regularly declared dividend to such members on their investment in shares under the provisions of the Indiana Credit Union Law now in force; that, as in the case of federally-chartered credit unions, the Indiana Credit Union Law would have to be amended to grant such express authority, before patronage dividends may be permitted.

OFFICIAL OPINION NO. 34

June 3, 1958

Brigadier General John W. McConnell
Adjutant General of Indiana
212 State House
Indianapolis, Indiana

Dear Sir:

This is in reply to your letter in which you request my Official Opinion on the following:

"The Acts of 1915, Ch. 3, Sec. 1, as amended, as found in Burns' (1957 Supp.), Sec. 59-1009, offers several legal questions of extreme importance to personnel who have served and are serving in the military service of the State of Indiana and of the United States.

"Two of the more pertinent questions are as follows:

"1. Would service in the federally recognized National Guard of the United States, without active federal service, qualify an individual as a veteran within the purview and intent of the Act?

"2. A majority of the personnel of the Indiana National Guard are now required to serve with the Armed Forces of the United States for various periods of time, to-wit: Attendance at Service Schools operated by the regular establishment, active duty with the regular establishment for a period of two (2) years; active duty for training for a period of six (6) months, a similar eleven (11) week period, and a two (2) week annual active duty training period. Does this required service qualify participants as veterans within the purview and intent of the Act?"
The Acts of 1915, Ch. 3, Sec. 1, as amended, as found in Burns' (1957 Supp.), Section 59-1009, reads in part as follows:

"Whenever any person, male or female, who has heretofore served or who may hereafter serve, as a member of the armed forces of the United States as a soldier, sailor or marine in the army or navy of the United States, or as a member of the women's components thereof, * * * and who, while a member of the armed forces and before discharge therefrom, or, who after receiving an honorable discharge therefrom, * * * has died or shall hereafter die, upon claim being filed by an interested person with the board of commissioners of the county of the residence of such deceased person, stating the fact of such service, death and discharge, * * * such board of commissioners shall hear and determine such claim, like other claims filed for allowance by them, and if the facts averred are found to be true, as a tribute of respect due such member of the armed forces, shall make allowance of such claim in a sum not exceeding one hundred dollars [$100] for service rendered and material furnished in care of such body and where necessary an amount not to exceed twenty-five dollars [$25.00] for a place of burial of such body." (Our emphasis)

In Official Opinion No. 19 dated March 8, 1948, page 90, the then Attorney General stated:

"* * * Under the 1947 Act, Ch. 167, p. 553, the law now applies to those persons who die while in active service and also as before to those persons who die after discharge from active service. * * *" (Our emphasis)

Although the term, "active service," is used in this opinion, it is necessary to point out that the question upon which the opinion was based was whether the burial benefits could be paid to a member of the armed forces who dies while in actual service. Further, Burns’ 59-1009, supra, makes no mention of active or inactive service, but rather requires service as a member of the Armed Forces.
The use of the term, "member of the Armed Forces" is further expressly qualified in Burns' 59-1009, *supra*, by limiting the class of persons upon whom the burial benefit is conferred to those who performed or will perform service, "as a soldier, sailor, or marine in the Army or Navy of the United States or as member of the Women's Components thereof."

The term, "Armed Forces," as defined by Congress is as follows:


It is noted in Burns' 59-1009, *supra*, and the definition of the term "Armed Forces" contained in Public Law 1028, *supra*, that no reference is made to the reserve components or the National Guard. Also members of the National Guard are relieved from duty in the National Guard when called to active duty in the Armed Forces:

"(a) Each member of the Army National Guard of the United States or * * *, who is ordered to active duty is relieved from duty in the National Guard of his state * * *, from the effective date of his order to active duty until he is relieved from that duty.

"(b) So far as practicable, members, organizations, and units of the Army National Guard * * * ordered to active duty shall be returned to their National Guard status upon relief from that duty." 32 U. S. C. 325. (Our emphasis)

The Acts of 1953, Ch. 187, Sec. 102, as amended, as found in Burns' (1957 Supp.), Section 45-1802 reads in part as follows:

"* * * 'Federally recognized national guard' denotes that portion of the Indiana national guard which has met all the requirements for and has been recognized by the national military establishment as a part of the reserve components of the Armed Forces of the United States. * * *" (Our emphasis)
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The foregoing unequivocally places the Indiana National Guard in the category of a reserve component. Further, Congress expressly recognizes the National Guard as a part of the State Militia and the status of the National Guard is spelled out by Congress as follows:

"'Army National Guard' means that part of the organized militia of the several states and * * * that

(A) is a land force;
(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, Article I, of the Constitution;
(C) is organized, armed, and equipped wholly or partly at Federal expense, and
(D) is federally recognized." Public Law 1028, Ch. 1041, dated August 10, 1956; 10 U. S. C. A. § 101(10).

It is my opinion that service in this reserve component is not in fact service in the Armed Forces within the definition of the term Armed Forces as used in Public Law 1028, supra, and, further, that the Legislature in Burns' 59-1009, supra, did not intend to include service in the reserve as qualifying service as a member of the Armed Forces. In addition, service in the Indiana National Guard is not in fact service in the Armed Forces for the reason that members of the Indiana National Guard retain their status as members of the Indiana National Guard subject to state control during the weekly assembly periods, summer encampments, and attendance at service schools.

In order to obtain Federal funds Congress has prescribed certain training requirements, to include forty-eight (48) assembly periods a year and training at encampments or other exercises at least fifteen days each year. 32 U. S. C. Section 502. In both of these instances, the Indiana National Guard remains under the control of the Governor of the State of Indiana and the only recourse available to the Federal authorities for failure to perform the prescribed training is to withhold Federal recognition and Federal funds. Further, any breaches of discipline on the part of any individual member of
the Indiana National Guard during the weekly assembly periods or summer encampments would be punishable only under the authority of the Indiana Military Code. I am therefore of the opinion that attendance at weekly assembly periods and summer encampments would not constitute service in the Armed Forces of the United States.

The same reasoning would apply to individual members of the Indiana National Guard attending service schools operated by the regular establishment.

"Under such regulations * * * and upon the recommendation of the Governor of any state * * *, the Secretary of the Army may authorize a limited number of members of its Army National Guard to

(1) attend any service school * * *; or

(2) be attached to an organization of the branch of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction * * *." 32 U. S. C. A. § 505. (Our emphasis)

It is evident from reading the foregoing that members of the Indiana National Guard attending a service school do so upon the recommendation of the Governor and during the period of such attendance remain subject to the Indiana Military Code. This view is further corroborated by a note in the Manual for Courts-Martial United States 1951.

"National Guard personnel attending service schools under Section 99, National Defense Act, are not in the Armed Forces of the United States and * * *." Note page 412, Manual for Courts-Martial United States 1951.

In respect to the eleven (11) weeks training under the Reserve Forces Act of 1955, I am informed by VI Corps United States Army (Reserve), Fifth U. S. Army that this program was discontinued in October 1957 and it would appear that this question could be dispensed with at this time. However, if the program were to be reinstated the same rule would be applied as will be discussed with respect to the six months "RFA program."
Members of the Indiana National Guard enlisting under the Reserve Forces Act of 1955 are required to serve six months on active duty followed by a period of years in the reserve upon separation from active duty. I am of the opinion that the service performed during the six months duty is service in the Armed Forces after the completion of which the individuals receive a DD Form 214, Report of Separation. This separation relieves the individuals from active duty in the Armed Forces and returns them to their reserve status with a further obligation in the reserve. Further during the six months training, the individuals are in fact subject to control of the Federal authorities and as such are in the Armed Forces. The same reasoning would apply to the members of the Indiana National Guard who entered active duty in the Armed Forces for a period of two years. During this two year period they are relieved from the duty as members of the Indiana National Guard and remain subject to Federal authority throughout the two year period and upon completion of their two years duty they in turn receive a DD Form 214, Report of Separation which relieves them from their service in the Armed Forces and returns them to their status in the Indiana National Guard.

I would also like to point out that the Legislature made specific provisions for members of the Indiana National Guard who die while in the active service of the state as evidenced by the Acts of 1953, Ch. 187, Sec. 421, as found in Burns' (1957 Supp.), Section 45-2121 which reads in part as follows:

"* * * If any member of the national guard shall die in the active service of the state, his reasonable funeral expenses, not exceeding five hundred dollars [$500], shall be paid by the state in such manner as the governor may direct. * * *"

In conclusion, it is necessary to point out that the foregoing discussion of the Acts of 1915, Burns' 59-1009, supra, does not in any way affect the power conferred by statute upon the Boards of County Commissioners to hear and determine each claim for burial allowance.

The answers to your questions are as follows:

1. Persons serving in the federally recognized National Guard without active service are not afforded the
burial benefits provided by the Acts of 1915, Burns' 59-1009, *supra*, by reason of the fact that such service is not service in the Armed Forces of the United States but rather service in a reserve force.

2. Members of the National Guard attending service schools are not afforded burial benefits under Burns' 59-1009, *supra*, by reason of such service as they are not members of the Armed Forces but rather attend service schools operated by the regular establishment in their status as members of the Indiana National Guard.

3. The same reasoning as set out in number two above would apply to time spent in summer encampments.

4. Persons on active duty for a period of two years and those engaged in six months training are entitled to the burial benefits afforded by Burns' 59-1009, *supra*, as they are members of the Armed Forces and not members of the Indiana National Guard. Further, upon completion of their duty they are separated from service in the Armed Forces and returned to their status as members of the Indiana National Guard.

OFFICIAL OPINION NO. 35

June 12, 1958

Mr. Robert J. Pitchell
Resident Director
Commission on State Tax and Financing Policy
4A-8 State House
Indianapolis, Indiana

Dear Mr. Pitchell:

You have requested my Official Opinion concerning proposed tax legislation now under study by the Commission on State Tax and Financing Policy. Your letter making that request is as follows:

"The General Assembly in 1957 directed this Commission to study the net income tax as a possible re-