

ADJUTANT GENERAL: Use by Indianapolis Motor Speedway Corp., of National Guard troops as guards during the 500 mile race of May 30 of each year.

May 17, 1933.

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

Dear General Straub:

Under date of May 9, 1933, you asked for an official opinion concerning the use by the Indianapolis Motor Speedway Corporation, of national guard troops as guards during the 500 mile race of May 30, of each year.

In your letter you state that it has been the custom of the adjutant general's office to permit, but not to order, such use of troops on that day, and that such guardsmen have been on duty acting as guards without any authority from any sources whatsoever.

It is my opinion that a member of the national guard may not wear the uniform provided for him on any occasion whatsoever without the authority from the adjutant general of the State of Indiana. According to section 49 of title 32, National Guard United States Code Annotated, 1925, 1926, the adjutant general of the State of Indiana when appointed by the governor of the state, and such appointment approved by the secretary of war, becomes responsible for the equipment used by such guard. We understand that the uniforms referred to are federally owned and that you, as adjutant general, are responsible for their safe keeping. Under such conditions, the uniforms in question may not be worn by any member of your organization without the express approval from you or from some officer designated by you.

Your letter suggests that it has been urged that the national guard troops are permitted to wear the uniform on Memorial Day, May 30, of each year. We have been unable to discover any statutory authority to support this proposition. It is true that section 1393 of Title 10, Army, United States Code Annotated and the regulations of the United States army extend to every ex-soldier, ex-marine and ex-sailor, who has been honorably discharged, the right to wear the uniform of the highest rank that he held during service on national holi-

days or occasions of ceremony. We find nothing in this section, or in any other, which extends the absolute right to a member of the national guard to wear the uniform upon any occasion, except when he does so under express authorization of his superior officer.

LIEUTENANT-GOVERNOR: Whether governor may appoint state fair and board of agriculture employees and authority of governor and board of agriculture in connection with state fair.

May 17, 1933.

Hon. M. Clifford Townsend,
Lieutenant Governor,
State of Indiana.

Dear Sir:

I have before me your request for an official opinion regarding certain matters as submitted in your letter of May 11, 1933. I will endeavor to discuss the various questions in the order in which they are presented.

Question 1. "Under the reorganization act does the governor have the authority to appoint the state fair board of agriculture employees, with the exception of the secretary-treasurer and superintendent of grounds?"

Section 5 of chapter 4, Acts of 1933, designated as the "state executive-administrative act," reads as follows:

"That the tenure of office of each and every officer, employee or servant of the executive including the administrative department of the State of Indiana, of whatsoever nature and kind of appointment, designation or employment now prevailing, save and except only those officers specifically defined in section 3 hereof as being provided for in the Constitution, and save and except the attorney-general for the State of Indiana for the remainder of his elected term, be and the same is hereby terminated at the pleasure and discretion of the governor, and in all events not later than the thirtieth day of June, 1933; and thereafter no such officer, employee or servant of the executive including the administrative department of the State of Indiana shall