

Georgia Militia Districts

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The active, organized Georgia Militia, in the sense that it existed during the Revolutionary War, the War of 1812 and the various Indian uprisings until 1840, is today practically extinct. Its place was taken by the Volunteer organizations, both before and after the War Between the States, and later by the National Guard when it was organized in 1916. In fact, although detailed provisions for the government of the organized Georgia Militia were contained in the 1863 Code, later Codes dropped all but a few references to it although containing equivalent provisions relating to the Volunteers. The 1910 Code omitted all references to the Militia as a military force. It is true that the Act of Aug. 21, 1916 (Chap 86-2 of the 1933 Code) and the Act of Feb. 19, 1951 (Chap. 86-1 of the 1933 Code Supplement) contain references to the unorganized Militia, but it is obvious that they are included only to provide for a reservoir of manpower who could be made subject to the draft and duty in the defense of the State in emergencies of the gravest nature. Technically, every citizen of the State, between the ages of 17 and 45, who is not a member of the National Guard or other organized military force, is today a member of the unorganized Georgia Militia in the Militia District in which he resides.

But although the organized Georgia Militia is dead, the Georgia Militia Districts are very much alive and enter daily into the activities of all of our citizens in anything connected with (1) the territorial jurisdiction of Justice of the Peace Courts; (2) the boundaries of election districts; (3) the return of property for taxation; (4) stock and fence laws; (5) the conveyancing of land in headright Counties; and (6) in all other circumstances specifically referred to in the laws of the Senate as presently codified.

It must be borne in mind that , as was stated by Chief Justice Fish in the case reported in 150 Ga 370 (p.396), " it clearly appears *** that Captain's and Company Districts were the same as what are now known as Militia Districts." The words Captain's, Company and Militia appear interchangeably in all of the legislation where Militia District is the subject or is referred to.

Militia Districts had their origin in the colonial Acts of Jan. 24, 1755¹ and Sept. 29, 1773,² and the basic principles were adopted and adapted in all subsequent enactments of the State Legislature. Originally the Provincial Governor, as Commander in Chief, was empowered to create Regimental and Company Districts and the field officers commissioned by him would define the lines of the King's Militia Company Districts and designate the number of men constituting the Militia company in that District. The Captain of each Company would enroll the names of every male, between the ages of 16 and 60, residing in the Company District, and his action automatically made those men members of that Militia Company.

The first Militia Act of the newly-formed State was passed on Nov. 15, 1778.³ Practically the only changes from the Colonial Acts were in the lowering of the minimum age to 15 years and the election of the Captain and Lieutenants by the Militiamen residing in that Company District.

The Act of Feb. 26, 1784,⁴ passed at the close of the Revolutionary War to amend the 1778 Act, placed the age limits between 16 and 50, but still made the enrolling of the names of all residents in a Company District, by the Captain thereof, an automatic and compulsory enlistment. Under both Acts the boundaries of each Company District were determined by the Governor and Commander in Chief and were controlled by the number of militiamen residing therein, a Company being limited to a maximum of sixty-three men. It was under these Acts that there was originated the custom of identifying the District in which the Company was contained by the name of the Captain of that Company. Thus, with each election of a Captain, the same Militia Company District could be known successively as Smith's District, Jones' District, Brown's District or Robinson's District. The name of a Georgia Militia Company and of the District in which the Company was located changed each time its Captain died, resigned or was removed, and it then became known as the District of his successor.

Following the passage, on May 8, 1792,⁵ of the Act of Congress establishing uniform Militia laws for all of the States, Georgia again revised and amended her former Militia laws by her act of Dec. 14 (or 24), 1792.⁶ The only new revisions, so far as the Militia Companies and Militia Districts were effected, called for elections of Captains in all Company Districts "within ten days after such Company District shall have been defined by the Executive." Governor Telfair issued a proclamation on Dec. 21, 1792⁷ to the effect that the Company Districts "will remain as at present established." The appointment of a Adjutant General was first provided for by this Act.

The amending Act of Feb. 18, 1799⁸ gave to the field officers of each Regiment the power to arrange and define Company Districts, subject to the approval of the Brigade Commander.

No act can be found, dated prior to 1807, which required that Captain's or Company Districts should be numbered. Up to and including April 8, 1804 no commission issued to a Company officer mentioned the name of his Company, but all commissions issued on or after May 2, 1804 designated the number of the Company District for which issued. Presumably the numbering of Militia Districts or Captain's Districts originated as a regulation of the Adjutant General, but it was soon after written into the laws by the Act of Dec. 10, 1807.⁹ Sect. 4 of that Act read:

"Every division, brigade, regiment, battalion and company district shall be numbered throughout the State, by order of the commander in chief, in such manner that every corps of the same denomination shall bear a different number, by which numbers every district shall be designated in the commissions of officers commanding therein."

Prior to the passage of the 1807 Act, the Adjutant General had given numbers to 275 Militia Districts or Company Districts, all in twenty-six headright Counties, and as each new County was thereafter formed and Militia Districts were designated therein, they were likewise numbered in consecutive order. The highest numbered Militia District is 1892. In the course of time 281 Districts have been abolished through consolidation or otherwise, but those losses have been somewhat offset by clerical errors in duplicating 54 numbers, so that there are approximately 1665 Militia Districts in the State, as of 1955. As new Counties were formed from older Counties or large tracts were transferred from one County to another, the Militia Districts

retained their identities and numbers – thus, Long County which was created in 1920 contains Militia Districts Nos. 16 and 24 which had been numbered in 1804 when part of Liberty County.

Practically all of the Georgia Militia Districts are known by name as well as number and those names remain unchanged year after year, in contrast to the earlier years when the name of the Captain then commanding was given to his District. The fact that names instead of numbers were formerly more popular is evidenced by the fact that the drawers in all six Land Lotteries between 1805 and 1832 entered their residences as being in (for example) Captain Smith's District in Burke County, instead of giving the number of that same district. An unsuccessful applicant who never drew a Land Lot in any of the Land Lotteries could enter his name in each successive Lottery, and it was quite possible that his residence, although never changed, could have been shown in as many as five differently numbered Captain's Districts in two or more Counties. It is today impossible to identify (for example) Captain Wiggins' District of Washington County, as it was known in 1807, with any of the numbered Districts as they existed in that County that year or any following year.

From 1755 to 1776 the power to lay out, alter and define the boundary lines of Militia Districts was vested in the Provincial Governor; and from 1778 to 1799 it was vested in the State's Governor, as Commander in Chief. The first Adjutant General of the Militia evidently inaugurated a form of muster roll for each Company, which included a description of that Company District. Among the fragmentary records of his office there can be found the descriptions, as of the year 1793, of thirty-seven Militia Districts in Columbia, Elbert, Franklin, Greene, Washington and Wilkes Counties.¹⁰ This was changed by the Act of Feb. 18, 1799¹¹ which gave to the field officers of the Militia in each County the power to lay out new Company Districts and to alter the lines of old districts, subject to the approval of the Brigadier General in command over that County. The Act of Dec. 10, 1807¹² gave to the commanding officer of each regiment, sitting with all his junior officers as a court of inquiry, the power to alter existing Company Districts and to lay out new Districts, and provided that such changes be recorded by the regimental clerk. The same provisions were included in the Militia Acts of Dec. 6, 1813¹³ and Dec. 19, 1818.¹⁴ Only one complete report of a clerk of a regimental court of inquiry can be found today.¹⁵ That report shows that the officers of the Gwinnett County Regiment convened on June 18, 1830 and, in great detail, defined the lines of new and altered Company Districts.

However, the two Acts of Dec. 21, 1819 organizing Appling, Early, Irwin and Rabun Counties gave to the Inferior Court of each County the right to lay out the Captain's Districts. As each new County was thereafter created similar powers were given to the Justices of the Inferior Court, and the minutes books of those Courts should contain recorded data as to each such District. It must be noted that those Acts relating to newly created Counties did not change the laws respecting Militia Company Districts in the older Counties. But on Dec. 23, 1839¹⁶ a general law was passed, which gave to the Justices of the Inferior Courts of all Counties the right to lay out and alter the Militia Districts in their respective Counties. An amendatory Act of Dec. 23, 1840¹⁷ required that the Governor be immediately notified as to the changes in District lines.

When the Inferior Courts were abolished by the Constitution of 1868,¹⁸ their former jurisdiction over County matters, including the laying out and altering of Militia Districts, was conferred

upon the Ordinaries.¹⁹ An Ordinary's powers over Militia Districts were expressly set out in Sect. 337 of the 1873 Code and in all subsequent Codes, including Sect. 23-701 of the 1933 Code.

The creation of the office of County Commissioner(s) of Roads and Revenues was first authorized by the Constitution of 1868²⁰ and repeated in the Constitution of 1877,²¹ and today 150 of the 159 Counties have such Commissioners or Boards of Commissioners. Up until 1922 the various local Acts creating County Commissioners for the various Counties defined their powers and duties, and unless the Act specifically gave them power to lay out new Militia Districts, or to alter or abolish existing Districts, that power remained vested in the Ordinary.²² The Act of Aug. 21, 1922 (Acts 1922, p.82) gave to the Boards of County Commissioners of all Counties exactly the same powers and authority which had formerly been vested in the Inferior Courts, therefore, today the provisions of Chap. 23-2 of the 1933 Code apply alike to Ordinaries in Counties which have no County Commissioners and to County Commissioners in all other Counties, in which latter case the word "Ordinary" as it appears in each Section (except 23-208) of that Chapter should be construed as reading "County Commissioners of Roads and Revenues." Any action and order by Ordinary or County Commissioners, as the case may be relative to Georgia Militia Districts, is final and not subject to review or appeal, unless void on its face by reason of fraud or abuse of discretion.²³

The territorial jurisdiction of Justice of the Peace Courts was first made conterminous with Militia Company Districts by Sec. 68 of the Judiciary Act of Feb. 9, 1797.²⁴ The Constitution of 1798²⁵ declared that "there shall be two Justices of the Peace in each Captain's District." Originally these Justices were nominated and appointed by the Inferior Courts, but after the Act of Dec. 21, 1819²⁶ they were elected by the citizens residing in each Militia District. The Constitution of 1968 reduced the number of Justices in each Militia District from two to one, and the actual wording of the law as it stands today is "there shall be one Justice of the Peace in each Militia District."²⁷

Beginning in 1804²⁸ the Tax Receiver in each County took and made up the tax returns by and in the Militia Districts, and it was the duty of the Captain of each District Company to furnish him with a list of all persons in the District. These laws remained in force until 1830,²⁹ when the justices in each Captain's District were required to render similar assistance to the Tax Receiver. The practice of segregating taxpayers by Militia Districts on the tax digests continues to this day.

Originally all elections were required to be held at the seat of government in each County, but beginning in 1817 and continuing each year thereafter, local laws were passed for the various Counties, permitting general elections for Governor, Senators and all other officials to be held in the Militia Districts. Election Districts were established by varying phraseology such as "muster ground of the 27th Company, Captain Wilson's District" or "at the place of holding Justice courts in each Captain's District." Sec. 34-801 of the 1933 Code prescribes that voters deposit their ballots at the voting precinct in the Militia District in which they are registered.

The original Act of Dec. 23, 1839, as amended by the Acts of Dec. 23, 1840 and Dec. 14, 1899 (now codified as Chapter 23-2), prescribing the method of creating, changing, abolishing, or consolidating Georgia Militia Districts, has been considered and construed by the Supreme Court

of Georgia in a number of decisions.³⁰⁻⁴⁰ The most studious research into the State's history before these Acts was made by Chief Justice Fish in his dissenting opinion in the case reported in 150 Ga. 370 (pp. 392-396), but even he overlooked the first fifty years of the evolution of the District system. Perhaps the most remarkable instance in which the Supreme Court voided an order by the Commissioners of Roads and Revenues, wherein they had abused their discretion to the extent of removing certain isolated sections of one Militia District to another, even though those two Districts were physically separated by still another District, is illustrated in the case reported in 99 Ga. 544.

Endnotes

1. *Colonial Records of Georgia*, Vol. 18, p. 7.
2. *Colonial Records of Georgia*, Vol. 19 (part 1), p. 291.
3. *Colonial Records of Georgia*, Vol. 19 (part 2), p. 103.
4. *Colonial Records of Georgia*, Vol. 19 (part 2), p. 348.
5. *Watkins Digest*, p. 816.
6. *Watkins Digest*, p. 458; *Marbury-Crawford Digest*, p. 348.
7. *Georgia Military Affairs*, Vol. 1, p. 324.
8. *Watkins Digest*, p. 741; *Marbury-Crawford Digest*, p. 362.
9. *Clayton Compilation*, p. 408.
10. *Georgia Military Affairs*, Vol. 1, pp. 358, 427, 457, 442; Vol. 2 (part 1), pp. 1-109; Vol. 3, p. 105.
11. *Watkins Digest*, p. 741; *Marbury-Crawford Digest*, p. 362.
12. *Clayton Compilation*, p. 408.
13. *Lamar Compilation*, p. 446.
14. *Lamar Compilation*, p. 459.
15. *Georgia Military Affairs*, Vol. 6, p. 23.
16. *Acts 1839*, p. 37.
17. *Acts 1840*, p. 53.
18. *Constitution of 1868*, Art. 5, Sec. 14.
19. *Constitution of 1868*, Art. 5, Sec. 5.
20. *Constitution of 1868*, Art. 5, Sec. 15.
21. *Constitution of 1868*, Art. 6, Sec. 16.
22. 86 Ga. 358.
23. 198 Ga. 162.
24. *Watkins Digest*, p. 619; *Marbury-Crawford Digest*, p. 271. Note: This Section was not repealed or amended by the Judiciary Act of Feb. 16, 1799.
25. *Art. 3, Sec. 5*.
26. *Lamar Compilation*, p. 393.
27. *Sec. 24-401 of 1933 Code*.
28. *Clayton Compilation*, p. 226.
29. *Acts 1830*, p. 200.
30. 67 Ga. 36.
31. 67 Ga. 254.
32. 68 Ga. 354.
33. 84 Ga. 432.

34. *87 Ga. 283.*
35. *91 Ga. 141.*
36. *93 Ga. 631.*
37. *99 Ga. 544.*
38. *130 Ga. 564.*
39. *138 Ga. 18.*
40. *150 Ga. 370.*