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Powers of the President - Subject File

Box 175

PSF: Powers of the President

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Grace:

To put in your "Powers of the
President" file.

F.D.R

THE WHITE HOUSE
WASHINGTON

R5F
Powers of the
Pres.

Box 175

October 31, 1941

MEMORANDUM FOR THE ATTORNEY GENERAL:

The enclosed from the Judge Advocate General of the Navy Department refers to certain statutes which are not dependent on a state of national emergency but would seem to depend on circumstances even more grave. Actually, the situation seems to authorize certain types of action in time of "threatened war".

You might check these with previous briefs and let me know if you believe that additional powers are conferred through the actual threat of war.

F.D.R.

Confidential memorandum from Rear Admiral W. B. Woodson, Judge Advocate General of the Navy, 10/24/41 for the President, enclosing "Memorandum of Statutes Which Come Into Force in Time of War, When War is Imminent, And So Forth", dated 10/24/41.

L:dc

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
Washington,

October 24, 1941

MEMORANDUM OF STATUTES WHICH COME INTO FORCE IN
TIME OF WAR, WHEN WAR IS IMMINENT, AND SO FORTH.

I Statutes Applicable to the Army and Navy.

(a) Applicable in time of war:

Revised Statutes, sec. 1166 (U. S. Code 10: 194):
The Chief of Ordnance (or the senior officer of
that corps for any district) is to execute the
orders of any general or field officer commanding
any army, garrison, or detachment for the supply
of all ordnance and ordnance stores for garrison,
field, or siege service.

Revised Statutes, sec. 1209 (U. S. Code 10: 521):
The President may confer brevet commissions upon
Army officers for distinguished conduct in the
presence of the enemy.

Revised Statutes, sec. 1436 (U. S. Code 34: 225):
Navy staff officers who have served as chiefs of
bureaus are to be "exempt from sea duty, except in
time of war."

Revised Statutes secs. 1462-1464 (U. S. Code 34:
421, 424, 425): Retired Navy officers are not to
be 'employed on active duty except in time of war';
and in such time the President, with the consent
of the Senate, may detail certain officers to such
commands as he believes to be required for the
good of the service.

(Amended by act of August 22, 1912 (37 Stat. 329;
U. S. Code 34: 422), to permit employment on ac-
tive duty under certain circumstances.)

Revised Statutes, sec. 1624, article 4 paragraphs
6, 7, 12-20, article 5 (U. S. Code 34: 1200): The
death penalty is prescribed for certain naval of-
fenses, such as desertion, spying, etc.

Act of February 15, 1879 (20 Stat. 295, ch. 86, sec. 2; U. S. Code 34: 21): The Secretary of the Navy is not to appoint acting assistant surgeons for temporary service, "except in case of war."

Act of March 3, 1883 (22 Stat. 457; U. S. Code 10: 525): Army officers are to be assigned to duty according to their brevet rank only "when actually engaged in hostilities."

Act of April 26, 1898 (30 Stat. 365, sec. 7; U. S. Code 10: 694): An Army officer, exercising command in a higher grade with troops operating against the enemy, is entitled to receive the pay and allowances of such higher grade.

Act of August 29, 1916 (39 Stat. 586; U. S. Code 34: 1200, art. 38): General courts martial may be convened by the commandants of navy yards, etc., and by commanding officers of brigades, etc., of Navy or Marine Corps on shore.

Same (p. 600; U. S. Code 14: 3): When the Coast Guard operates as part of the Navy, its personnel are subject to the laws governing the Navy.

Same (p. 601; U. S. Code 14: 95): The Secretary of the Navy may man any Coast Guard station or maintain any house of refuge as a Coast Guard station.

Act of May 22, 1917 (40 Stat. 89, sec. 18; U. S. Code 34: 213): Officers for the command of fleets are to be selected from the grades of rear admiral or captain on the active list of the Navy.

Act of July 9, 1918 (40 Stat. 892 (XVIII); U. S. Code 31: 80): Time for transmission of Army disbursing officers' accounts may be extended (from 60) to 90 days.

Act of June 4, 1920 (41 Stat. 785; U. S. Code 10: 513, 992): Retired Army officers may be employed on active duty in the discretion of the President, with full pay and allowances; permanent commissions are not vacated by the appointment of the officer to higher temporary rank.

Same (p. 787, art. 2 (d); U. S. Code 10: 1473):
Camp retainers, etc., whether within or without the
territorial jurisdiction of the United States, are
subject to the Articles of War.

Same (p. 794, art. 39; U. S. Code 10: 1510): Per-
sons subject to military law are not liable to
prosecution for crimes committed 2 years before
arraignment, except for "desertion committed in
time of war," etc.

Same (p. 796, 797, art. 48 (b), (d); U. S. Code
10: 1519): Commanding general of the Army, or of
the territorial department or division, may confirm
court-martial sentences of dismissal of an officer
below the grade of brigadier general, or of death
for persons convicted of murder, rape, mutiny, or
desertion, or as spies.

Same (p. 800, art. 58, 59; U. S. Code 10: 1530,
1531; p. 803-4, arts. 75-82; U. S. Code 10: 1547-
1554; p. 811, art. 119, U. S. Code 10: 1591):
Penalties prescribed by the Articles of War for
various enumerated wartime offenses, such as deser-
tion, aiding the enemy, etc.

Act of June 10, 1922 (42 Stat. 626; U. S. Code 37:
2): Certain Army officers below the grade of
brigadier-general are to receive higher pay than
that to which they would be entitled in time of
peace.

Act of June 8, 1926 (44 Stat. 705 c. 494; U. S.
Code 10: 423): All enlistments in the Regular
Army or the Enlisted Reserve Corps, in force at
the outbreak of war, or entered into during its
continuation, are to continue in force until six
months after its termination, unless sooner ter-
minated by the President.

(Amended and superseded by Act of March 15, 1940
(54 Stat. 53 c. 61; Pub. No. 438, 76th Congress),
but without any change as to the war provision.)

Act of July 2, 1926 (44 Stat. 780 c. 721 par. 2; U. S. Code 10: 291a): Of the total number of officers authorized for the Air Corps during war, 10% may be immediately commissioned as nonflying officers.

Act of March 4, 1933 (47 Stat. 1573): The appropriation "Recreation fund, Army" is not subject to withdrawal "except in time of war when it is to be available for expenditure by the Secretary of War" for the amusement, etc., of the enlisted personnel of the Military Establishment.

(This fund was abolished by Act of June 26, 1934 (48 Stat. 1229 par. 8; U. S. Code 31: 725g), and the balance covered into the surplus fund of the Treasury, with a proviso that in the event of war an amount equal to the amount so covered is authorized to be appropriated for the same purpose."

Act of June 15, 1933 (48 Stat. 155 par. 4; U. S. Code 32: 19): Appointments in the National Guard of the United States in force at the outbreak of war are to continue in force until six months after its termination.

Act of July 22, 1935 (49 Stat. 488 par. 2; U. S. Code Supp. 34: 4): Certain specified numbers of Navy officers must not be exceeded, "except in time of war."

Act of June 23, 1938 (52 Stat. 944 c. 598 par. 3; U. S. Code Supp. 34: 4): The number of rear admirals on the active list of the line of the Navy is limited to seventy, "except in time of war."

Same (p. 952 (b); U. S. Code Supp. 34: 626a): The number of general officers on the active list of the Marine Corps is limited to fourteen, "except in time of war."

Act of June 25, 1938 (52 Stat. 1176, par. 5; U. S. Code Supp. 34: 853c): Any member of the Naval Reserve may be released from active duty by the Secretary of the Navy.

Act of September 16, 1940 (54 Stat. 886 (a); Public, No. 783, 76th Cong.): A provision that the number of men inducted into service under the Selective Training and Service Act is to be limited to 900,000, is not to be in effect in time of war.

(b) Applicable as indicated by underlined portions:

Act of May 27, 1908 (35 Stat. 400, sec. 3; U. S. Code 32: 81a): The President may call out such number of the militia of the States, Territories, or the District of Columbia as may be necessary "whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable with the regular forces at his command to execute the laws of the Union."

Act of June 4, 1920 (41 Stat. 776 (sec. 37a); U. S. Code 10: 369): The restriction on employment of reserve officers on active duty for more than 15 days is not applicable "in time of a national emergency expressly declared by Congress."

Same (p. 780, sec. 35 (sec. 55b); U. S. Code 10: 426): Certain restrictions on active duty service of members of the Enlisted Reserve Corps are not applicable "in time of a national emergency expressly declared by Congress."

Act of June 4, 1920 (41 Stat. 808, art. 104; U. S. Code 10: 1576): Certain commanding officers of the Army "in time of war or grave public emergency" may impose, as additional punishment upon officers under their command, forfeiture of not more than one-half of 1 month's pay.

Same (p. 811, art. 119; U. S. Code 10: 1591): The President may assign the command of forces in the field, "in time of war or public danger," without regard to seniority of rank in the same grade.

Act of June 15, 1933 (48 Stat. 156, sec. 7; U. S. Code 32: 124): The President may extend enlistment

terms of the National Guard for 6 months "in the event of an emergency declared by Congress."

Same (p. 160, sec. 18; U. S. Code 32: 81), as amended by act of June 19, 1935 (49 Stat. 392, sec. 7): "When Congress shall have declared a national emergency and shall have authorized the use of armed land forces of the United States for any purpose requiring the use of troops in excess of those of the Regular Army," the President may order units of the National Guard of the United States into active military service "for the period of the war or emergency."

Act of May 29, 1934 (48 Stat. 816, ch. 370; U. S. Code 10: 17): The provision that Army officers or enlisted men are not to be required to serve more than 2 years on tours of duty on foreign stations is not to be applicable "in case of insurrection or of actual or threatened hostilities and * * * for temporary emergencies."

Act of June 10, 1935 (49 Stat. 391, ch. 277, sec. 1; U. S. Code Supp. 32: 81c): The President may order officers of the National Guard of the United States to active duty "in an emergency at any time"; but no such officer is to be employed on active duty for more than 15 days in a year without his own consent, "except in time of a national emergency expressly declared by Congress."

Act of May 14, 1940 (54 Stat. 213, ch. 194; Pub. No. 513, 76th Cong.): "In time of war or other emergency declared by Congress," enlistments in the Army are to be without specification of any particular component, for the duration of such war or emergency plus 6 months. Persons enlisted at any time in the Army are to be available for assignment to any unit and for transfer from one unit to another, "in time of war or other emergency declared by Congress."

Act of May 14, 1940 (54 Stat. 214, ch. 195; Pub., No. 514): The President may, within the limit of the total authorized strength of the Regular Army, authorize additional enlistments in the Medical Department, "in event of actual or threatened

hostilities involving the United States," to such number as he deems necessary.

Act of June 3, 1916 (39 Stat. 204, sec. 86; U. S. Code 32: 39): Material of war, purchased by States from Army stores, may be requisitioned by the United States for use in the military service "in time of actual or threatened war."

Act of July 9, 1918 (40 Stat. 893; U. S. Code 10: 1287): The proceeds from operation of public utilities in connection with engineer operations in the field overseas are to be available for such utilities "in case of actual or threatened war."

Act of June 20, 1936 (49 Stat. 1557, ch. 636): The United States may, "in the event of war or of any national emergency declared by Congress to exist," take over Fort Newark Army Base property, sold to the city of Newark, N. J.

Act of August 29, 1916 (39 Stat. 558; U. S. Code 24: 192): Interned persons and prisoners of war, under the jurisdiction of the Navy Department, are entitled to admission to Saint Elizabeths Hospital for treatment.

Same (p. 602; U. S. Code 33: 757): The Secretaries of the Navy, War, and Commerce are jointly to prescribe regulations governing the duties of the Lighthouse Service "in time of war," etc.

(This provision is probably made obsolete by Reorganization Plan No. II which provides for the administration of the Bureau of Lighthouses as a part of the Coast Guard.)

Act of October 6, 1917 (40 Stat. 373, U. S. C. 24: 192): Prisoners of war, under the jurisdiction of the War Department, are entitled to admission to St. Elizabeths Hospital for treatment.

Act of October 9, 1940 (54 Stat. 1061, ch. 788, sec. 1; Public, No. 820): When a claim against the United States accrues in time of war to a person in the military or naval service, or when war intervenes within 5 years after accrual of such claim, it may be presented within 5 years after the

close of the war, even though this would exceed the ordinary limit of 10 years.

Soldiers' and Sailors' Civil Relief Act of October 17, 1940 (54 Stat. 1189, sec. 510, 1190, sec. 512, 1191, sec. 604; Public, No. 861): A homestead entryman is entitled to a leave of absence from his entry for the performance of farm labor during the pendency of any war in which the United States may be engaged.

The United States citizens who serve with the forces of any nation with which the United States is allied in the prosecution of a war, while the act is in force, are entitled to certain benefits relating to taxes and public lands.

If, on the date set for the termination of the act (May 15, 1945), the United States is engaged in a war, the act is to remain in force until such war "is terminated by a treaty of peace proclaimed by the President and for 6 months thereafter."

Section 2, act of June 3, 1916, 39 Stat. 166, as amended (U.S.C., title 10, sec. 602), authorizing (by inference) increase in the number of enlisted men of the Regular Army beyond the peacetime limits of 280,000 "in time of war or similar emergency when the public safety demands it."

Act of February 4, 1887, 24 Stat. 380, as amended (U.S.C., title 10, sec. 1362), providing for preference to shipments of troops and material of war upon demand of the President "in time of war or threatened war."

Act of July 5, 1884, 23 Stat. 110, as amended (U.S.C., title 10, sec. 1364), waiving the requirement of advertising in connection with purchases of transportation equipment by the Army "in cases of extreme emergency."

Act of August 29, 1916, 39 Stat. 614 (U.S.C., title 34, sec. 831), providing 6-weeks-per-year limitation upon Marine Corps Training Camps for the instruction of civilians "except in time of actual or threatened war."

Act of February 16, 1914, 38 Stat. 289 (U.S.C., title 34, sec. 851), authorizing the President to commission in the Regular Navy civilians selected and certified as provided by law "upon the outbreak of war, or when, in his opinion, war is imminent."

Section 13, act of August 24, 1912, 37 Stat. 569 (U.S.C., title 48, sec. 1306), authorizing the President to designate an officer of the Army to assume exclusive authority and jurisdiction over the operation of the Panama Canal in time of war or when, in his opinion, war is imminent.

Act of July 2, 1917, 40 Stat. 241, as amended (U.S.C., title 50, sec. 171), providing for the acquisition of land for military purposes "in time of war or the imminence thereof."

Act of July 9, 1918, 40 Stat. 861 (U.S.C., title 40, sec. 37), authorizing the Secretary of War to rent or lease any building or part thereof in the District of Columbia that may be required for military purposes "in time of war, or when war is imminent."

II Miscellaneous Statutes.

Act of June 19, 1912 (37 Stat. 138, sec. 2; U. S. Code 40: 325): The President is authorized to waive stipulations of the 8-hour law in public contracts "during time of war or a time when war is imminent."

Penalties are not to be imposed for violations which were "due to any extraordinary events or conditions of manufacture or to any emergency caused by fire, famine, or flood, by danger to life or to property, or by other extraordinary event or condition on account of which the President shall subsequently declare the violations to have been excusable."

Act of May 18, 1933 (48 Stat. 68, sec. 20; U. S. Code 16: 831s): The United States reserves the right, "in case of war or national emergency declared by Congress," to take possession of property

described in the Tennessee Valley Authority Act, for the purpose of manufacturing explosives or for other war purposes.

Act of August 26, 1935 (49 Stat. 849 (c); U. S. Code Supp. 16: 824a): The Federal Power Commission may require certain temporary connections of facilities, etc., to prevent shortage of electric energy "during the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists."

Acts of October 6, 1917 (40 Stat. 394, c. 95; 40 Stat. 422 par. 10 (i); U. S. C. 35: 42), as amended by the act of July 1, 1940 (54 Stat. 710, c. 501; Public, No. 700, 76th Cong.): If it is found that the publication of an invention by the granting of a patent might be detrimental to the safety or defense of the United States, such grant may be withheld until the termination of the war.

Trading with the Enemy Act of October 6, 1917 (40 Stat. 411-426): Penalties are imposed for unlicensed (1) trading in the United States with an enemy or ally of an enemy; (2) transportation of an enemy to or from the United States; also, for sending out of, or receiving into, the United States any communication except in the regular course of the mail. Corporations are required to transmit to the Alien Property Custodian lists of stockholders believed to be enemies; the President may require property of enemies, etc., to be conveyed to the Alien Property Custodian (amended and broadened by act of November 4, 1918; 40 Stat. 1020); persons holding property, etc., for enemies are required to make report to the Alien Property Custodian; regulations are proscribed concerning applications for patents, etc., by enemies.

Act of April 16, 1918 (40 Stat. 531, c. 55; U. S. C. 50: 21): Persons 14 years of age or over, citizens, etc., of a hostile nation, are liable to removal as alien enemies; and the President is authorized to establish regulations concerning the conduct to be observed toward such aliens.

Act of March 2, 1929 (45 Stat. 1495 (c); U. S. C. 46: 85g): Concealing, removing, etc., marks placed on American vessels is not penalized if done to prevent capture by an enemy.

Act of June 19, 1934 (48 Stat. 1104, par. 606, U. S. C. 47: 606): The President may direct that "during the continuance of any war in which the United States is engaged" such communications as he deems essential to the national defense and security be given preference by any carrier subject to the Communications Act.

Act of June 16, 1938 (52 Stat. 708, c. 458 par. 3; U. S. C. Supp. 50: 93): A statutory limit on the educational orders (for the manufacture of special munitions, etc.) which may be awarded to any one factory is not applicable "during any war in which the United States is engaged."

Nationality Act of October 14, 1940 (54 Stat. 1150, sec. 326, 1169, sec. 401 (g); Public, No. 853): An alien enemy may be naturalized if his declaration of intention was made 2 years prior to the beginning of the war, or if he was at the beginning of the war entitled to become a citizen without making a declaration of intention, etc.

A person who is a national of the United States, whether by birth or naturalization, loses that nationality upon conviction of deserting the military or naval service of the United States in time of war.

Act of April 24, 1912, 37 Stat. 90 (U. S. C., title 36, sec. 10), authorizing the President to utilize the services of the American Red Cross "in time of war, or when war is imminent."

Section 402, act of February 28, 1920, 41 Stat. 476-477 (U. S. C., title 49, sec. 1 (15)), authorizing the Interstate Commerce Commission to direct preferences and priorities upon certification by the President that such preferences and priorities are essential to the national defense and security "in time of war or threatened war."

Act of June 3, 1916, 39 Stat. 213 (U. S. C., title 50, sec. 80), providing for the procurement of war materials "in time of war or when war is imminent," and authorizing the President to appoint a Board on Mobilization of Industries Essential to Military Preparedness.

Act of July 9, 1918, 40 Stat. 888, as amended (U. S. C., title 50, sec. 172), providing for the acquisition of property for production of lumber "in time of war or the imminence thereof."

Act of July 1, 1902, 32 Stat. 713, as amended (U. S. C., title 42, sec. 8), authorizing the President to utilize the Public Health Service "in times of threatened or actual war."

Section 606, act of June 19, 1934, 48 Stat. 1104 (U. S. C., title 47, sec. 606), authorizing the President to suspend or amend rules and regulations applicable to transmission of communications by radio or wire, etc., "upon proclamation by the President that there exists war or a threat of war or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States;" also to require priority for communications essential to the national defense. "during the continuance of war in which the United States is engaged."



Office of the Attorney General
Washington, D.C.

November 6, 1941

THE WHITE HOUSE
NOV 8 10 25 AM '41
RECEIVED

The President,

The White House.

My dear Mr. President:

I have your memorandum of October 31 submitting a memorandum from the Judge Advocate General of the Navy listing certain statutes which, as you state, "are not dependent on a state of national emergency but would seem to depend on circumstances even more grave." Some of these statutes are by their terms to be effective only "in time of war."

Some others, as you indicate, are applicable in time of "threatened war," which requires the conclusion that such statutes are now effective.

Attorney General Murphy, responding to a request from the President of the Senate under date of October 4, 1939, submitted a list of statutes which by their terms grant powers that may be exercised by the Executive "in an emergency or state of war." I am sending you herewith a copy of that list with the accompanying letter. The list contains some statutes not included

in that prepared by the Judge Advocate General of the Navy and, on the other hand, the Judge Advocate General's list contains some not included in the other--particularly later statutes, some of which have undoubtedly superseded the authority contained in some statutes in the earlier list.

I do not feel that it is safe to deal with statutes of this character as a group and to undertake categorically to pronounce them presently effective or ineffective without relation to some particular end desired to be accomplished. As pointed out by Attorney General Murphy in the letter above mentioned:

" * * * It is not claimed that this list is complete--indeed, accuracy in this respect can be assured only by careful and painstaking search of the entire body of the Federal statutory law--statutes of this class having been enacted from time to time since the beginning of the Government.

" * * * The Executive has powers not enumerated in the statutes--powers derived not from statutory grants but from the Constitution. It is universally recognized that the constitutional duties of the Executive carry with them the constitutional powers necessary for their proper performance. These constitutional powers have never been specifically defined, and in fact cannot be, since their extent and limitations are largely dependent upon conditions and circumstances. In a measure this is true with respect to most of the powers of the Executive, both constitutional and statutory. The right to take specific action might not exist under one state of facts, while under another it might be the absolute duty of the Executive to take such action."

The documents submitted by you are returned herewith.

Respectfully,


Attorney General.

Incl. 222142

EXECUTIVE POWERS
UNDER NATIONAL EMERGENCY

LETTER

FROM

THE ATTORNEY GENERAL

TRANSMITTING

WITH REFERENCE TO SENATE RESOLUTION NO. 185,
INFORMATION AS TO EXTRAORDINARY POWERS
AVAILABLE TO THE PRESIDENT DURING
A NATIONAL EMERGENCY OR
STATE OF WAR



OCTOBER 5 (legislative day, OCTOBER 4), 1939.—Referred to the
Committee on the Judiciary and ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1939

EXECUTIVE POWERS UNDER NATIONAL EMERGENCY

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., October 4, 1939.

The honorable the PRESIDENT OF THE SENATE,
Washington, D. C.

MY DEAR SIR: Reference is made to Senate Resolution 185, agreed to September 28, 1939, which reads:

Resolved, That the Attorney General is requested to report to the Senate at the earliest practicable date what executive powers are made available to the President under his proclamation of national emergency, and what other extraordinary powers, if any, are made available to the executive under existing statutes in emergency or state of war.

To comply with this resolution would require me to give an opinion to the Senate on legal phases of the subject matter of the resolution. The historic position of the Attorneys General with respect to the rendering of opinions on legal questions to the Congress and to its committees and members was ably stated by Attorney General Mitchell in response to a resolution of the Senate, agreed to March 8, 1932, which recited certain asserted transactions of railroad companies engaged in interstate commerce and proceeded as follows:

Resolved, That the Attorney General of the United States be requested to inform the Senate as soon as practicable (1) whether such transactions constitute contracts, combinations, or conspiracies in restraint of trade or commerce among the several States or attempts to monopolize or restrain such commerce, in violation of the act of Congress of July 2, 1890, as amended, commonly called the antitrust act; (2) in what respect, if any, such transactions differ from the operations condemned by the Supreme Court of the United States in the so-called Northern Securities case (193 U. S. 197); and (3) what steps, if any, have been taken or are contemplated by the Department of Justice for the enforcement in these instances of the antitrust laws.

In a letter to the President of the Senate, dated April 25, 1932, declining to comply with the resolution, Mr. Mitchell said:

The first two subdivisions of this resolution request me to give an opinion to the Senate on legal phases of the subject matter of the resolution. I feel obliged to refrain from responding to this request.

The powers of the Attorney General in the matter of giving opinions on questions of law are defined in sections 354 and 356 of the Revised Statutes (title 5, secs. 303 and 304, U. S. C.). These statutes are:

"The Attorney General shall give his advice and opinion upon questions of law, whenever required by the President," and

"The head of any executive department may require the opinion of the Attorney General on any questions of law arising in the administration of his department."

These statutes, in substantially this form, have been in effect since 1789. They do not authorize, empower, or require the Attorney General to give opinions to committees of Congress or to either House. For more than 100 years there has been an unbroken line of authority to that effect. As early as 1818 Attorney General Wirt held that under these statutes Attorneys General are not authorized to give officials opinions on questions of law except upon call of the President or

at the request of one of the heads of the executive departments to enable him to decide a question pending in his own department for action.

In the following instances the Attorneys General have, for the reasons stated, declined to give official opinions on questions of law or on the constitutionality or construction of legislation either pending or enacted, to committees of the House or to committees of the Senate or in response to resolutions or requests from the Senate itself or from the House of Representatives: 1 Op. 335; 5 Op. 561; 10 Op. 164; 12 Op. 544; 14 Op. 17; 14 Op. 177; 17 Op. 357; 18 Op. 87; 18 Op. 107.

Under date of January 28, 1820, the House of Representatives entered an order requesting the opinion of Attorney General Wirt respecting a matter in which the House was interested. In declining to give the opinion the Attorney General among other things, said:

"The Attorney General is sworn to discharge the duties of his office according to law. To be instrumental in enlarging the sphere of his official duties beyond that which is prescribed by law would, in my opinion, be a violation of this oath." (1 Op. 336.)

That opinion has stood unquestioned for 112 years, and has been repeatedly followed in later rulings. Under date of December 17, 1884, Attorney General Brewster felt obliged to decline compliance with a resolution passed by the House of Representatives requesting his opinion on the application of a section of the Revised Statutes (18 Op. 87). Having failed to obtain the opinion by direct request, the House of Representatives passed another resolution requesting the Postmaster General to ask for the Attorney General's opinion, and the Postmaster General transmitted the request to the Attorney General, who again refused to give the opinion on the ground that he had no authority to give it to the House of Representatives and the Postmaster General did not need it on any question pending in his Department.

Under date of February 14, 1929, my immediate predecessor declined the request of the House Committee on Expenditures in the Executive Departments for an opinion, and on June 3, 1930, I felt obliged to decline an opinion requested by the Judiciary Committee of the Senate.

Congress has accepted this long-standing interpretation of the law and has never attempted by law to enlarge the powers or duties of the Attorney General so as to require him to give opinions to either House of Congress or to committees thereof. Having in mind the constitutional separation of the functions of the legislative, executive, and judicial branches of the Government, there has always been a serious question whether the principle of that separation would be violated by a statute attempting to make the Attorney General a legal adviser of the legislative branch, and as a matter of governmental policy the wisdom of constituting as legal adviser of either House of Congress an official of the executive department, who sits in the President's Cabinet and acts as his legal adviser, has always been open to doubt.

When pending legislation affecting the Department of Justice has been referred to Attorneys General for comment or suggestion, it has been their practice to suggest such legal points as are pertinent and which ought to receive consideration by committees, but that practice has never properly involved any formal legal opinions from Attorneys General and has no resemblance to a request for an opinion as to the effect of an existing statute.

With the utmost deference for the request of the Senate, I am obliged to decline to give an opinion in this case.

The above letter of Attorney General Mitchell will be found in 36 Op. A. G. at page 533, et seq. Other precedents on this subject are listed in the Congressional Record of March 26, 1936 (vol. 80, p. 4370).

This time-honored position should not, in my opinion, be departed from. However, desiring to be of all possible assistance to the Senate, I have prepared and am transmitting herewith a list of statutes which, by their terms, grant to the executive branch of the Government powers which may be exercised "in emergency or state of war." It is not claimed that this list is complete—indeed, accuracy in this respect can be assured only by careful and painstaking search of the entire body of the Federal statutory law—statutes of this class having been enacted from time to time since the beginning of the Government.

You are aware, of course, that the Executive has powers not enumerated in the statutes—powers derived not from statutory grants

but from the Constitution. It is universally recognized that the constitutional duties of the Executive carry with them the constitutional powers necessary for their proper performance. These constitutional powers have never been specifically defined, and in fact cannot be, since their extent and limitations are largely dependent upon conditions and circumstances. In a measure this is true with respect to most of the powers of the Executive, both constitutional and statutory. The right to take specific action might not exist under one state of facts, while under another it might be the absolute duty of the Executive to take such action.

Respectfully,

FRANK MURPHY,
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STATUTES WHICH BY THEIR TERMS GRANT POWERS THAT MAY BE EXERCISED BY THE EXECUTIVE "IN EMERGENCY OR STATE OF WAR"

For convenience of persons desiring to examine them the statutes are listed in the order in which they appear in the United States Code, which results generally in grouping according to subject matter.

Title 7, U. S. C., "Agriculture."

Section 509, act of September 1, 1937, 50 Stat. 916 (U. S. C., title 7, sec. 1179), authorizing the President to suspend the operation of titles II and III of said act when he "finds and proclaims that a national economic or other emergency exists with respect to sugar or liquid sugar."

Title 10, U. S. C., "Army."

Section 2, act of July 2, 1926, 44 Stat. 780, as amended (U. S. C., title 10, sec. 291a), authorizing the immediate commissioning of additional nonflying officers for the Air Corps "in time of war."

Act of July 2, 1926, 44 Stat. 781, as amended (U. S. C., title 10, sec. 291e), providing qualifications for flying officers of the Air Corps "in time of war."

Section 30, act of June 3, 1916, 39 Stat. 187, as amended (U. S. C., title 10, sec. 343), authorizing members of the Regular Army Reserve to be ordered to active duty "in case of emergency declared by the President."

Section 32, act of June 4, 1920, 41 Stat. 776 (U. S. C., title 10, sec. 369), authorizing the President to order Reserve officers of the Army to active duty for more than 15 days in a calendar year, without their consent, "in time of a national emergency expressly declared by Congress."

Section 35, act of June 4, 1920, 41 Stat. 780 (U. S. C., title 10, sec. 426), authorizing the President to place members of the enlisted Reserve Corps on active duty for a longer period than 15 days in a calendar year, without their consent, "in time of a national emergency expressly declared by Congress."

Section 51, act of June 4, 1920, 41 Stat. 785 (U. S. C., title 10, sec. 513), authorizing any officer of the Regular Army to be appointed to higher temporary grade without vacating his permanent commission "in time of war."

Act of July 6, 1812 (R. S., sec. 1209), as amended (U. S. C., title 10, sec. 521), authorizing the President by and with the advice and consent of the Senate to confer commissions by brevet upon commissioned officers of the Army for distinguished conduct and public service in the presence of the enemy "in time of war."

Section 2, act of June 3, 1916, 39 Stat. 166, as amended (U. S. C., title 10, sec. 602), authorizing (by inference) increase in the number of enlisted men of the Regular Army beyond the peacetime limits of 280,000 "in time of war or similar emergency when the public safety demands it."

Act of April 26, 1898, 30 Stat. 365 (U. S. C., title 10, sec. 694), providing pay for officers exercising command in higher grade with troops operating against the enemy "in time of war."

Section 51, act of June 4, 1920, 41 Stat. 785 (U. S. C., title 10, sec. 992), authorizing the President to employ retired officers of the Army on active duty "in time of war."

Act of May 23, 1926, 44 Stat. 532 (U. S. C., title 10, sec. 1032), providing that retired nurses may be employed on active duty in the discretion of the Secretary of War or the Secretary of the Navy "in time of war or national emergency."

Act of July 5, 1884, 23 Stat. 109, as amended (U. S. C., title 10, sec. 1200), authorizing certain discretion in the purchase of supplies for the Army "in cases of emergency."

Act of March 2, 1901, 31 Stat. 905 (U. S. C., title 10, sec. 1201), authorizing purchase of supplies for the Army without advertising "in cases of emergency."

Act of August 29, 1916, 39 Stat. 645 (U. S. C., title 10, sec. 1361), authorizing the President, through the Secretary of War, to take possession and assume control of any system or systems of transportation or any part thereof "in time of war."

Act of February 4, 1887, 24 Stat. 380, as amended (U. S. C., title 10, sec. 1362), providing for preference to shipments of troops and material of war upon demand of the President "in time of war or threatened war."

Act of July 5, 1884, 23 Stat. 110, as amended (U. S. C., title 10, sec. 1364), waiving the requirement of advertising in connection with purchases of transportation equipment by the Army "in cases of extreme emergency."

Act of June 4, 1920, 41 Stat. 811 (U. S. C., title 10, sec. 1590), providing for dismissals of officers of the Army in time of war.

Title 12, U. S. C., "Banks and Banking."

Section 4, act of March 9, 1933, 48 Stat. 2 (U. S. C., title 12, sec. 95), forbidding Federal Reserve banks to transact business except under regulations prescribed by the Secretary of the Treasury with the approval of the President "during such emergency period as the President * * * by proclamation may prescribe."

Section 5 (b), act of October 6, 1917, 40 Stat. 415, as amended (U. S. C., title 12, sec. 95a), authorizing the President to investigate, regulate, or prohibit transactions in foreign exchange, and export, hoarding, melting, or earmarking of gold or silver coin, bullion, or currency "during time of war or during any other period of national emergency."

Title 14, U. S. C., "Coast Guard."

Section 1, act of January 28, 1915, 38 Stat. 800 (U. S. C., title 14, sec. 1), providing that the Coast Guard shall operate as a part of the Navy, subject to the orders of the Secretary of the Navy, "in time of war or when the President shall so direct."

Act of August 29, 1916, 39 Stat. 601 (U. S. C., title 14, sec. 95), authorizing the Secretary of the Navy to man Coast Guard stations "in time of war."

Act of July 1, 1918, 40 Stat. 717, as amended (U. S. C., title 14, secs. 164 and 165), providing that commissioned or warrant officers of the Coast Guard on the retired list may be called to active service and that any retired officer so recalled may be temporarily advanced in rank on the retired list not above lieutenant commander, as the President may determine, "during the existence of war or of a national emergency declared by the President to exist."

Title 15, U. S. C., "Commerce and Trade."

Section 805, act of September 8, 1916, 39 Stat. 799 (U. S. C., title 15, sec. 76), providing that whenever "during the existence of a war in which the United States is not engaged" the President finds that any country restricts the importation of products of the United States contrary to the law and practice of nations, the President is authorized to prohibit or restrict the importation into the United States of articles from such country.

Section 806, act of September 8, 1916, 39 Stat. 799 (U. S. C., title 15, sec. 77), providing that "during the existence of a war in which the United States is not engaged" the President may direct that clearance be refused any vessel which, on account of the laws of a belligerent country, grants a preference to any person or company; that when the President finds that a belligerent country discriminates against vessels or citizens of the United States, he may withhold clearance from one or more vessels of the belligerent country until the practice has ceased, or he may deny to such vessels and citizens of the belligerent the rights usually accorded by the United States; and that the President is authorized to employ the land and naval forces of the United States to carry out the purposes of this section.

Section 19, act of June 6, 1934, 48 Stat. 898 (U. S. C., title 15, sec. 78s (a) (4)), authorizing the Securities and Exchange Commission summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding 10 days or, with the approval of the President, to suspend all trading on any national securities exchange for a period not exceeding 90 days "if in its opinion the public interest so requires."

Title 16, U. S. C., "Conservation."

Section 16, act of June 10, 1920, 41 Stat. 1072 (U. S. C., title 16, sec. 809), providing that the United States may take over certain power houses, dams, conduits, and reservoirs for the purpose of manufacturing nitrates, explosives, or munitions of war, or for any other purpose involving the safety of the United States "when in the opinion of the President * * * the safety of the United States demands it," paying just compensation for the use.

Act of June 10, 1920, as amended by section 213, act of August 26, 1935, 49 Stat. 848 (U. S. C., title 16, sec. 824a (c)), authorizing the Federal Power Commission to require such temporary connections of

facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest "during the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electrical energy," etc.

Title 18, U. S. C., "Criminal Code and Criminal Procedure."

Section 14, act of March 4, 1909, 35 Stat. 1090 (U. S. C., title 18, sec. 26), authorizing the President to employ the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining, in order to enforce execution of prescribed prohibitions and penalties, vessels which are fitted out and armed, etc., contrary to the provisions of the said act.

Section 15, act of March 4, 1909, 35 Stat. 1091, as amended (U. S. C., title 18, sec. 27), authorizing the President to employ such part of the land or naval forces of the United States, or the militia thereof, as he may deem necessary to compel any foreign vessel to depart from the United States or any of its possessions in all cases in which, by the law of nations or the treaties of the United States, it ought not to remain, and to detain or prevent any foreign vessel from so departing in all cases in which, by the law of nations or the treaties of the United States, it is not entitled to depart.

Section 17, act of March 4, 1909, 35 Stat. 1091 (U. S. C., title 18, sec. 29), providing that collectors of customs shall detain any vessel manifestly built for warlike purposes, and about to depart from the United States, the cargo of which principally consists of arms and munitions of war, when it appears probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects or property of foreign countries with whom the United States is at peace, until the decision of the President is had thereon, etc.

Section 1, title V, act of June 15, 1917, 40 Stat. 221 (U. S. C., title 18, sec. 31), providing that during a war in which the United States is neutral the President may withhold clearance from any vessel which is required by law to secure clearance before departing from the United States, etc., whenever there is reasonable cause to believe that such vessel is about to carry fuel, arms, etc., to any warship of a foreign belligerent nation in violation of the laws, treaties, or obligations of the United States under the law of nations.

Section 2, title V, act of June 15, 1917, 40 Stat. 221 (U. S. C., title 18, sec. 32), providing that during a war in which the United States is neutral the President may detain armed vessels until the owners furnish proof that the vessels will not be employed to commit hostilities upon the subjects or property of foreign countries with which the United States is at peace, etc.

Section 3, title V, act of June 15, 1917, 40 Stat. 222 (U. S. C., title 18, sec. 33), providing that during a war in which the United States is neutral it shall be unlawful to send out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, etc., with the intent that such vessel shall be delivered to a belligerent nation.

Section 4, title V, act of June 15, 1917, 40 Stat. 222 (U. S. C., title 18, sec. 34), providing that "during a war in which the United States is a neutral" any master or person having charge or command

of any vessel, domestic or foreign, shall deliver to the Collector of Customs a statement under oath concerning any intended transshipment or delivery of the cargo or any part thereof to other vessels in port or upon the high seas.

Section 5, title V, act of June 15, 1917, 40 Stat. 222 (U. S. C., title 18, sec. 35), authorizing the Collector of Customs, subject to review by the Secretary of Commerce, to refuse clearance to and forbid the departure of vessels not entitled to clearance or whenever there is reasonable cause to believe that the additional statements required by the preceding section (U. S. C., title 18, sec. 34, supra) are false.

Section 9, title V, act of June 15, 1917, 40 Stat. 223 (U. S. C., title 18, sec. 38), authorizing the President to employ the land or naval forces of the United States to carry out the purposes of several sections set forth above and others mentioned in the Code under the heading "Offenses against Neutrality" (i. e., U. S. C., title 18, secs. 25, 27, and 31 to 37).

Title 19, U. S. C., "Customs Duties."

Section 318, title III, act of June 17, 1930, 46 Stat. 696 (U. S. C., title 19, sec. 1318), providing that whenever the President shall by proclamation declare an "emergency to exist by reason of a state of war," or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time prescribed in the said (tariff) law for the performance of any act, and may authorize the Secretary of the Treasury to permit the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work.

Title 22, U. S. C., "Foreign Relations and Intercourse."

Section 19, act of May 24, 1924, 43 Stat. 146, as amended (U. S. C., title 22, sec. 22), authorizing the President to recall any retired Foreign Service officer temporarily to active service in the event of "public emergency."

Section 1, act of May 22, 1918, 40 Stat. 559 (U. S. C., title 22, sec. 223), authorizing the President to impose additional restrictions and prohibitions upon the departure of persons from and their entry into the United States "when the United States is at war."

Section 1, act of January 31, 1922, 42 Stat. 361 (U. S. C., title 22, sec. 236), providing that whenever the President finds that in any American country, etc., conditions of domestic violence exist, which are or may be promoted by the use of arms or munitions of war procured from the United States, and makes proclamation thereof, it shall be unlawful to export, except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by the Congress.

Section 1, title VI, act of June 15, 1917, 40 Stat. 223 (U. S. C., title 22, sec. 238), providing that under stated conditions certain classes of officers of the United States and every other person duly authorized by the President may seize and detain any articles and munitions of war about to be exported from the United States in violation of law, and the vessels or vehicles containing them.

Section 8, title VI, act of June 15, 1917, 40 Stat. 225 (U. S. C., title 22, sec. 245), providing that the President may employ such part of

the land or naval forces of the United States as he may deem necessary to carry out the purposes of certain sections of the said act of June 15, 1917, including section 238, *supra*.

The joint resolution of May 1, 1937 ("Neutrality Act"), 50 Stat. 121 (U. S. C., title 22, secs. 245a et seq.), providing for an embargo upon the exportation of arms, etc., and making unlawful certain other acts, in the event of a finding and proclamation by the President of the existence of "a state of war between, or among, two or more foreign states."

Title 31, U. S. C., "Money and Finance."

Act of March 2, 1901, 31 Stat. 910, as amended (U. S. C., title 31, sec. 80), authorizing an extension of the time for examination of accounts covering expenditures for the Army "in time of war."

Act of July 12, 1870, 16 Stat. 251 (R. S., sec. 3679), as amended (U. S. C., title 31, sec. 665), authorizing the waiver or modification of the monthly apportionments of appropriations for governmental departments and agencies for expenses during the fiscal year, "upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment."

Section 43, act of May 12, 1933, 48 Stat. 51, as amended (U. S. C., title 31, sec. 821), authorizing the President to take certain action in respect of credit expansion when he finds "an economic emergency requires an expansion of credit."

Title 32, U. S. C., "National Guard."

Section 49, act of June 4, 1920, 41 Stat. 784, as amended (U. S. C., title 32, sec. 81), authorizing the President to order into the active military service of the United States all units and members of the National Guard of the United States, "when Congress shall have declared a national emergency and shall have authorized the use of armed land forces of the United States for any purpose requiring the use of troops in excess of those of the Regular Army."

Section 4, act of January 21, 1903, 32 Stat. 776, as amended (U. S. C., title 32, sec. 81a), authorizing the President to call forth such number of the militia of the States, Territories, or of the District of Columbia as may be necessary to repel invasion, suppress rebellion, or to enable the President to execute the laws of the Union.

Section 38, act of June 3, 1916, 39 Stat. 190, as amended (U. S. C., title 32, sec. 81c), authorizing the President to the extent provided for by appropriations for the specific purpose to order officers of the National Guard of the United States to active duty "in an emergency" at any time and for the period thereof, provided that except in time of a national emergency expressly declared by the Congress, no officer of the National Guard shall be employed on active duty for more than 15 days in any calendar year without his consent.

Title 33, U. S. C., "Navigation and Navigable Waters."

Act of March 3, 1819 (R. S., secs. 4293, 4294), 3 Stat. 510, 512, and act of August 5, 1861, 12 Stat. 315 (R. S., sec. 4298) (U. S. C., title 33, secs. 381, 382, and 386), authorizing the President to employ the public armed vessels to suppress piracy, etc.

Act of August 29, 1916, 39 Stat. 602 (U. S. C., title 33, sec. 758), authorizing the President to transfer to the War Department or the

Navy Department vessels, equipment, stations, and personnel of the Lighthouse Service (now a part of the Coast Guard) whenever in the judgment of the President "a sufficient national emergency exists."

Section 16, act of May 22, 1917, 40 Stat. 87 (U. S. C., title 33, sec. 855), authorizing the President to transfer to the War Department, or the Navy Department, vessels, equipment, stations, and personnel of the Coast and Geodetic Survey whenever in the judgment of the President "a sufficient national emergency exists."

Title 34, U. S. C., "Navy."

Act of February 15, 1879, 20 Stat. 295, as amended (U. S. C., title 34, sec. 21), authorizing the Secretary of the Navy to appoint assistant surgeons for temporary service "in time of war."

Act of July 1, 1918, 40 Stat. 714, as amended (U. S. C., title 34, sec. 151), authorizing the President to increase the authorized enlisted strength of the Navy "whenever in his judgment a sufficient emergency exists."

Act of August 29, 1916, 39 Stat. 581 (U. S. C., title 34, sec. 191), providing that furloughed enlisted men of the Navy shall be subject to recall "in time of war or national emergency" to complete the unexpired portion of enlistment.

Act of May 22, 1917, 40 Stat. 89 (U. S. C., title 34, sec. 213), authorizing the selection of officers for the command of fleets from the grade of captain in addition to that of rear admiral "in time of war."

Act of August 29, 1916, 39 Stat. 579, as amended (U. S. C., title 34, sec. 311), providing for suspension of the requirement of sea service in connection with the promotion of officers of the Navy in exceptional cases "during war or national emergency declared by the President or by the Secretary of the Navy."

Act of March 3, 1873, 17 Stat. 547 (R. S., sec. 1462) (U. S. C., title 34, sec. 421), providing that except as otherwise provided by law no officer on the retired list of the Navy shall be employed on active duty "except in time of war."

Act of July 1, 1918, 40 Stat. 717 (U. S. C., title 34, sec. 423), providing that retired officers of the Navy or Marine Corps may be ordered to active duty "during the existence of war or a national emergency declared by the President."

Act of December 21, 1861, 12 Stat. 329 (R. S., sec. 1463), as amended (U. S. C., title 34, sec. 424), providing that the President, by and with the advice and consent of the Senate, may detail officers on the retired list for the command of squadrons or ships "in time of war."

Act of March 3, 1915, 38 Stat. 941, as amended (U. S. C., title 34, sec. 433), authorizing the Secretary of the Navy to call retired enlisted men to active service "in time of war, or when a national emergency exists."

Section 4, act of May 13, 1926, 44 Stat. 532 (U. S. C., title 34, sec. 440a), providing that retired nurses may be employed on active duty in the discretion of the Secretary of War or the Secretary of the Navy "in time of war or national emergency."

Section 15, act of June 23, 1938, 52 Stat. 952 (U. S. C., title 34, sec. 626a), limiting the number of general officers on the active list of the Marine Corps, "except in time of war."

Act of August 29, 1916, 39 Stat. 614 (U. S. C., title 34, sec. 831), providing 6-weeks-per-year limitation upon Marine Corps Training

Camps for the instruction of civilians "except in time of actual or threatened war."

Act of February 16, 1914, 38 Stat. 289 (U. S. C., title 34, sec. 851), authorizing the President to commission in the Regular Navy civilians selected and certified as provided by law "upon the outbreak of war, or when, in his opinion, war is imminent."

Section 5, act of June 25, 1938, 52 Stat. 1176 (U. S. C., title 34, sec. 853c), superseding section 9, act of February 28, 1925, 43 Stat. 1082 (U. S. C., title 34, sec. 757), authorizing the Secretary of the Navy to order to active duty members of the Naval Reserve, including those retired, "in time of war or when in the opinion of the President a national emergency exists."

Section 302, act of June 25, 1938, 52 Stat. 1180 (U. S. C., title 34, sec. 855a), authorizing an allowance to officers of the Naval Reserve for purchase of uniforms when reporting for active duty "in time of war or national emergency."

Section 303, act of June 25, 1938, 52 Stat. 1181 (U. S. C., title 34, sec. 855b), superseding section 13, act of February 28, 1925, 43 Stat. 1083 (U. S. C., title 34, sec. 761), providing for issuance of outfits, etc., for midshipmen, cadets, nurses, and enlisted men of the Naval Reserve when reporting for active duty "in time of war or national emergency."

Section 311, act of June 25, 1938, 52 Stat. 1183 (U. S. C., title 34, sec. 855j), superseding section 16, act of February 28, 1925, 43 Stat. 1084 (U. S. C., title 34, sec. 764), providing for precedence in rank of officers of the Naval Reserve when mobilized with the Regular Navy "for war or a national emergency."

Section 312, act of June 25, 1938, 52 Stat. 1183 (U. S. C., title 34, sec. 855k), superseding section 17, act of February 28, 1925, 43 Stat. 1084 (U. S. C., title 34, sec. 765), providing for advancement in rank of Naval Reserve and Marine Corps Reserve officers "in time of war or national emergency."

Section 401, act of June 25, 1938, 52 Stat. 1185 (U. S. C., title 34, sec. 856), superseding section 28, act of February 28, 1925, 43 Stat. 1088 (U. S. C., title 34, sec. 841), providing that officers and men of the Naval Reserve who are members of the State Naval Militia shall stand relieved from service or duty with such militia when on active duty "in time of war or national emergency."

Section 1624, art. 36, R. S., as amended (U. S. C., title 34, sec. 1200, art. 36), providing for dismissals of officers of the Navy in time of war.

Title 35, U. S. C., "Patents."

Act of October 6, 1917, 40 Stat. 394 (U. S. C., title 35, sec. 42), authorizing the Commissioner of Patents to order certain inventions kept secret and to withhold patent therefor "when the United States is at war."

Title 36, U. S. C., "Patriotic Societies and Observances."

Act of April 24, 1912, 37 Stat. 90 (U. S. C., title 36, sec. 10), authorizing the President to utilize the services of the American Red Cross "in time of war, or when war is imminent."

Title 37, U. S. C., "Pay and Allowances."

Act of June 10, 1922, 42 Stat. 626 (U. S. C., title 37, sec. 2), authorizing increased pay for certain officers of the Army "during the existence of a state of war, formally recognized by Congress."

Title 40, U. S. C., "Public Buildings, Property, and Works."

Act of July 9, 1918, 40 Stat. 861 (U. S. C., title 40, sec. 37), authorizing the Secretary of War to rent or lease any building or part thereof in the District of Columbia that may be required for military purposes "in time of war, or when war is imminent."

Act of March 4, 1917, 39 Stat. 1192 (U. S. C., title 40, sec. 326), authorizing the President to suspend the provisions of law prohibiting more than 8 hours labor in any 1 day by persons engaged upon work covered by contracts with the United States "in case of national emergency."

Title 42, U. S. C., "The Public Health."

Act of July 1, 1902, 32 Stat. 713, as amended (U. S. C., title 42, sec. 8), authorizing the President to utilize the Public Health Service "in times of threatened or actual war."

Act of October 27, 1918, 40 Stat. 1017 (U. S. C., title 42, sec. 18), authorizing the creation of a Reserve for duty in the Public Health Service "in time of national emergency."

Title 46, U. S. C., "Shipping."

Sections 1 and 2, act of March 24, 1908, 35 Stat. 46 (U. S. C., title 46, secs. 133 and 134), providing that hospital ships in ports of the United States and the possessions thereof shall be exempt "in time of war" from all dues and taxes imposed on vessels by the laws of the United States, and authorizing the President to name the exempt hospital ships by proclamation and to indicate the time when the exemptions provided for shall begin and end.

Section 4, act of July 15, 1918, 40 Stat. 901 (U. S. C., title 46, sec. 835), making it unlawful to transfer vessels, shipping facilities, etc., to foreign registry or ownership "when the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President."

Section 302, act of June 29, 1936, 49 Stat. 1992 (U. S. C., title 46, sec. 1132), authorizing the President to suspend the provisions relating to citizenship of officers and crews on vessels documented under the laws of the United States, etc., "during a national emergency as proclaimed by the President."

Section 712 (d), act of June 29, 1936, 49 Stat. 2010 (U. S. C., title 46, sec. 1202), authorizing the termination of charters of Maritime Commission vessels "in any national emergency as proclaimed by the President."

Section 902 (a), act of June 29, 1936, 49 Stat. 2015, as amended (U. S. C., title 46, sec. 1242), authorizing the Maritime Commission to requisition any vessel documented under the laws of the United States "during any national emergency declared by proclamation of the President."

Title 47, U. S. C., "Telegraphs, Telephones, and Radiotelegraphs."

Section 606, act of June 19, 1934, 48 Stat. 1104 (U. S. C., title 47, sec. 606), authorizing the President to suspend or amend rules and regulations applicable to transmission of communications by radio or wire, etc., "upon proclamation by the President that there exists war or a threat of war or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States;" also to require priority for communications essential to the national

defense "during the continuance of war in which the United States is engaged."

Title 48, U. S. C., "Territories and Insular Possessions."

Section 13, act of August 24, 1912, 37 Stat. 569 (U. S. C., title 48, sec. 1306), authorizing the President to designate an officer of the Army to assume exclusive authority and jurisdiction over the operation of the Panama Canal in time of war or when, in his opinion, war is imminent.

Title 49, U. S. C., "Transportation."

Section 402, act of February 28, 1920, 41 Stat. 476-477 (U. S. C., title 49, sec. 1 (15)), authorizing the Interstate Commerce Commission to direct preferences and priorities upon certification by the President that such preferences and priorities are essential to the national defense and security "in time of war or threatened war."

Title 50, U. S. C., "War."

Act of July 6, 1798 (R. S., sec. 4067), as amended by act of April 16, 1918, 40 Stat. 531 (U. S. C., title 50, sec. 21), providing that "whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event," all nationals of the hostile nation of the age of fourteen years and upward, within the United States and not naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies, and authorizing the President by proclamation to direct the conduct to be observed by and toward such aliens, etc.

Section 6, act of June 15, 1917, 40 Stat. 219 (U. S. C., title 50, sec. 36), authorizing the President to designate prohibited places under the provisions relating to espionage "in time of war or in case of national emergency."

Act of June 3, 1916, 39 Stat. 213 (U. S. C., title 50, sec. 80), providing for the procurement of war materials "in time of war or when war is imminent," and authorizing the President to appoint a Board on Mobilization of Industries Essential to Military Preparedness.

Act of June 16, 1938, 52 Stat. 708 (U. S. C., title 50, sec. 93), providing that the limitation upon the placing of educational orders for the manufacture of munitions, etc., "shall not prohibit the awarding of any contract during any war in which the United States is engaged."

Act of October 6, 1917, 40 Stat. 385 (U. S. C., title 50, sec. 121, et seq.), dealing with manufacture, possession, licensing, etc., of explosives "when the United States is at war."

Act of July 2, 1917, 40 Stat. 241, as amended (U. S. C., title 50, sec. 171), providing for the acquisition of land for military purposes "in time of war or the imminence thereof."

Act of July 9, 1918, 40 Stat. 888, as amended (U. S. C., title 50, sec. 172), providing for the acquisition of property for production of lumber "in time of war or the imminence thereof."

Act of April 11, 1898, 30 Stat. 737 (U. S. C., title 50, sec. 178), authorizing the President to order the erection of any temporary fort or fortification upon the written consent of the owner of the land upon which such work is to be placed "in case of emergency."

Section 1, title II, act of June 15, 1917, 40 Stat. 220 (U. S. C., title 50, sec. 191), authorizing the Secretary of the Treasury, subject to the approval of the President, to make rules and regulations governing the anchorage and movement of vessels in the territorial waters of the United States whenever the President has by proclamation or Executive order declared a "national emergency to exist by reason of actual or threatened war, insurrection or invasion, or disturbance or threatened disturbance of the international relations of the United States."

U. S. C., title 50, secs. 201-226, conferring extraordinary powers upon the President to be exercised in case of insurrection.

Statutes not yet included in Code.

Title I, act of June 29, 1939 (Public, No. 156, 76th Cong., 1st sess.), known as the Department of State Appropriation Act, 1940, providing that whenever the President finds that a "state of national emergency" exists endangering the lives of American citizens in any foreign country, he may make available for expenditure for the protection of such citizens a sum, not to exceed \$500,000, from the various appropriations under the heading "Foreign intercourse."

Statutes imposing penalties for acts committed in time of war.

There are a number of statutory provisions imposing penalties or increased penalties for various offenses committed in time of war. Some of these appear in the "Articles of War" (U. S. C., title 10, ch. 36), the "Articles for the Government of the Navy" (U. S. C., title 34, ch. 21), the provisions of the Criminal Code dealing with "Offenses against existence of government," "Offenses against neutrality" (U. S. C., title 18, ch. 1 and 2), etc.

○

IN REPLY ADDRESS
THE JUDGE ADVOCATE GENERAL OF THE NAVY
AND REFER TO NO.

L:dc

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C.



CONFIDENTIAL

October 24, 1941 **OCT 31 1941 AM**

MEMORANDUM FOR THE PRESIDENT.

In compliance with a verbal directive received through Rear Admiral McIntire (MC), U. S. Navy, there is set forth below a summary of the statutes which will come into force when "war is imminent," "in time of * * * grave public emergency," or in comparable situations:

Act of May 27, 1908 (35 Stat. 400, sec. 3; U. S. Code 32: 81a): The President may call out such number of the militia of the States, Territories, or the District of Columbia as may be necessary "whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable with the regular forces at his command to execute the laws of the Union."

Act of June 4, 1920 (41 Stat. 808, art. 104; U. S. Code 10: 1576): Certain commanding officers of the Army "in time of war or grave public emergency" may impose, as additional punishment upon officers under their command, forfeiture of not more than one-half of 1 month's pay.

Act of June 4, 1920 (41 Stat. 811, art. 119; U. S. Code 10: 1591): The President may assign the command of forces in the field, "in time of war or public danger," without regard to seniority of rank in the same grade.

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Date- 3-5-59

Signature- Carl L. Spicer

Act of May 29, 1934 (48 Stat. 816, ch. 370; U. S. Code 10: 17): The provision that Army officers or enlisted men are not to be required to serve more than 2 years on tours of duty on foreign stations is not to be applicable "in case of insurrection or of actual or threatened hostilities and * * * for temporary emergencies."

Act of May 14, 1940 (54 Stat. 214, ch. 195; Pub., No. 514): The President may, within the limit of the total authorized strength of the Regular Army, authorize additional enlistments in the Medical Department, "in event of actual or threatened hostilities involving the United States," to such number as he deems necessary.

Act of June 3, 1916 (39 Stat. 204, sec. 86; U. S. Code 32: 39): Material of war, purchased by States from Army stores, may be requisitioned by the United States for use in the military service "in time of actual or threatened war."

Act of July 9, 1918 (40 Stat. 893; U. S. Code 10: 1287): The proceeds from operation of public utilities in connection with engineer operations in the field overseas are to be available for such utilities "in case of actual or threatened war."

Soldiers' and Sailors' Civil Relief Act of October 17, 1940 (54 Stat. 1189, sec. 510, 1190, sec. 512, 1191, sec. 604; Public, No. 861): A homestead entryman is entitled to a leave of absence from his entry for the performance of farm labor during the pendency of any war in which the United States may be engaged.

Act of February 4, 1887, 24 Stat. 380, as amended (U.S.C., title 10, sec. 1362), providing for preference to shipments of troops and material of war upon demand of the President "in time of war or threatened war."

Act of July 5, 1884, 23 Stat. 110, as amended (U.S.C., title 10, sec. 1364), waiving the requirement of advertising in connection with purchases of transportation and equipment by the Army "in cases of extreme emergency."

Act of August 29, 1916, 39 Stat. 614 (U.S.C., title 34, sec. 831), providing 6-weeks-per-year limitation upon Marine Corps Training Camps for the instruction of civilians "except in time of actual or threatened war."

Act of February 16, 1914, 38 Stat. 289 (U.S.C., title 34, sec. 851), authorizing the President to commission in the Regular Navy civilians selected and certified as provided by law "upon the outbreak of war, or when, in his opinion, war is imminent."

Section 13, act of August 24, 1912, 37 Stat. 569 (U.S.C., title 48, sec. 1306), authorizing the President to designate an officer of the Army to assume exclusive authority and jurisdiction over the operation of the Panama Canal in time of war or when, in his opinion, war is imminent.

Act of July 2, 1917, 40 Stat. 241, as amended (U.S.C., title 50, sec. 171), providing for the acquisition of land for military purposes "in time of war or the imminence thereof."

Act of July 9, 1918, 40 Stat. 861 (U.S.C., title 40, sec. 37), authorizing the Secretary of War to rent or lease any building or part thereof in the District of Columbia that may be required for military purposes "in time of war, or when war is imminent."

Act of June 19, 1912 (37 Stat. 138, sec. 2; U. S. Code 40: 325): The President is authorized to waive stipulations of the 8-hour law in public contracts "during time of war or a time when war is imminent."

Act of April 24, 1912, 37 Stat. 90 (U.S.C., title 36, sec. 10), authorizing the President to utilize the services of the American Red Cross "in time of war, or when war is imminent."

Section 402, act of February 28, 1920, 41 Stat. 476-477 (U.S.C., title 49, sec. 1 (15)), authorizing the Interstate Commerce Commission to direct preferences and priorities upon certification by the President that such preferences and priorities are essential to the national defense and security "in time of war or threatened war."

Act of June 3, 1916, 39 Stat. 213 (U.S.C., title 50, sec. 80), providing for the procurement of war materials "in time of war or when war is imminent," and authorizing the President to appoint a Board on Mobilization of Industries Essential to Military Preparedness.

Act of July 9, 1918, 40 Stat. 888, as amended (U.S.C., title 50, sec. 172), providing for the acquisition of property for production of lumber "in time of war or the imminence thereof."

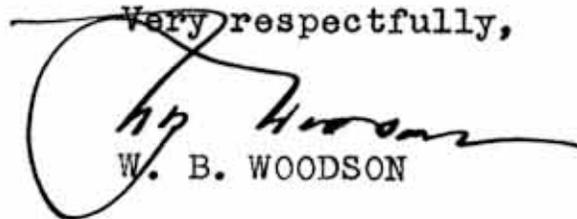
Act of July 1, 1902, 32 Stat. 713, as amended (U.S.C., title 42, sec. 8), authorizing the President to utilize the Public Health Service "in times of threatened or actual war."

No determination is made with respect to the question of the authority to proclaim that war is imminent, that war is threatened, and so forth. It is assumed that such declarations are a function of the President.

There is attached hereto a comprehensive memorandum prepared in this office of the statutes, exclusive of those brought into effect by the existing national emergency, which are applicable in time of war or

imminency thereof, in time of emergency declared by
the Congress, and so forth.

Very respectfully,

A handwritten signature in cursive script, appearing to read "W. B. Woodson", written over the typed name. The signature is enclosed within a large, stylized loop that starts under the "V" of "Very" and ends under the "N" of "Woodson".

W. B. WOODSON