ADJUTANT GENERAL: Status of National Guard in Government service, as to indebtedness.

National Guard: Status as to debts while in Government service.

December 6, 1940.

Honorable Elmer F. Straub,
The Adjutant General of Indiana,
212 State House,
Indianapolis, Indiana.

My Dear General:

Your letter of December 5, 1940 requesting an official opinion, and the letter submitted therewith, raising the question you want the opinion on, reads in part, as follows:

"Information is requested as to members of the National Guard, when they are called into service.

"If a member is paying on a Home, Automobile, Furniture, in fact anything on a payment plan, is this man relieved from making such payment while in service for the year or more that he is required to serve, and for what length of time would such a moratorium last?"

The Senate Bill, S. 4164, of the 76th Congress, extends the benefits of the Soldiers' and Sailors' Relief Act, approved March 8, 1918, to all persons inducted into the land or naval forces under said Act, and to all members of any reserve component of such forces now or hereafter on active duty for a period of more than one month. The provision of such Act of March 8, 1918, shall be effective for such purposes.

Section 301 of the Acts of March 8, 1918, reads as follows:

"(1) That no person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate
the contract or resume possession of the property for nonpayment of any installment falling due during the period of such military service, except by action in a court of competent jurisdiction.

“(1a) Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subsection (1) hereof shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

“(2) Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this Act unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties.”

Also, Section 103, of the Acts of March 18, 1918, reads as follows:

“Whenever pursuant to any of the provisions of this Act the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or decree, or the performance of any other act, may be stayed, postponed or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, indorsers, and others subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

“When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act, the same may, in the discretion of the court, likewise be set
aside and vacated as to any surety, guarantor, indorser, or other person liable upon the contract or liability for the enforcement of which the judgment or decree was entered."

Also, Section 201, of the Acts of March 8, 1918, reads as follows:

"That at any stage thereof any action or proceeding commenced in any court, by or against a person in military service during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service."

Also, Section 202, of the Acts of March 8, 1918, reads as follows:

"That when an action for compliance with the terms of any contract is stayed pursuant to this Act no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired."

Also, Section 203, of the Acts of March 8, 1918, reads as follows:

"That in any action or proceeding commenced in any court against a person in military service, before
or during the period of such service, or within sixty
days thereafter, the court may, in its discretion, on
its own motion, or on application to it by such person
or some person on his behalf shall, unless in the opin-
ion of the court the ability of the defendant to comply
with the judgment or order entered or sought is not
materially affected by reason of his military service:

“(1) Stay the execution of any judgment or order
entered against such person, as provided in this Act, and

“(2) Vacate or stay any attachment or garnish-
ment of property, money, or debts in the hands of an-
other, whether before or after judgment, as provided
in this Act.”

It is my opinion that where a soldier or sailor is on active
duty for a period of more than one month, the payments on
a home that is purchased by him on the installment plan or
an automobile, furniture, or any other article, the parties sell-
ing such properties could not repossess such articles or take
possession of real estate during the period that the enlisted
man was in service on active duty, except where in a proceed-
ing in a court of competent jurisdiction, in the opinion of the
court, the ability of the defendant to comply with the judg-
ment or order entered or sought is not materially affected by
reason of his military service, or except where the termina-
tion or cancellation of a contract referred to in Section 301
above quoted or the repossesion or retention of property
purchased or received under such contract is made pursuant
to a mutual agreement of the parties thereto or their assignees
if such agreement is executed in writing, subsequent to the
making of such contract and during the period of military
service of the person concerned.