

48-2104. (KCMJ Art. 4) Dismissal of officer; right to trial by court-martial. (a) The governor may dismiss any officer by a written order, but no such written order shall be made until 60 days after the governor has served on the officer a detailed statement of the reasons for dismissal. No dismissal shall be made except for misconduct as defined in the punitive articles of this code. Any officer dismissed by order of the governor may, within 30 days of notice thereof, make a written application for trial by court-martial, setting forth under oath, that the officer has been wrongfully dismissed. The governor, upon receipt thereof, shall as soon as practicable convene a general court-martial to try that officer on the charges on which the officer was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and the officer shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which the officer is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(b) If the governor fails to convene a general court-martial within 60 days from the presentation of an application for trial under this code, the order of dismissal under subsection (a) is automatically rescinded.

(c) If a discharge is substituted for a dismissal under this code, the governor alone may reappoint the officer to the same grade and rank as that former officer would have attained had the officer not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All the time between the dismissal and the reappointment shall be considered as actual service for all state purposes.

(d) If an officer is discharged from the state military forces by administrative action or by board proceedings under law or is dropped from the rolls by order of the governor, the officer has no right to trial under this section.

History: L. 1972, ch. 203, § 48-2104; L. 1988, ch. 191, § 2; July 1.