the City Board should deem it advisable from its standpoint, to effect a reorganization before the four county members are appointed. In other words, when the four county members are appointed and qualified they are then as much members of the board as they will ever be, and a reorganization of the board, after they become members, I think, is necessary.

INDIANA STATE POLICE: Soldiers and Sailors—Whether soldiers and sailors on leave are subject to civil law and civil arrest for felony or misdemeanor.

September 21, 1942.

Mr. Don F. Stiver,
Superintendent,
Indiana State Police,
Indianapolis, Indiana.

My dear Mr. Stiver:

I have before me your recent letter in which you ask for an opinion as to whether soldiers and sailors on leave are subject to civil law, and whether such persons are subject to civil arrest for felony or misdemeanor.

Since the formation of our nation, it has been regarded as one of the fundamental principles of our system of government that the military authority is subordinate to the civil power. For example see:


However, the powers to declare and wage war are vested specifically in the Federal Government by the Constitution. Article 1, Section 8, Constitution of the United States. It is acknowledged that during times of war, the Federal Government is the supreme authority as to all matters properly connected with the war powers. The power of a State to arrest and detain a member of the armed forces of the United States, therefore, necessarily is limited by Federal authority.
A State may not arrest and detain for punishment an officer or soldier for an alleged breach of State laws done in the performance of duty in times of war:

"It is however a basic principle that no state has the right to interfere with the Federal Government in the performance of its authorized functions. And a State therefore cannot arrest and detain for trial and punishment an officer or soldier in the regular Army of the United States or of the militia while in the service of the United States Government, for an alleged violation of state laws done in the performance of his duties in times of war or when troops are being mobilized to prevent a threatened invasion.

"Even though it be true that the officer, by making the defense in the state court, can ultimately obtain the protection of the laws of the United States, the injurious effect in the way of impeding the enforcement of the laws of the United States would not be obviated, for during the time the officer is under arrest or is engaged in defending himself in the state court, he is withdrawn from the discharge of his duty, and the exercise of the acknowledged Federal power is arrested.

"Accordingly, if a soldier or officer is arrested under such conditions the Federal Courts may direct his release on a writ of habeas corpus."

Vol. 36, A. Jur., p. 261, Section 112.

It should be noted that the above limitation applies only when offenses are committed by military personnel in the performance of duty.

It has been held that Congress has not conferred exclusive jurisdiction over military personnel to the military authorities, and that, even in time of war, such persons may be tried in civil courts for offenses against the civil law.

The jurisdiction of courts martial, even in time of war, does not appear to be exclusive, and when there is no objection on the part of proper military officials, a person in the military service may be tried in civil courts for an alleged violation of civil law. In view of the adjudications upon the subject, it is my opinion that the military persons so charged with violations of state law may not object to the jurisdiction of civil courts, but the proper military authorities may obtain the custody of such persons. It appears to be immaterial, as a matter of law, whether such persons are on leave, although, as a practical matter, persons in the military services would seldom come into contact with civil authority under other circumstances.

As was said in the Denman case, supra:

"Conceding that paramount right of the military authorities in time of war to the custody of any person in the military service, notwithstanding criminal charges against him in the courts of a state, the right is solely that of the military authorities, to be enforced as the best interests of the military service seem to require. In the absence of some showing of a claim by such authorities, no question of want of jurisdiction can arise."

(177 Pac. at 464, 465.)

And, in the Hirsch case, supra, the Court said:

"In the present case, the defendant has in effect been delivered over to the civil authorities, even in time of war, by the mere fact that, without interference from his superior officers, he has been subjected to arrest, and has been, and is being allowed to appear to answer the charge."

I have examined the Articles of War and the Articles for the Government of the Navy, and I find nothing in either
which conflict with the conclusions that follow. A person in
the military service, on leave in time of war, is subject to the
civil law, and may be subjected to arrest for felony or mis-
demeanor not committed in the performance of his duties.
However, upon demand by the proper military authorities, it
would seem that such authorities would be entitled to the
custody of such person in time of war, such as the present.

It is my opinion that the same rule would apply to persons
in the naval service.

This rule seems to me to have the support of sound reason-
ing. If a person in the military service, charged with viola-
tion of state law, is released to the military authorities upon
their demand, made in what they deem to be the best interests
of the military service, there is no denial of any right. If a
wrong has been done, the military authorities are amply able
to punish such offenders. If they do not, as was said by the
Court in the Wulzen case, supra, “it does not necessarily follow
that at a proper time * * * the parties in interest may not
be without their remedy.”

It would seem to be excellent practice for all enforcement
officials, when a person in any of the military services is ar-
rested for violation of state laws, in time of war, to notify
such person’s military superiors as soon as practicable.

You will note by my answer to your question that it is
directed to the situation in time of war, and that I have not
attempted to discuss the rule properly applicable in times
of peace.

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INDIANA STATE POLICE: Drunken Driving—Whether the
drunken driving statute is applicable to roadways in mili-
tary reservations.

September 21, 1942.

Mr. Don F. Stiver,
Superintendent,
Indiana State Police,
Indianapolis, Indiana.

My dear Mr. Stiver:

This will acknowledge receipt of your letter of recent date
in which you ask whether a civilian operator of a motor