Texas State Guard program should not publish or distribute advertisements for the Texas State Guard Association at state expense (page 15); and
- h) military membership should not be required as a condition for employment unless it exists as a clear prerequisite to performance of job tasks (page 14).

II. BACKGROUND

Historical Perspective

The tradition of maintaining a local militia for the common defense in Texas dates back to the 1830's, when volunteers organized to win the state's independence from Mexico. In order to coordinate the actions of these volunteer forces, the Adjutant General's Department was established under the Republic of Texas in 1840.

In 1846, one year after Texas was admitted as the twenty-eighth state, the department was established in state government to execute the constitutional responsibilities of the governor as commander in chief of the state's military forces. By this action, Texas followed the precedent set by other states under the powers given them by Article I, Section 8 of the U.S. Constitution. The constitution reserves to the states "the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress."

In 1903, action taken by the Federal Government in the National Militia Act redefined the nature of the state militia and laid the groundwork for these forces as we know them today. Under terms of this Act, the various state military organizations became known as the "National Guard", organized along the lines of the regular army. The Federal Government became responsible for arming the guard, as well as contributing to their support and training. In addition, the President was granted the authority to call forth the guard into federal service. In this manner, the Act created for the national guard and the Adjutant General's Department a dual responsibility of providing: 1) a trained and organized state militia to function in the protection of life and property, and the preservation of

law and order within the state; and 2) trained military units for federal active duty in time of war or national emergency.

In response to the Congressional action redefining the state's militia, the Twenty-ninth Texas Legislature in 1905 passed legislation to provide for the organization and discipline of the Texas National Guard under the command of an adjutant general, appointed by the governor for a two-year term. Subordinate only to the governor in matters pertaining to the state's military forces, the legislation stated that the adjutant general shall perform, as near as possible, such duties as pertain to the chief of staff and the military secretary of the United States Army. These duties and the dual federal-state functions of the department have remained unchanged.

Since the reorganization of the state militia into national guard units, the structure of the state's military forces has undergone one significant change. Following the call to federal active service of the Texas National Guard during World War II, the Texas Legislature enlarged the state militia by creating the Texas Defense Guard. Redesignated the Texas State Guard in 1943, this body was charged with replacing the national guard insofar as its state functions were concerned during times of federal service.

While the Texas State Guard was disbanded and given reserve status following the return of the Texas National Guard after World War II, it was recreated as an active unit by the Texas Legislature in 1965 and has continued in existence since that date. This reactivation was taken after a Texas National Guard unit was called to active service, leaving behind an unguarded armory containing state equipment. This situation underlined the continuing need for a ready force to supplement or replace national guard personnel.

In the seventy-five years of its existence, the Texas National Guard has answered a federal call to duty on five different occasions. In addition, the guard has frequently provided a state service in the form of disaster assistance and support to civil authorities -- 120 times since 1949. The agency carries out its duty of command and administration of the state's military forces with a staff of 215 full-time state employees and close to 2,000 federal employees located throughout the state. During the 1978-79 biennium, the department expended \$6,988,169 in support of its various programs. Eighty-eight percent of these funds came from the General Revenue Fund while the remaining twelve percent were from federal funds. In addition to funds expended through the department, the Federal Government contributed approximately \$185.9 million during the 1978-79 biennium in support of the Texas National Guard.

Comparative Analysis

In order to determine the pattern of laws and regulations utilized within the United States for the purpose of administering state military forces, a survey of the fifty states was conducted.

Federal law establishes the position of adjutant general in each of the fifty states. In all states, the governor is commander in chief of state military forces, while the adjutant general is charged with the administration and command of these forces. Every state provides state funds for the support of its respective Department of Military Affairs or Adjutant General and, in each state, military forces perform state as well as federal functions. State functions performed by state military forces include disaster relief, law enforcement, civil defense, rescue, community health, and forestry functions. State funds appropriated in support of these state military functions range from approximately \$500,000 in the

states of Nevada and Virginia to \$14,000,000 appropriated by the State of New York. In Texas, \$3,534,456 in state funds has been appropriated to the Adjutant General's Department for the 1980 fiscal year. In addition to state appropriations, thirty-two states, including Texas, collect fees for armory rental. In Iowa, additional funds are generated through the rental of armory grounds to farmers.

All states surveyed employ state-funded personnel for the purpose of administering state military forces. The number of personnel employed ranges from 319 in California to 20 in West Virginia. In Texas, the Adjutant General's Department is staffed by 215 state employees.

Of the fifty states surveyed, nine states possess an active state guard or militia, as does Texas. In eighteen additional states, a state guard or militia is authorized by state law but has not been funded.

In the area of military facilities, final responsibility for the construction of armories rests with the Adjutant General's Department or with the state Department of Military Affairs in all states except Texas. In Texas, construction responsibility rests with the National Guard Armory Board. The function of facility maintenance is performed by the Adjutant General's Department in all but six states, including Texas. In five of these states, including Texas, maintenance functions are fully or partially the responsibility of a National Guard Armory Board.

All states surveyed indicated the necessity of performing the basic administrative and management functions related to the maintenance of a state military force.

III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates, and the objectives of the agency and the manner in which these objectives have been achieved.

Organization and Objectives

The objective of the Adjutant General's Department is to provide command, control, and administrative and materiel support to the state's military forces. The department is headed by an adjutant general, appointed by the governor and confirmed by the senate for a two-year term. To be qualified for appointment as adjutant general, a person must be a federally recognized officer of field grade in the Texas National Guard, must have previously served on active duty or training with the Army or Air Force, and must have completed at least ten years service as an officer with an active unit of the Texas National Guard.

The adjutant general is aided by two assistant adjutant generals appointed by the governor, and an authorized staff of 215 state and 1,890 federal employees. Activities of the department are funded through general revenue appropriations and federal contracts which reimburse the state for utilities and state personnel utilized in performing the federal mission. In addition, the major portion of Texas National Guard equipment, personnel, and training are financed by the Federal Government.

Evaluation of Agency Activities

The operations of the agency are divided into four major programs: 1) Command and Administration; 2) Army National Guard; 3) Air National Guard; and 4) Texas State Guard. These programs were reviewed to determine the extent to

which agency objectives have been achieved. To make this determination, the evaluation focused on whether the agency has complied with statutory provisions, and whether agency organization and procedures are structured in a manner that contributes to cost-effective accomplishment of the agency's task.

Command and Administration

The objective of the Command and Administration Program is to provide for efficient agency operation. The review indicated that the agency has generally been successful in meeting this objective. Accepted procedures have been utilized in accounting, record-keeping, and property management. Recommendations by the State Auditor's Office for improving internal controls relating to cash receipts and payroll functions have been implemented.

The agency has achieved significant savings and has reduced staff size by contracting for air conditioning and garbage services at Camp Mabry. In addition, the department has attempted to ensure that maximum federal reimbursements are received for services provided in support of the federal mission.

While the agency is generally administered in an efficient manner, several aspects of agency administration could be improved. With regard to agency financing, the department currently maintains four special revenue funds outside the State Treasury as part of its operating structure: the Camp Mabry Billeting Fund, the Texas National Guard Fund, the Texas National Guard Academy Fund, and the All Faiths Chapel Fund. The total amount maintained in these funds is relatively small, totaling approximately \$20,000. However, this amount is anticipated to increase in the future. Revenue for these funds is generated by fees collected and donations received by the agency. The funds are audited by both the Inspector General's Office of the Adjutant General's Department and the State Auditor's Office.

Although expenditures from these funds are governed by regulations set by the adjutant general, purchases are not recorded with the state's property record system which is maintained by the State Purchasing and General Services Commission, a procedure recommended by the State Auditor. Purchases financed from the special funds of the department should be made through the State Purchasing and General Services Commission.

One of the above-mentioned funds, the Camp Mabry Billeting Fund, is generated by fees collected for the use of visitor quarters located at the camp. While the adjutant general possesses the statutory authority to perform all duties pertaining to control of his department and the military forces, no clear authority exists for the department to collect fees. The adjutant general should be given clear statutory authority to collect a billeting fee for use of visitor quarters if this practice is to be continued.

These funds are maintained outside the State Treasury and as a result, the expenditure from the funds are not subject to the standard fund practices and controls developed by the legislature to assure administrative efficiency and accountability. To be consistent with the approach used for most other state funds, and the general policy of the Sunset Advisory Commission, the special funds of the Adjutant General's Department should be placed in the State Treasury and be appropriated to the agency.

In fulfilling agency objectives, efforts have been made to ensure that federal personnel and funds are utilized for the performance of federal functions. In fiscal year 1979, the adjutant general supervised 1,890 federal employees and the expenditure of \$92.6 million in federal funds. In recent years, several federal functions performed by the state have been assumed by the Federal Government. During the review, additional activities related to the federal mission but sup-

ported with state funds were identified. The Adjutant General's Department provides mail and printing services to various federal offices located on Camp Mabry and throughout the state. Although the Federal Government contributes its share of printing supplies and materials, no federal reimbursement is currently being received for labor costs involved in the two functions. The agency should take necessary steps to negotiate a federal reimbursement contract for state printing and mail services supplied to federal offices.

In the area of personnel, several areas of concern were identified. These areas involve janitorial services, services provided to private organizations, and qualifications for employment. Analysis of the janitorial requirements at Camp Mabry indicate that the department could achieve significant savings by contracting for janitorial services. The department currently employs 17 janitors at an annual cost of approximately \$172,000. In addition, the department must provide necessary janitorial equipment and supplies. Private janitorial companies estimate that these services could be provided for approximately \$140,000 annually. Agency staff recognize the potential benefits to be derived from contracting for janitorial services and are attempting to develop an appropriate contract for securing these services.

A second concern in the area of personnel results from the performance by an agency employee of tasks in behalf of the National Guard Association. The National Guard Association serves as a private promotional and lobbying group for the guard. One state employee currently spends approximately 20 percent of her time performing National Guard Association functions. In general, the activities of private associations and of state agencies should be clearly distinguished, and the use of state personnel to perform association functions should be discontinued.

Unofficial employment policies of the department require membership in the guard as a condition for employment in certain positions. In many of these administrative and support positions, guard membership is not clearly related to job duties. Consequently, capable individuals not serving in the guard may be excluded from employment. In general, guard membership should not be required for job eligibility unless it is clearly related to and necessary for the performance of job tasks.

Guard Programs

The Adjutant General's Department administers three guard programs: the Army National Guard, the Air National Guard, and the Texas State Guard. The Army and Air Guard programs are charged with two major objectives. The state mission is to provide organized, trained, and equipped units to protect life and property, and preserve law and order as directed by the governor and the adjutant general. The federal mission is to provide trained military units for federal active duty in time of national emergency or war. The administration of these programs is the responsibility of both federal and state government. Eighty-four of the 1,974 personnel employed in the programs are state employees. In support of Army and Air Guard activities during fiscal year 1979, the agency expended \$777,591 in state funds and administered \$92.6 million in federal funds.

The review indicated that the Army and Air National Guard programs have been effective in addressing their objectives. The operations of the programs are in compliance with federal regulations regarding training, property control and military procedures. Basic military training in areas such as leadership, first aid, communications, and transportation lends itself well to accomplishing the state mission of disaster relief. In addition, specialized training for control of civil

disturbances is given to units in major population centers across the state. During fiscal year 1979, the national guard was committed in support of state civil authorities on three occasions, involving 3,175 man-days.

The third division of the state's military forces, the Texas State Guard, is responsible for providing organized and trained units to supplement or replace the Texas National Guard when needed. This program is supported solely with state funds and is administered by five state employees.

The review indicated that the State Guard is generally effective in achieving its objectives. The program operates under written procedures developed to assume responsibility for armories, state property, and state funds upon mobilization of the national guard. Training emphasis is placed on providing assistance to civil authorities through exercises in traffic control, crowd control, property protection, light rescue, and first aid. In addition, 30 disaster relief exercises were conducted by state guard battalions in fiscal year 1979. In 1979, 31 members of the Texas State Guard were called into active state duty to reinforce and support national guard units involved in disaster relief operations.

Review of state guard operations indicated a close relationship between the program and the Texas State Guard Association, a private lobby group. Advertisements for the association are published in the "Texas State Guard Bulletin" and distributed to all guard units at state expense. In general, agency operations should be clearly separated from those of private associations.

Summary

The evaluation of the Adjutant General's Department indicated that the agency has been successful in meeting its major program objectives. Operations of the agency are generally conducted in an efficient and effective manner; however,

several areas of concern were identified through the review. In the area of financing, purchases made from agency's special funds are not conducted through the State Purchasing and General Services Commission. In addition, these funds, which total approximately \$20,000, are not kept in the State Treasury, but are maintained in local bank accounts. In order to provide for legislative control and to comply with general state purchasing procedures, the agency's special funds should be placed in the Treasury and expenditures from these funds should be conducted through the State Purchasing and General Services Commission. As a final concern in the area of financing, fees collected by the department for rental of visitor quarters at Camp Mabry are not clearly authorized by statute. Such authorization should be given if this procedure is to be continued.

The agency has made efforts to ensure that federal functions are performed by federal personnel and funds. Although many federal activities previously performed by the state have been assumed by the Federal Government in recent years, the state still provides mail and printing services to various federal offices without any reimbursement for the labor involved. The agency should take steps to negotiate a federal reimbursement contract for these services.

The agency has achieved significant savings and has reduced staff size by contracting for garbage and air conditioning services at Camp Mabry. An analysis of the janitorial requirements at the camp indicated that current costs of \$172,000 could be significantly reduced through contracting with private firms.

With regard to personnel procedures, one state employee currently performs tasks on behalf of the National Guard Association, a private promotional organization. The activities of the department and the association should be clearly distinguished and state personnel should not perform association functions. The review also indicated that the department requires membership in the guard as a

condition for employment for administrative and support positions, thereby potentially excluding capable individuals from employment. Guard membership should not be required unless it clearly relates to the performance of the job tasks.

With the use of state and federal resources, the Army and Air National Guard programs have been successful in providing trained units for national defense and to support state civil authorities. The Texas State Guard, supported through state funds alone, receives specialized training in traffic control, crowd control, property protection, light rescue, and first aid to accomplish its objective of replacing or supplementing the national guard in times of federal active duty. The review indicated a close relationship between the Texas State Guard and a private lobby group, the Texas State Guard Association. Advertisements for the association, currently published and distributed at state expense by the state guard program, should be discontinued and agency operations should be clearly distinguished from those of private associations.

IV. ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of alternative methods of performing agency functions; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Consolidation Alternatives

The organization of military activities in other states was reviewed to identify potential patterns of agency consolidation in Texas. In all fifty states an independent body, designated as either the Adjutant General's Department or the Military Department, is maintained to provide for the command of the state's military forces. Responsibility for armory construction, maintenance, and operation is assigned to the adjutant general in forty-four states. In the remaining six states, these responsibilities are shared with a separate body. In Texas, the Adjutant General's Department and the National Guard Armory Board share responsibility for armory construction and maintenance.

To determine the feasibility of consolidating the functions of the National Guard Armory Board within the Adjutant General's Department, the compatibility of the objectives and existing duplication of efforts of the agencies were reviewed. By statute, the adjutant general is in control of all military matters in the state. In order to fulfill this requirement, the department currently develops plans and specifications for constructing military facilities, employs janitors and guards at several unit locations, and supervises maintenance work at national guard facili-

ties. These efforts are duplicated by the National Guard Armory Board. Potential savings could be derived and duplication of efforts could be eliminated through the consolidation of facility construction and maintenance functions within the Adjutant General's Department.

An exception to this general pattern of duplication results from the authority of the National Guard Armory Board to issue bonds for armory construction. These bonds are serviced by armory rents paid by the adjutant general. If the two agencies were consolidated, the mechanism established to provide for construction and renovation funding through the issuance of bonds would be eliminated as a result of restrictive bonding provisions in the state constitution. Consequently, another funding approach would be required.

In order to maintain the option of funding agency activities through bond revenue, consolidation of functions could be achieved by requiring the National Guard Armory Board to contract with the Adjutant General's Department for the construction, maintenance and operation of national guard facilities. This approach would result in the consolidation of Armory Board staff and functions within the Adjutant General's Department while continuing the mechanism through which Armory Board bonds are serviced.

Functional Alternatives

The Adjutant General's Department in Texas is responsible for providing trained and organized military units to assist in providing for the national defense and to provide support to civil authorities in instances of natural disaster or civil disturbance. These defense and support functions are carried out within a military setting in all states.

The review indicated that other non-military personnel also provide support to local authorities in times of civil disobedience or natural disaster. These groups include the Department of Public Safety and the Parks and Wildlife Department. However, staff of the Division of Disaster Emergency Services indicate the necessity of continuing the use of military forces in providing support to civil authorities. A shift to total reliance on non-military personnel would not provide the state sufficient equipment or trained personnel to adequately provide the support service.

Federal Impact

Title 32, United States Code, establishes the position of adjutant general in each of the fifty states, charging the position with the administration of the state's national guard. Through the National Guard Bureau, federal guidelines have established the military conditions that are to be met by the Texas National Guard. If the above conditions are not maintained, any or all federal funds appropriated in support of the Texas National Guard may be withheld. For fiscal year 1979, these funds totaled \$92.6 million.

Summary

The Adjutant General's Department possesses primary responsibility for the performance of military-related functions. However, the responsibility for national guard facility construction and maintenance is shared with the National Guard Armory Board. Consolidation of facility construction and maintenance activities under the Adjutant General's Department through an interagency contract could eliminate functional duplication and provide potential savings. This approach to consolidation would continue the bonding mechanism used in the past to fund armory construction and renovation.

With respect to the agency's functions, no feasible alternatives were identified to the use of trained military forces to carry out guard responsibilities. In addition, the elimination of the agency could result in the state's loss of federal funds for military operations.

V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees, the extent to which the agency complies with the Open Records Act and the Open Meetings Act, and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals. Agency operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as through agency compliance with statutes relating to open meetings and open records.

Conflict of Interest

The adjutant general, as an appointed state officer, is subject to statutory standards of conduct and conflict-of-interest provisions (Article 6252-9b., V.A.C.S.). A review of the documents filed with the Office of the Secretary of State indicates that the adjutant general has complied with the filing requirements set out in the state's general statutes concerning conflict of interest. The agency has also complied with riders in Article V of the General Appropriations Act (House Bill No. 558, Sixty-sixth Legislature), which require the agency to furnish new employees with a copy of certain conflict-of-interest provisions.

Open Meetings - Open Records

Section 1(a) of the Open Meetings Act (Article 6252-17, V.A.C.S.) defines a meeting as:

any deliberation between a quorum of members of a governmental body at which any public business or public policy over which the governmental body has supervision or control is discussed or considered, or at which any formal action is taken.

The Attorney General's Office has determined that the Adjutant General's Department does not hold meetings as defined in the above provision and therefore is not subject to the posting requirements of the Open Meetings Act.

The records of the agency are available to the public in accordance with provisions of the Open Records Act (Sec. 3(a), Article 6252-17a., V.A.C.S.). The agency does maintain certain records defined as confidential under the Open Records Act, as well as materials classified as confidential by the Federal Government. Under these provisions, access to agency information has been ultimately denied in one instance. In this case, which involved the request of an investigative report, a clarifying Attorney General's Opinion was sought by the agency. This opinion indicated that the document in question could be considered as confidential under the Open Records Act.

Employment Practices

The Adjutant General's Department developed an Affirmative Action Plan in 1974 with technical assistance from the Equal Employment Opportunity Officer of the Texas National Guard. Although the plan has not been updated since its development, the agency has indicated its intention to begin an update this fiscal year. The department has operated under a written employee grievance procedure since 1978.

An analysis of the department's work force in 1979 indicates that 115 of the

196 full-time positions were held by minorities. Sixty-one of these 115 minorities were females, 51 of which were employed in the office-clerical category. No minorities were employed in the administrator category.

One charge of discrimination has been filed against the agency. A conciliation agreement was reached resolving the case in 1979. Under the terms of the conciliation agreement, \$1,250 was paid to the complainant by the Adjutant General's Department.

Summary

The department has complied with statutory requirements regarding conflict of interest and open records. Open meeting requirements do not apply to the agency, which does not hold meetings within the meaning of the Open Meetings Act. The only charge of discrimination filed against the department was resolved in 1979.

VI. PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions, and the extent to which public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

Agency Activities

Review of records maintained by the Office of the Secretary of State indicates that the Adjutant General's Department has adopted two rules during the last four fiscal years. These rules relate to personnel matters and public information policies. The adoption of rules has been in compliance with public notification requirements found in general state law; however, there has been no public involvement in the agency's rule-making process.

In addition to full-time recruiting activities conducted by national guardsmen, the agency has made efforts to inform the general public of its operations. During fiscal year 1979, the agency conducted 50 guided tours of Camp Mabry, Austin, distributed informational pamphlets to visitors at Camp Mabry, issued 95 news releases and made 5 requested presentations to community groups in the Austin area. Additional presentations were made by the local guard units located in 120 cities across the state.

Public Membership

Responsibility for the day-to-day policy direction of the agency is vested in its chief executive officer, the adjutant general, rather than in a multi-membered board or commission. This type of organizational framework is traditionally accepted as appropriate in a military setting. Given the lack of a policy-making board and its traditional absence in this setting, the question of public membership is not applicable to this agency.

Summary

Only two rules have been adopted by the agency during the last four years. These rules have been adopted in compliance with general state law. The agency has informed the public of its activities through pamphlets, news releases, and public presentations. It has been the policy of the state to administer and direct state military forces solely through the adjutant general, rather than through a governing board or commission; therefore, the question of public membership is not applicable to this agency.

VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public and the nature of statutory changes recommended by the agency. In the period covering the last three legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to substantive adopted changes.

Past Legislative Action

The framework for organizing and disciplining the militia of Texas has remained fundamentally unchanged since 1905. Statutory changes enacted by the legislature have generally established military procedures, provided for the administration of the department and its facilities, and directed the activities of the Texas State Guard. Substantive amendments to the department's Act are identified in Exhibit VII-1.

Proposed Changes

Apart from the successful legislation identified in Exhibit VII-1, review of legislation introduced in the last three legislative sessions indicates that several bills affecting the state's military provisions were unsuccessfully submitted. The Adjutant General's Department has been active in seeking only one of these bills, House Bill No. 1583 in the Sixty-sixth Legislature, which would have generally updated the statute, afforded protection to state military personnel performing law enforcement duties, restored immunity from criminal liability for legitimate military acts, and increased disability and survivor benefits.

SUBSTANTIVE AMENDMENTS TO ARTICLES 5765-5890, V.A.C.S.

Administrative Provisions

1905
H.B. No. 480
Prescribed the military duties of the governor and adjutant general; placed the adjutant general in control of the state's military department.

1927
H.B. No. 551
Created the Veteran's State Service Office and attached it to the Adjutant General's Department.

1930
H.C.R. No. 8
1939
S.B. No. 428
Authorized the adjutant general to execute leases with the Texas National Guard Armory Board for buildings and property.

1941
H.B. No. 41
1943
H.B. No. 585
1947
H.B. No. 18
Abolished the Veteran's State Service Office.

H.B. No. 414
S.B. No. 361

Military Procedure Provisions

Defined military procedures; provided for the pay and transportation of the militia when on active duty.

Directed the adjutant general to design and issue medals and ribbons for military service.

Created the Texas Defense Guard.

Redesignated the Texas Defense Guard as the Texas State Guard and made the group a component of the state's military forces.

Increased the maximum strength of the Texas National Guard from 7000 to 37,000.

Changed the Texas State Guard into a Reserve Corps.

<u>1949</u> S.B. No. 180	Provided leaves of absence not to exceed 15 days per year to state employees called into military duty.
H.B. No. 13	Authorized the adjutant general to transfer all state-owned national guard land and buildings to the National Guard Armory Board, except Camp Mabry in Austin.
<u>1957</u> H.B. No. 523	Included females in the state militia.
<u>1963</u> S.B. No. 279	Updated the Texas Military Code and national guard provisions.
<u>1965</u> H.B. No. 410	Revised the age requirements of those subject to duty; recreated the Texas State Guard as an active unit.
<u>1967</u> H.B. No. 108	Established specific disability and survivor benefits.
<u>1973</u> H.B. No. 1634	Provided that the adjutant general may accept funds from any legal source.
<u>1975</u> H.B. No. 224	Revised the Texas Code of Military Justice.
<u>1977</u> S.B. No. 54	Made the Adjutant General's Department subject to the Texas Sunset Act.

Several pieces of legislation have been introduced to provide for the design and issuance of special license plates for members of the Texas National Guard. These bills are House Bill No. 206, introduced in 1975 to the Sixty-fourth Legislature; and House Bill No. 1369, Senate Bill No. 762 and Senate Bill No. 771, introduced in 1979 to the Sixty-sixth Legislature.

Senate Bill No. 491 of the Sixty-fifth Legislature (1977), and Senate Bill No. 55 of the Sixty-sixth Legislature (1979) included provisions that would have held officers or enlisted men financially accountable for the negligent loss or damage of public property. House Bill No. 1472 and Senate Bill No. 53, both introduced to the Sixty-sixth Legislature in 1979, provided a penalty for Texas National Guard members who fail to report for official functions. House Bill No. 2096, introduced in 1977 to the Sixty-fifth Legislature, provided that the Federal Government shall impose no control which would diminish the right of the state of Texas to provide its own security in the event of a national emergency.

In its self-evaluation report, the agency recommended that several changes be made in its statute. These changes are those unsuccessfully sought by the agency in House Bill No. 1583 of the Sixty-sixth Legislature (described above).

Summary

Although the basic functions of the Adjutant General's Department have not changed since its establishment, the military statutes of the state have undergone many revisions. In the area of administration, revisions which continue to be of primary importance in the agency's current operation include those authorizing the adjutant general to lease buildings and property from the National Guard Armory Board and to accept funds from any legal source. With respect to changes related to the agency's substantive military function, of principal note were statutory provisions creating the Texas State Guard as a continuing part of the state's active guard forces.

An analysis of legislation unsuccessfully introduced indicates that these bills covered a wide variety of topics. Among other things, legislation would have restored the guard's immunity from criminal liability for legitimate military acts, held officers or enlisted men financially accountable for negligent damage of public property, and provided penalties for guard members who fail to report for official functions.