the active militia are now exempted from the payment of poll tax * * * " (Opinions of the Attorney General for the year of 1937, at page 140.)

The third opinion was issued on October 7, 1941 by the then Attorney General to the then Acting Adjutant General. The question in that opinion concerned the officers and men of the Indiana State Guard and it was the opinion of the Attorney General that the members of the Indiana State Guard were *active militia* and as such come under the provisions of (Sec. 45-1210) regarding the poll tax exemptions. (Opinions of the Attorney General for the year 1941, at page 342.)

In view of the fact that these three opinions discuss fully the question of both the Indiana State Guard and the Indiana National Guard in regard to poll tax exemption, I think it beyond question that, according to Burns’ Anno. Statute Sec. 45-1210, the officers and enlisted men of the *Indiana National Guard* are exempt from the payment of poll tax.

JAW:man

OFFICIAL OPINION NO. 64

July 13, 1949.

Honorable James M. Propst,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your request of July 7, 1949 for an official opinion involving the proper construction and authority vested in the Division of Auditing by virtue of two separate Acts of the Legislature of 1947. The first of these Acts referred to is Chapter 10 of said Acts, approved February 18, 1947 and the other is Chapter 279 of said Acts, approved March 13, 1947. It will be observed that both of these Acts were adopted at the same session of the Legislature. Each of the Acts have an emergency clause and each became effective on the approval.
of Governor so that Chapter 10 became effective about twenty-two days before the approval of Chapter 279.

You have been kind enough to set out the provisions of Section 4 of Chapter 10 in detail and also set out in detail Section 7 of Chapter 279 of said Acts so that I'll not burden this opinion by setting them out again. You refer to the fact that there is a conflict in the language of these two Acts which makes it impossible to administer and adhere to the strict letter of both of said Acts. You refer to the fact that when the State Revenue Act was set up a conference was had between the Director of Auditing, the administrator of the Indiana Department of State Revenue and the Attorney General and that it was mutually agreed at that time that the entire Motor Fuel Tax Department would be moved from the Auditor of State's Office to the Indiana Department of State Revenue and that the Director of Auditing, pursuant to Section 7 of Chapter 279, should add to his staff of personal additional pre-audit clerks necessary to examine each and every gas tax refund claim, before he wrote his warrant in payment of the same. This means that there have been two pre-audit sections auditing the same claims, one in the Department of Revenue and one in your office. You refer also to the fact that the method constitutes an enormous amount of lost motion and detail and much cost to the taxpayer in maintaining the two pre-audit sections.

You further say that it is now agreeable with all parties concerned, the Governor of the State, the Director of Auditing, and the administrator of the Indiana Department of State Revenue that the refund section which pre-audits the gas tax fund claims on the tax on gasoline used for other than highway purposes be transferred to the Division of Auditing. This will eliminate one pre-audit section and will affect a great saving to the taxpayer, to say nothing of the time it will save in processing the gas tax refund claims. In conclusion you say, "In light of the language used in Section 4, Chapter 10, Acts of 1947 and Section 7, Chapter 279, Acts of 1947, can the Gas Tax Refund Section of the Motor Vehicle Highway Division of the Indiana Department of State Revenue be transferred to the Division of Auditing?" I have given considerable thought to these two Acts. Chapter 10 of the Acts of 1947 creates a sort of super government over
certain departments of State government and seems to impinge upon the duties of certain officers. Its language in many respects is inordinately extravagant and perhaps exaggerative. For instance, in Section 4 it states that “there is hereby transferred to said department all of the authority, powers, duties, jurisdictions, officers, employees, books, papers, records, supplies, equipment and appropriations of: (a) The Gross Income Tax Division;” to the Department of State Revenue. It will be observed that this language is so all-inclusive as to virtually wipe out and emasculate the Gross Income Tax Division because all of its powers and duties and its appropriations are taken away from it and it would be powerless to operate in any respect. This same provision is made to apply to the State Board of Tax Commissioners and to certain functions of the State Auditor and the language used is so extravagant as to almost approach absurdity. There seems to have been no construction placed upon this section by this office but it certainly means only that so far as the duties referred to, the Department of Revenue should exercise an advisory power over these officials, at any rate these departments are still operating and no doubt have retained some of their officers and some of the appropriation with which to meet their expenses of operation.

It may be that someone connected with that session of the Legislature had a vision as to what might happen if all of the provisions of Chapter 10 should be followed literally so that the enactment of Chapter 279 followed. Chapter 279 has an illuminating preamble which indicates why the Act was adopted. It has been held that the preamble of a statute may be looked to for the purpose of disclosing the intention of the Legislature in the enactment of a statute.

Hanly v. Sims et al. (1911), 175 Ind. 345;
Huff v. Fetch (1924), 194 Ind. 570.

It is apparent that the two Acts are not in harmony, in certain respects they are in conflict. Section 4 of Chapter 10 of the Acts of 1947 provides that all of the authority and powers, duties, and jurisdictions of the Auditor of State so far as the Motor Fuel Tax Law and the Act imposing the license tax on the use of fuel, an Act concerning the inspection of petroleum products and the Act requiring license for
the operation, maintenance, opening and establishment of stores in this State, prescribing the license and filing fees to be paid therefor, are transferred to the Department of State Revenue while Section 7 of Chapter 279 later adopted at the same session provides that the Director of Auditing who, by the terms of the Act, is to be the State Auditor, requires him to maintain a centralized accounting record for the State, keep the general books of account in detail so they shall reflect in summary all assets, liabilities, reserves, surpluses, revenues and receipts appropriations, allotments, expenses or encumbrances except as otherwise provided by the Act and said Act further provides that the Director of Accounting shall examine every receipt, amount, bill, claim, refund, and demand against the State arising from activities carried on by agencies of the State; to approve each legal, correct and proper claim, designate the account to be charged therefor and to issue his warrant thereof. Other parts of this section confer other and additional duties upon him.

So far as the duties of the Director of Auditing under Chapter 279 are in conflict with the provisions of Chapter 10 of the Acts of 1947 are concerned, Chapter 279 will prevail and the provisions of Chapter 10 are amended, superseded or repealed by implication.

The above statement is clearly sustained by certain sections of Chapter 279. Section 28 of that Act confers all rights, powers and duties of pre-auditing and accounting for the transactions and activities of all State agencies heretofore vested and conferred upon the Auditor of State to the Director of Auditing. Section 32 is as follows:

"All other laws or parts of laws now in effect inconsistent with the provisions of this Act are hereby repealed and superseded to the extent of such inconsistency and so far as necessary conform to and give full force and effect to the provisions of this Act."

It will be seen that this section is intended to show that certain provisions of the former Act are superseded. Section 38 of Chapter 279 specifically and expressly repeals all laws or parts of laws in conflict therewith and Section 38 states:

"* * * The provisions of this Act shall supersede the provisions of any general or special Act or
part of Act in conflict herewith, passed at *this session* of the General Assembly, regardless of whether such Act or Acts were passed *before* or *after* the effective date of this Act.” (Our emphasis.)

This provision of Section 38 seems to be a “clincher” on the proposition that if there are any conflicts they should be resolved in favor of the powers conferred by Chapter 279.

In conclusion, you are informed that I am of the opinion that the duties referred to in Section 4 of Chapter 10 of the Acts of 1947 can be, and should be transferred to the Division of Auditing and the method of having two pre-audits should be abandoned and all pre-auditing and accounting for the financial transactions of all State agencies should be done by the Director of Auditing.

CHJ:vb

---

**OFFICIAL OPINION NO. 65**

July 18, 1949.

Caroline Hauenstein, R. N.,
Executive Secretary,
Indiana State Board of Nurses’
Registration and Nursing Education,
638 K. of P. Building,
Indianapolis, Indiana.

Dear Miss Hauenstein:

Your letter of June 10, 1949 has been received and is as follows:

“There have been several reports made to both the Indiana State Nurses’ Association and to this office regarding a person who is operating a training school for practical nurses in Evansville. The President of the Indiana Practical Nurses’ Association has sent a written report of the training school to this board and is awaiting a reply as to what can be done to abolish the school.