

Lore of the Corps

The Governor Versus the Adjutant General: The Case of Major General George O. Pearson, Wyoming National Guard*

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On Tuesday, 1 December 1964, Major General George O. Pearson, Adjutant General of the Wyoming National Guard, angrily denied charges made against him by Wyoming Governor Clifford P. Hansen. In a front-page story in *The Billings (Montana) Gazette*, Pearson insisted that he had never “misappropriated state funds and diverted them to his personal use.”¹ Not only was he completely innocent of any wrongdoing, but the sixty-one-year old Pearson claimed that he would “explicitly refute each and every charge made against [him].”² What follows is the story of the legal fight between the Governor of Wyoming and the highest military official of that state; a conflict that resulted in a Wyoming Supreme Court decision and Pearson’s court-martial, a unique event in the history of the Army National Guard and military criminal law.

Born in Sheridan, Wyoming, on 15 August 1903, George Oliver Pearson had a remarkable career as a Soldier. When he was sixteen years old, he enlisted as a private in the 1st Wyoming Cavalry Regiment. Later, while a student at the University of Minnesota, Pearson also served in the 151st Field Artillery Regiment, Minnesota National Guard. Major General Pearson obtained an officer’s commission in 1928, and when the United States entered World War II, then Major Pearson deployed to the Pacific. He saw heavy combat as the commander of the famous 187th Airborne Infantry Regiment³ in the Philippines and was decorated for gallantry in action with the Silver Star.⁴ After the Japanese surrender in 1945, then Colonel Pearson participated in the initial occupation of Japan. He subsequently served as Commander of the 508th Regimental Combat Team in Berlin, Germany, before retiring from active duty in 1958 and returning to Wyoming. On 1 June 1959, Colonel Pearson joined the staff and administration of the Wyoming National Guard. Two years later, he transferred from the Infantry to the Adjutant General’s Corps and was promoted

to brigadier general. A year later on 23 July 1962, Pearson pinned on a second star after being appointed The Adjutant General by Governor Jack R. Gage. Major General Pearson was still serving as the top military officer in Wyoming when that state’s voters defeated Gage’s bid for re-election and chose Republican Clifford Hansen to be their chief executive in November 1962.⁵

In late November 1964, Governor Hansen confronted Major General Pearson with evidence that Pearson had “turned in false travel vouchers” and “charged personal long distance telephone calls to the state.” Convinced that Pearson was guilty of criminal misconduct, but that the matter should be handled administratively, the governor apparently offered Pearson two choices: submit his resignation or be fired. When Pearson “declined to resign because he was innocent,”⁶ Governor Hansen exercised his authority as “Governor and Commander in Chief” to relieve Pearson as “The Adjutant General, State of Wyoming, effective 25 November 1964.”⁷ In his stead, Governor Hansen appointed Brigadier General Roy E. Cooper as Acting Adjutant General.⁸ As for Pearson, he retained his rank but was in an “inactive and unassigned” status. In a 20 February 1965 letter addressed “To All units of the Wyoming Army and Air National Guard,” Governor Hansen informed all personnel that “under no circumstances” could Major General Pearson “participate in Wyoming National Guard activities or exercise any authority.”⁹

While Hansen insisted that he had the authority to remove Pearson from office and strip him of all military authority, the latter very much disagreed, and filed suit in Wyoming’s highest court to block the governor’s action. Major General Pearson argued that a Wyoming statute, which provided “that no state appointed person serving in a military capacity can be removed without a hearing,”¹⁰ meant that Hansen’s action was a nullity.

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¹ *Can Prove Hansen Charges False*, BILLINGS GAZETTE (Montana), Dec. 1, 1964, at 1.

² *Id.*

³ The 187th Airborne Infantry Regiment is today known by the moniker Rakkasans. In Japanese, Rakkasan means “man falling under umbrella”; the unit received the moniker while in occupation duty in Japan after World War II. See *The Rakkasans, 187th Infantry Regiment*, RAKKASAN ASS’N, <http://www.rakkasan.net/history.html> (last visited Oct. 16, 2013).

⁴ U.S. Dep’t of Army, DA Form 66, Officer Qualification Record, George O. Pearson, block 21 (Awards and Decorations) (17 Aug. 1966).

⁵ *Id.* block 12 (Appointments).

⁶ *Supra* note 1.

⁷ Wyo. Adjutant Gen.’s Office Exec. Order No. 66 (Nov. 26, 1964) (copy on file with author).

⁸ Wyo. Adjutant Gen.’s Office, Special Order No. 222 (Nov. 26, 1964) (copy on file with author).

⁹ Letter from Clifford P. Hansen, to To All units of the Wyoming Army and Air National Guard (20 Feb. 1965).

¹⁰ *Guard Dispute: Attorney General Asks Suit Dismissal*, BILLINGS GAZETTE (Montana), Dec. 25, 1964, at 21.

On 12 May 1965, in *The State of Wyoming ex rel. Pearson v. Hansen et al.*, the Supreme Court of Wyoming agreed with Pearson. While acknowledging that Governor Hansen held “the sole power” to appoint the state’s Adjutant General, the court unanimously concluded that Wyoming Statute 19-56 required “a court-martial or efficiency board” as a prerequisite to removing a military officer from office. Consequently, the Court held that “the Governor exceeded his powers” in removing Pearson from office and granted summary judgment for him on the complaint.¹¹

So what was Governor Hansen to do? Since the highest court of the state had indicated in its opinion that there was no reason that the governor could not convene a court-martial to hear the evidence against Major General Pearson, Hansen took action. Two months later, on 12 July 1965, acting under his authority as “Governor and Commander-in-Chief,” Hansen “relieved” Pearson from “Command and Duties as Adjutant General . . . during the pendency of the court-martial proceedings which have been instituted against him.”¹²

On 12 November 1965, again under his authority as “Commander-in-Chief,” Governor Hansen convened a general court-martial at the New Armory, Cheyenne, Wyoming, “for the trial of Major General George O. Pearson.”¹³

On 6 December 1965, a panel consisting of Colonel Theron F. Stimson as president, eight lieutenant colonels and two majors, convened to hear the evidence against Pearson.¹⁴ He was charged with a number of travel-related offenses under Articles 80, 107, 121, 133, and 134, Uniform Code of Military Justice (UCMJ). Although two charges alleged that he had falsely claimed payments for personal long distance telephone calls, the remaining charges and specifications revolved around falsely claiming reimbursement for airline tickets, limousine, and taxi expenses. The prosecution’s evidence was that General Pearson had travelled on Wyoming National Guard aircraft to various locations, but filed vouchers claiming that he had flown on commercial aircraft, requesting money as reimbursement for these commercial airline tickets and related per diem and travel expenses.

¹¹ State of Wyoming *ex rel. Pearson v. Hansen*, 401 P.2d 954 (1965). Cooper was named as a defendant because Hanson had appointed him as Adjutant General after removing Pearson from the office.

¹² Wyo. Office of the Governor and Commander-in-Chief Exec. Orders No. 34 (12 July 1965).

¹³ Headquarters, Wyo. Nat’l Guard, Office of the Commander-in-Chief, Gen. Court-Martial Appointing Order No. 1 (12 Nov. 1965).

¹⁴ Under Article 25(d)(1), Uniform Code of Military Justice (UCMJ), a member may be junior in rank to the accused when that cannot be “avoided.” Since Pearson was the highest-ranking officer in the Wyoming National Guard, selecting members junior to him could not be avoided. UCMJ art. 25(d)(1) (2012).

Defense counsel first objected to the presence of Mr. George W. Latimer as Assistant Trial Counsel, perhaps because of Latimer’s considerable military legal experience.¹⁵ This objection was overruled by the court.

Defense counsel then argued to the panel that it lacked jurisdiction over General Pearson. The gist of the argument apparently was that as the Wyoming legislature had not formally adopted the UCMJ, there could be no court-martial. After the law officer¹⁶ ruled that there was jurisdiction, Pearson and his counsel filed a writ of prohibition with the Wyoming Supreme Court, seeking to halt the proceedings on this same jurisdictional basis. On 14 January 1966, the court denied the writ.¹⁷

Major General Pearson’s trial resumed on 24 January 1966, and concluded on 3 February. He was convicted of one specification of filing a false claim and one specification of conduct unbecoming an officer and gentlemen. He was sentenced to a reprimand.¹⁸

Perhaps Governor Hansen hoped that the court-martial panel would have sentenced Pearson to a dismissal so that he then would have a clear basis to order his removal as Adjutant General. But this was not to be and, in the absence of a dismissal, it seems that Hansen was stuck with Pearson. This is the best explanation for why Governor Hansen rescinded his earlier order prohibiting Pearson from participating in National Guard matters. A 4 June 1966 letter from Hansen to Major General Pearson restored his authority as Wyoming’s top military officer.¹⁹

¹⁵ A distinguished lawyer with a strong military background (he had enlisted in the Utah National Guard in 1917 and served as a colonel in the 40th Infantry Division in World War II) George W. Latimer was one of the original three judges on the Court of Military Appeals (today’s Court of Appeals for the Armed Forces). Latimer served on that court from 1951 to 1961. *Judges*, U.S. COURT OF APPEALS FOR THE ARMED FORCES, <http://www.armfor.uscourts.gov/newcaaf/judges.htm> (last visited Oct. 9, 2013). Some years after the Pearson court-martial, Latimer defended Lieutenant William F. “Rusty” Calley in the infamous My Lai massacre court-martial. RICHARD HAMNER, *THE COURT MARTIAL OF LT. CALLEY* 61–62 (1971).

¹⁶ Prior to the Military Justice Act of 1968, when Congress created the position of “military judge,” all general courts-martial had a “law officer” detailed to them by the convening authority. The law officer was a quasi-judicial official, and was certified by The Judge Advocate General as legally qualified to instruct the panel members on the elements of the offense, the presumption of innocence, and the burden of proof. The law officer also ruled on interlocutory questions of law. UCMJ art. 26 (1951).

¹⁷ State *ex rel. Pearson v. Hansen*, 409 P.2d 769 (1966). The court had previously held that the legislature had enacted sufficient legislation to allow for trials of state military personnel under the UCMJ.

¹⁸ Memorandum from Wyo. Nat’l Guard, Office of the Staff Judge Advocate, subject: Opinion, Review, and Recommendations, Trial of Major General George O. Pearson, Adjutant Gen., State of Wyo. 5 (29 Aug. 1966).

¹⁹ Letter from Governor Hansen, to Major General Pearson (4 June 1966).

Almost three months later, on 29 August 1966, Governor Hanson approved the court-martial findings and sentence.²⁰ On 3 October 1966, he took his final action in the case by issuing a written reprimand to Major General Pearson. It read, in part:

You were found guilty by a General Court Martial of conduct unbecoming an officer and gentleman, and of conduct such as to bring discredit upon the Armed Forces of the State of Wyoming, and sentenced to a reprimand. As it is my duty to carry out that sentence, I shall proceed to do so.

The Office of Adjutant General is a high position in the organization of the State of Wyoming. It is so, because it carries with it not only the responsibility for the conduct of State business, but also the leadership of a department steeped in military traditions, based upon honor and moral duty as well as the best of discipline.

...

You have violated the trust which you were given by the people of this great State. Government falls into disrepute when its highest officers depart from honesty and follow an unacceptable path. It is regrettable that by your conduct you have brought upon yourself the humiliation and overwhelming sense of shame you must feel when facing your fellow officers and men, in having failed to set for them the example which they expect and to which they are entitled.²¹

So ended the fight between Governor Hansen and his Adjutant General. The governor had made his point, and General Pearson must have felt uncomfortable in his presence—and that of his fellow Guardsmen. But he remained as the Adjutant General until the following year when, aged sixty-four years, Pearson reached mandatory retirement. Amazingly, Pearson was awarded the Wyoming National Guard Distinguished Service Medal “for long and exceptionally distinguished service to the State of Wyoming and the United States of America” before retiring. The citation lauds his “exceptional foresight and leadership in directing the training and administration” of the Guard and his “steadfast devotion to duty.”²² Since Governor Hansen approved the award to Pearson, one must conclude that Hansen harbored no ill feelings toward his Adjutant General. In any event, the Pearson-Hansen dispute did have a lasting impact: at least in Wyoming until 1977, the Adjutant General could not be removed except by a court-martial.²³

What happened to Major General Pearson after 1967? Instead of going quietly into retirement, Pearson went to Vietnam, where he worked for Pacific Architects and Engineers as a civilian contractor at Cam Ranh Bay. He returned to the United States in 1970 and settled in Sheridan, Wyoming. George Pearson died there in March 1998. As for Governor Hansen? He completed his service as Wyoming’s chief executive and was elected to the U.S. Senate in 1967. He served two terms and retired in 1978 when he declined to run for a third. Clifford P. Hansen died in Wyoming in 2009 at the age of ninety-seven.²⁴

More historical information can be found at

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Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

<https://www.jagcnet.army.mil/History>

²⁰ *Supra* note 17, at 8.

²¹ Letter from Governor Clifford P. Hansen, to Major General George O. Pearson, subj: Reprimand (3 Oct. 1966).

²² Wyo. Adjutant Gen.’s Office, Gen. Orders No. 18 (10 June 1967).

²³ In 1977, almost certainly in response to the Hansen-Pearson controversy, the Wyoming legislature revised state law to provide for the removal of the Adjutant General, as with all other gubernatorial appointees, at the pleasure of the governor. WYO. STAT. ANN. §§ 19-7-103(a), 9-1-202(a) (1977). While this means that the governor may remove the Adjutant General from the state position, this would not constitute a dismissal action with respect to dual status membership in the Reserves or state militia.

²⁴ *Obituary, Clifford P. Hansen, 1912–2009*, WYOMING TRI. EAGLE, http://www.wyomingnews.com/articles/2009/10/24/obituaries/01obit_10-24-09.prt (last visited Aug. 20, 2013).