



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
KANSAS NATIONAL GUARD
JOINT FORCES HEADQUARTERS KANSAS
2722 SOUTHWEST TOPEKA BOULEVARD
TOPEKA, KANSAS 66611-1287

October 13, 2021

SUBJECT: COVID-19 Vaccination for Kansas National Guard

Representative Pat Proctor
State Capital, 352-S
300 S.W. Tenth Avenue
Topeka, Kansas 66612

Dear Representative Proctor:

Thank you for your letter of October 12, 2021 concerning the COVID-19 vaccination of members of the Kansas National Guard.

The United States Constitution, in particular Article I, Section 8, clauses 15 & 16, along with United States Supreme Court precedent, establishes federal supremacy in the area of military affairs. The Supreme Court has long recognized that the Militia clauses of the Constitution not only expressly permit Congress to provide for organizing state militias, but also grants Congress the power to subject the state militia to express federal limitations. Congress has delegated its authority to regulate the National Guard to the President of the United States, Secretary of Defense, Service Secretaries, and Chief, National Guard Bureau. See 10 U.S.C. § 113(b), 10 U.S.C. § 10503, and 32 U.S.C. § 110.

Since 1933, membership in the Kansas National Guard has also required membership in the National Guard of the United States. This dual enlistment provides for the efficient utilization of Soldiers and Airmen to satisfy the needs of the State of Kansas and the national defense of our country. With this dual enlistment comes the responsibility of ensuring all members of the Kansas National Guard are compliant with the regulations, directives, and instructions of their respective service branch.

While the Kansas National Guard is an entity of the State of Kansas, the federal government provides the vast majority of funding, equipment, and training utilized by the Kansas National Guard. Under 32 U.S.C. § 104 the allocation and designation of units within the Kansas National Guard is controlled through federal recognition by the Secretary of the Army and Secretary of the Air Force. Furthermore, 32 U.S.C. § 105 permits both Secretaries to conduct inspections of the units and personnel of the

Kansas National Guard to determine compliance with appropriate regulations, instructions, and qualifications. This includes inspections of members to determine compliance with prescribed physical qualifications, such as medical standards. On August 24, 2021, the Secretary of Defense mandated vaccination for all members of the armed forces, including the National Guard. A failure to comply with regulations authorized under Title 32 may result in the withdrawing of federal recognition of units or members, or the withholding of money, aid, benefit, or any other privilege authorized by law.

I share your concerns about the utilization of State appropriated funds. However, as an entity subject to the discipline prescribed by Congress, I must ensure compliance with the regulations and requirements of the Department of Defense. That said, State appropriated funds are an absolute requirement to continue receiving federal funding for the continuance of our readiness and federal recognition of the Kansas National Guard. Much of the federal funding received for the National Guard requires a State match. Rest assured that the Kansas National Guard will not utilize State appropriated funds to satisfy vaccination requirements of members of the National Guard of the United States.

Sincerely,

David A. Weishaar
Major General, Kansas National Guard
The Adjutant General