OF THE ELECTION AND APPOINTMENT OF MILITARY OFFICERS
AND THE TENURE OF THEIR OFFICES

§ 49. All major generals and the commissary general shall be nominated by the Governor, and appointed by him, with the consent of the Senate.

§ 50. The resolution of the Senate, concurring in any nomination made by the Governor to a military office, shall be certified by the president and clerk of the Senate, and be transmitted to the Adjutant General, who shall issue the commission and record the same in books to be provided by him.

§ 51. The staff of the Commander-in-Chief shall consist of the adjutant general, an inspector general, engineer-in-chief, judge advocate general, quartermaster general, commissary general of subsistence, paymaster general, surgeon general and three aids, who shall be appointed by the Governor, and whose commission shall expire with the time for which the Governor shall have been elected.

§ 52. The commissary general shall hereafter be known as the commissary general of ordinance, and shall not enter on the duties of his office until he shall have taken the oath of office prescribed in the constitution. Such oath shall be taken before any officer authorized to administer the same oath to the Attorney General within the same period, and subject to the same regulations.

§ 53. Captains, subalterns and non-commissioned officers of organized regiments shall be chosen by the written or printed votes of the members of their respective companies; field officers of organized regiments and battalions, by the written or printed votes of the commissioned officers of their respective regiments and battalions; and brigadier generals and brigade inspectors by the written or printed votes of the field officers of their respective brigades, if organized.

§ 54. Major generals, brigadier generals, and commanding officers of regiments or battalions, shall appoint the staff officers of their respective divisions, brigades, regiments or battalions, whose term of office shall expire when the persons appointing them shall retire from office; but they shall continue to hold such office until their successors shall be appointed and have qualified.

§ 55. The commissioned officers of the militia shall be commissioned by the Governor; and no commissioned
officer can be removed from office unless by the Senate, on the recommendation of the Governor, stating the grounds on which such removal is recommended; or by the decision of a court martial, or retiring or examining board, pursuant to law.

§ 55. Sergeant majors, quartermaster sergeants, sergeant standard bearers and drum majors shall be appointed by the commanding officer of the regiment or battalion to which they shall belong, by warrant under the hand of such commanding officer, and shall hold their offices during his pleasure.

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§ 57. Whenever the office of a brigadier general is vacant in any organized brigade, the Commander-in-Chief shall issue an order for an election to fill the vacancy, and shall designate a major general or some other proper officer to preside at such election.

§ 58. The officer so designated shall cause a written or printed notice to be served on each of the field officers of the brigade in which the vacancy exists, at least ten days previous to the election, specifying the time and place of holding such election.

§ 59. Whenever the office of any field officer in any organized regiment or battalion is vacant, the commanding officer of the brigade to which such regiment or battalion belongs shall cause a written or printed notice to be served on each commissioned officer in such regiment or battalion of an election to fill the vacancy. The notice shall specify the time and place of holding the election, and be served at least five days before such election shall take place.

§ 60. Whenever the office of a captain or subaltern in any organized company or troop is vacant, the commanding officer of the regiment or battalion to which such company or troop belongs, shall cause a written or printed notice of an election to fill the vacancy, to be served on the members of such company or troop, at least three days before the election shall take place, and shall specify in such notice the time and place of the election.

§ 61. All notices for any election shall be served on the persons entitled to vote thereat, in the same manner as non-commissioned officers, musicians and privates are warned to attend a parade, as prescribed in section one hundred and thirty-nine of this act.
§ 62. The officer issuing the notice shall designate some proper person or persons to serve the same or to direct such service; and the person so designated shall make a return of the persons notified, and of the manner of the services.

§ 63. The return, if made by a commissioned officer, shall be authenticated by his certificate on honor, if by a non-commissioned officer, by the oath of the person making such service. The oath may be administered by any magistrate or by the officer issuing the notice.

§ 64. The officer causing the notice to be given for any of the aforesaid elections, shall attend at the time and place of holding such elections; he shall organize the meeting and preside therein, and may, for sufficient cause, adjourn the same from time to time.

§ 65. If the officer causing the notices to be given shall not attend the meeting for the election, then the officer of the highest rank present, or in case of an equality of rank between two or more, then such of them as the majority of the electors present shall choose, shall preside at such meeting. And the officer issuing such notices, shall cause the proper evidence of service of such notices on all the electors to be delivered to such presiding officer. And at meetings for the election of company officers, the company roll, carefully revised, shall in like manner be delivered with such evidence. And if it shall happen at any election for commissioned officers that legal notice has not been given to all the persons entitled to vote thereat, the presiding officer shall adjourn the meeting, and cause such notice to be given. The presence of a person entitled to vote at any election shall be deemed a waiver of his right to take exception to the want of legal notice.

§ 66. The presiding officer at any election for commissioned officers, shall keep the polls opened at least one hour after the time appointed for holding the same. He shall then publicly canvass the votes received from the electors for the officers to be elected; and shall forthwith declare the result, and give notice to every person elected of his election. If such person shall not, within ten days after being notified of his election, signify to such officer his acceptance, he shall be considered as declining the office to which he shall have been chosen, and an election shall be held for a new choice.
§ 67. Immediately after the person elected shall have signified his acceptance, the officer who shall have presided at the election, shall, in case of the election of a brigadier general, communicate the same to the Commander-in-Chief; and in all other cases, if not himself the commanding officer of the brigade, shall certify to such commanding officer the names of the persons duly elected.

§ 68. If at any election an officer, then in commission, shall be elected to fill a vacancy, and shall accept, the electors present, whether such officer be present or absent, shall proceed to elect a person to fill the place of the officer so promoted, if the officers or persons assembled at such meeting have authority to make the choice.

§ 69. The commanding officers of brigades shall transmit the names of persons duly elected and approved or appointed to offices in their respective brigades, to the Commander-in-Chief, to the end that commissions may be issued to them.

§ 70. Every person thinking himself aggrieved by the proceedings at any election for a commissioned officer, may appeal, if the election be for a brigadier general, to the Commander-in-Chief, and in other cases to the commanding officer of the brigade to which such person belongs.

§ 71. The officer appealed to shall have power to administer oaths, and shall hear and determine the appeal; and if in his opinion the proceedings at such election are illegal, he shall declare the election void, and shall order an election to be held without delay for a new choice.

§ 72. Any person concerned may appeal from the decision of the commanding officer of the brigade to the Commander-in-Chief, who shall hear and determine such appeal, and in case it shall be necessary, order a new election.

§ 73. The Commander-in-Chief may make such rules and regulations relative to appeals as he shall deem necessary and proper to give full effect to the provisions of the constitution and of this act.

§ 74. The Commander-in-Chief shall issue commissions to all officers duly elected or appointed in pursuance of the provisions of this act; and every officer duly commissioned shall, within ten days after his commission shall be tendered to him, or within ten days...
after he shall be personally notified that the same is held in readiness for him, by any superior officer, take and subscribe the oath prescribed in the constitution of this state; and in case of neglect or refusal to take such oath within the time mentioned, he shall be deemed to have resigned said office, and a new election shall be forthwith ordered to fill his place. The neglect or refusal of an officer elect to take such oath shall be no excuse for neglect of duty until another shall be duly commissioned in his place.

§ 75. Every commissioned officer shall take and subscribe such oath before a judge of some court of record in this state, county clerk, commissioner to take affidavit, justice of the peace, or some general or field officer who has previously taken it himself, and who is hereby authorized to administer the same.

§ 76. A certificate of the oath shall be endorsed by the officer administering the same on the commission and a copy thereof shall be filed in the Adjutant General's office.

§ 77. No fee shall be received for administering any such oath, or endorsing such certificate.

§ 78. Any organized company or troop may, at any meeting thereof, elect non-commissioned officers to fill any vacancy therein.

§ 79. Such election shall be directed and conducted by the commanding officer of such company or troop for the time being, who shall certify the names of the persons elected to the commanding officer of the regiment or battalion to which the company or troop belongs, who shall decide upon the legality of the election, and issue warrants to the persons duly elected.

§ 80. The commandants of companies or troops may, whenever they deem it necessary, call a special meeting of their respective companies or troops for an election of non-commissioned officers.

§ 81. A majority of the votes of all persons present at an election of brigadier general shall be necessary to a choice; in all other cases a plurality shall be sufficient.

§ 82. No officer shall be considered out of the service on the tender of his resignation until it shall have been accepted by the Commander-in-Chief. The commanding officers of brigades shall receive the resignations of such commissioned officers as may resign in their respec-
Brigades, and shall transmit the same to the Adjutant General. Resignations of all other commissioned officers shall be made direct to the Commander-in-Chief.

§ 83. No officer shall be permitted to resign his commission who shall be under arrest, or shall be returned to a court-martial for any deficiency or delinquency; and no resignation shall be accepted unless the officer tendering the same shall furnish to the Adjutant General satisfactory evidence that he has delivered all moneys in his hands as such officer, and all books and other property of the state in his possession to his next superior or inferior officer, or to the officer authorized by law to receive the same, and that his accounts for money or public property are correct.

§ 84. In time of war, or when the military forces of this state are in actual service, resignations shall take effect thirty days from the date of the order of acceptance, unless otherwise specially ordered by the Commander-in-Chief.

§ 85. On accepting the resignation of any officer, the Commander-in-Chief shall cause the necessary notices and orders to be given for an election to fill the vacancy so created; provided, however, that when the military forces of this state shall be in the actual service thereof, or in the service of the United States in time of war, insurrection, invasion or imminent danger thereof, the Commander-in-Chief shall fill all vacancies of commissioned officers, by appointment.

§ 86. Every officer who shall move out of the bounds of his command (unless such removal shall not be beyond the bounds of a city in which such command shall lie in whole or in part,) and every officer who shall be absent from his command twelve months without leave of the commanding officer of his brigade, shall be considered as having vacated his office, and a new election shall be held, without delay, to fill the vacancy so created, except as above provided.

§ 87. No person shall be allowed to vote at any election for a commissioned or non-commissioned officer of a company unless he is an actual member of such company where he shall offer to vote, and liable to do military duty therein.

§ 88. If any person offering to vote at any election for a commissioned officer of a company shall be chal-
lenged as unqualified by any person entitled to vote thereat, the presiding officer shall declare to the person so challenged the qualifications of an elector.

§ 89. If he shall state himself to be duly qualified and the challenge shall not be withdrawn, the presiding officer shall then tender him the following oath: "You do swear (or affirm) that you are an actual member of the company commanded by , and that you are liable to do military duty therein."

§ 90. The commissioned officer who shall receive a commission for any subordinate officer shall, within thirty days thereafter, give notice thereof to the person entitled to it.

§ 91. The Commander-in-Chief is hereby authorized, so often as he may deem that the good of the service requires, to appoint a military board or commission of not less than three nor more than five officers, to sit at such place as he shall direct, whose duty it shall be to examine into the physical ability, moral character, capacity, attainments, general fitness for the service and efficiency of such commissioned officers as the Commander-in-Chief may order to be examined by said board, or who may be reported for examination to the Adjutant General by colonels of their regiments, or general officers commanding their brigades or divisions, and upon such report may be ordered to be examined by the Commander-in-Chief. If the decision of said board be unfavorable to such officer, and be approved by the Commander-in-Chief, the commission of such officer shall be vacated; provided, always, that no officer shall be eligible to sit on such board or commission whose rank or promotion would in any way be affected by its proceedings, and two members at least, if practicable, shall be of equal rank with the officer to be examined. The officers constituting such board shall receive the same pay and allowances for traveling expenses as members of courts-martial.

§ 92. No officer whose commission shall have been vacated under the next preceding section shall be eligible for election to any military office for the period of one year, and his election shall be void; and in case the vacancy so created shall not, within thirty days, be filled by the election of some other and proper person, the Commander-in-Chief shall have power to fill such vacancy by appointment.
§ 93. If any commissioned officer shall have become or shall hereafter become incapable of performing the duties of his office, he shall be placed upon the supernumerary list, and withdrawn from active service and command.

§ 94. In order to carry out the provisions of this act, the Commander-in-Chief shall from time to time, as occasion may require, cause to assemble a board of not less than three nor more than five commissioned officers, one of whom at least shall be of the medical staff, to determine the facts as to the nature and occasion of the disability of such officers as appear disabled or unfit from any cause to perform military service; such board being hereby invested with the powers of a court of inquiry and court martial, and their decision shall be subject to like revision as that of such courts by the Commander-in-Chief. The board, whenever it finds an officer incapacitated for active service, shall report such fact to the Commander-in-Chief, and if he approve such judgment, the disabled officer shall thereupon be placed upon the supernumerary list, according to the provisions of this act; provided, always, that the members of the board shall in every case be sworn to an honest and impartial performance of their duties, and that no officer shall be placed upon the supernumerary list by the action of said board without having had a fair and full hearing before the board, if upon due summons he shall demand it, nor shall any officer be summoned before such board unless reported to the Commander-in-Chief as incapable by a majority of the commissioned officers of his regiment, brigade or division, as the case may be.

§ 95. In time of war, insurrection, invasion, or imminent danger thereof, when the military forces of this state shall be in the actual service thereof, the Commander-in-Chief shall have power, whenever the public interests may in his opinion so require, to suspend from active service such officer or officers as he shall deem it discreet so to suspend and fill the vacancy thus created by appointment; but no such suspension shall continue for a longer period than thirty days, unless a court martial shall have in the meantime been ordered for the trial of such officer or officers.
§ 96. The Commander-in-Chief shall be entitled to three aids, with the rank of colonel, and a military secretary, with the rank of major.

§ 97. Each major-general shall be entitled to two aids, with the rank of major, and each brigadier-general to one aid, with the rank of captain.

§ 98. The Adjutant-General shall have the rank of brigadier-general; and in his department there shall be an assistant adjutant-general, with the rank of colonel; to each division a division inspector, with the rank of colonel; to each brigade, a brigade inspector, to serve also as a brigade major, with the rank of major; and to each regiment or battalion, an adjutant, with the rank of lieutenant.

§ 99. The Inspector-General shall have the rank of brigadier-general, and his duty shall be to attend to the organization of the militia of this state. He shall inspect every branch connected with the military service, attend the military parades and encampments, when other official duties will permit, and report annually to the Commander-in-Chief. In the Inspector-General's department there shall be an assistant inspector-general, with the rank of colonel, who shall also act under the directions of the Inspector-General as inspector of military accounts.

§ 100. The Engineer-in-Chief shall have the rank of brigadier-general; and there shall be in his department, to each division, a division engineer, with the rank of colonel; to each brigade, a brigade engineer, with the rank of major; to each regiment, one engineer, with the rank of captain.

§ 101. In the Quartermaster-General's department there shall be a Quartermaster-General, with the rank of brigadier-general; to each division a division quartermaster, with the rank of lieutenant-colonel; to each brigade a brigade quartermaster, with the rank of captain; and to each regiment or battalion, a quartermaster, with the rank of lieutenant; and the Quartermaster-General may, with the approval of the Commander-in-Chief, appoint so many storekeepers as the exigencies of the service may require, not exceeding one to each storehouse.
§ 102. In the department of the Commissary-General of subsistence there shall be a Commissary-General of subsistence, with the rank of colonel; and in his department there shall be so many assistant commissaries, with the rank of captain, as the exigencies of the service may require; such assistant commissaries to be appointed by the Commander-in-Chief, and to hold their offices during his pleasure.

§ 103. In the Paymaster-General's department there shall be a Paymaster-General, with the rank of colonel; to each division a division paymaster, with the rank of major; and to each brigade a brigade paymaster, with the rank of captain; but such paymasters may at any time be detached from service in said brigades or divisions.

§ 104. The commissary general shall hereafter be known as the commissary general of ordnance, and shall have the rank of brigadier general; and in his department there shall be an assistant, with the rank of colonel, and so many military storekeepers, for the safe keeping and the preservation of the state arsenals, magazines, fortifications and military stores belonging to this state, as he may find it necessary to appoint, not exceeding one to each arsenal.

§ 105. In the hospital department there shall be a surgeon general, with the rank of brigadier general; to each division, a hospital surgeon, with the rank of colonel; to each brigade, a hospital surgeon, with the rank of major; to each regiment, a surgeon, with the rank of captain; and to each regiment or battalion, a surgeon's mate, with the rank of lieutenant, but such rank shall not entitle said officers to promotions in the line, nor regulate their pay or rations in the service; and all such officers shall be graduates of an incorporated school or college of medicine.

§ 106. To each regiment or battalion there shall be appointed one chaplain, who shall be a regular ordained minister of a christian denomination.

§ 107. In the judge advocate's department there shall be a judge advocate general, with the rank of brigadier general; to each division, a division judge advocate, with the rank of colonel; and to each brigade, a brigade judge advocate, with the rank of major.
§ 108. There shall be to each regiment or battalion two sergeant standard bearers, one sergeant major, one quartermaster sergeant, one commissary sergeant, and one drum major; and to each regiment or battalion of light artillery and cavalry, one trumpet major.

§ 109. The chief of each staff department shall, under the direction of the Commander-in-Chief, have command over all subordinate officers in his department; and shall, from time to time, issue orders and instructions for their government and practice.

§ 110. The Commander-in-Chief is hereby authorized and empowered to organize, in his discretion, the various staff departments, and to prescribe by rules and regulations the duties to be performed by the officers connected therewith, which shall, as far as may be, conform to those which are prescribed for the government of the staff department in the army of the United States.

§ 111. Each chief of such department shall prepare and transmit, at the expense of this state, all blank forms of returns, precepts, warrants and proceedings necessary in his department.

OF THE ORGANIZATION OF BANDS OF MUSICIANS.

§ 112. The commanding officer of each regiment or battalion may, in his discretion, organize a band of musicians, and by warrant, under his hand, may appoint a leader of such band.

§ 113. Such musicians shall be subject to the orders of such leader, and be under the command of the commanding officer of the regiment or battalion; and the whole or any part of said band may be required by such commanding officer to appear at any meeting of the officers for military purposes, and at the review and inspection or encampment of such regiment or battalion.

§ 114. The leader of each band shall, whenever required by such commanding officer, make returns to him of the warning of the members of his band, and of the delinquents and delinquencies therein; which returns shall be duly authenticated by the oath of each leader, taken before a field officer of such regiment or battalion.

§ 115. Such return, so sworn to, shall be received as evidence in all cases, in the same manner as like returns of non-commissioned officers of infantry companies.