It is my opinion that, assuming that the property in question was lost due to carelessness or negligence, it is proper and legal to pay said claim. It is further my opinion that, as shown by the former opinions of prior Attorneys General, said claim may be paid from any military fund, including the Governor's Military Contingent Fund.

OFFICIAL OPINION NO. 61

October 1, 1948.

Colonel Ben Herr,
Fiscal Officer,
Office of Adjutant General,
Indianapolis, Indiana.

Dear Sir:

I have your letter of September 27, 1948, requesting an official opinion as follows:

"The city of Monticello, through its city attorney, Mr. Charles D. Boomershine, has indicated a desire to donate some land in its park to the State to be used as an armory site.

"Mr. Boomershine says while he believes that the Acts of the Indiana General Assembly of 1945, Chapter 135, page 291, Sec. 7, gives the city this authority, he prefers that before any definite steps are taken we obtain for him an official opinion from your Office, as to whether such a donation can be made.

"If you will favor us with an opinion on this subject, we will appreciate it very much."

Section 7, Chapter 135 of the Acts of 1945, referred to in your letter, appears as Section 45-307 Burns' 1946 Supplement, and is as follows:

"Such armory board shall have power to receive from counties, cities, municipalities, the federal government or other sources, donations of land or contributions of money, to aid in providing or erecting armories throughout the state for the use of the mili-
Said section was merely a re-enactment of Section 7 of Chapter 185 of the Acts of 1907.

A similar question on this section was presented to the Attorney General in 1934 and the Attorney General on May 22, 1934, gave an opinion to the then Adjutant General on said question, in which he stated as follows:

"In my opinion the above section clearly authorizes the donation by a city for armory purposes of real estate owned by it. While the latter part of the section, which expressly authorizes the necessary action on the part of the municipality, uses the language 'such contributions' only, still it is obvious that the legislature intended such language to cover both 'donations of land' and 'contributions of money' as set out in the first part of the section rather than to be limited to 'contributions of money' alone."


In said opinion the Attorney General also discussed the constitutionality and validity of this section and came to the conclusion that it was valid.

From your letter it appears that the land which it is proposed be donated to the State to be used as an armory site is a part of the park of said City of Monticello. It does not appear how or from what source the city acquired this land. I, therefore, for the purposes of this opinion assume that there is nothing in the conveyance to the city which restricts the city in alienating the land in question, or makes the city a trustee to hold the land for park purposes.

Section 260 of Chapter 129 of the Acts of 1905, Burns' 1933, Section 48-4803, places the custody and management of public parks in cities of the fifth class in the common council, its committees and appointees. Section 1 of Chapter 7 of the Acts of 1917 gives a city of the fifth class the right
by ordinance to create a board of trustees for the control and management of the public parks of such city. I am not informed as to whether the City of Monticello is operating its parks by the city council or whether it has created a board of trustees for that purpose under said Act of 1917.

However, it is my opinion that in either event, such land would be within the provisions of Section 7 of Chapter 135 of the Acts of 1945. Assuming that the City of Monticello owns the land in question in fee simple and that there is nothing in the chain of title which would prevent the city from doing so, it is my opinion that it may donate said land to the State Armory Board for an armory site.

OFFICIAL OPINION NO. 62

October 4, 1948.

Hon. Edwin Steers, Sr.
Member State Election Board,
108 E. Washington Bldg.
Indianapolis, Indiana.

Dear Sir:

Your letter has been received requesting an official opinion as to whether or not a town trustee vacates his office by moving from one ward to another within the corporate boundaries of said town.

Section 48-115, Burns' 1933, being Section 1, Chapter 41, Acts 1917, provides in part as follows:

"The elective officers of every town shall be one (1) trustee from each ward * * *. Provided, each trustee shall be voted upon by all the electors of the town, but shall be a resident of the ward for which he is elected: * * *." 

An examination of the Constitution of Indiana and of the statutes fails to reveal any requirement as to continued residence in the particular ward from which such town trustee was elected. The only constitutional requirement as to residence of local officers is provided by Article 6, Section 6, of the Constitution of Indiana, which reads as follows: