

SEC. 40. Officers shall take rank from date of commissions; an officer who has served in the same grade continuously, either by re-election or re-appointment, shall take rank from the date of his first commission in the grade.

SEC. 41. A commissioned officer tendering his resignation before having served five years, if the Governor shall accept it, shall receive an honorable discharge. If he has served five years or more he shall receive a full and honorable discharge, provided he shall not be under arrest or return to a military court for any deficiency or delinquency; and, provided further, he be not indebted to the State in any manner, and that his accounts for money or for public property be correct. In computing the time served, service as an enlisted man shall be allowed, and the service is not required to be continuous. If the Governor accepts the resignation of an officer who at the time shall be under arrest, under charges, or returned to a military court for any offense, deficiency or delinquency, such officer shall then cease to be an officer of the National Guard, and shall receive a discharge in such form as the Governor shall direct; nor shall he again be eligible to receive a commission unless he first re-enlist, as provided in this chapter in the case of men dishonorably discharged, and until he shall have performed at least sixty per cent. of duty in each year under such enlistment for two successive years.

SEC. 42. Any officer of the National Guard who has reached the age of sixty-four years may be placed upon the retired list by the Governor. Any commissioned officer who shall have served in the military service of the State for fifteen years may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the Governor. Any commissioned officer who has become, or shall hereafter become, disabled and thereby incapable of performing the duties of his office shall be withdrawn from active service and command and placed on the retired list. Any commissioned officer who has become, or shall hereafter become, unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer or upon the recommendation of an inspecting officer; such retirement or discharge shall be by order of the Governor, and in either case shall be subject to provisions of this section. Before making such order a board of not less than three commissioned officers, one of whom shall be a surgeon, shall be appointed, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit or incompetent from any cause to perform military service, and whose case shall be referred to it. No