In view of the foregoing, it will be seen that a full term commissioner from the district in question should be elected at the biennial election in 1938 and should begin his regular three-year term of office on January 1st, 1939. This is true whether or not a short-term commissioner be elected in 1936 to fill out the balance of the term for which the decedent was elected.

ADJUTANT GENERAL: Right of Governor to remove national guard officers.

January 6, 1936.

Hon. Elmer F. Straub,
The Adjutant General,
State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your request for an official opinion of date December 27, 1935, as follows:

"In accordance with 10004. (8539). Dismissal of Officers—105 Burns Annotated Indiana Statutes, 1926, as to whether or not the Governor of the State of Indiana has the authority to revoke a commission of a National Guard officer for negligence of duty, loss of interest, dilatoriness in making required returns and reports, failure to comply with instructions or frequent, unauthorized absence from meetings of Command, as provided in existing regulations."

By the terms of Section 114, Chapter 7, Title 32, U. S. C. A., as amended June 15, 1933, it is provided as follows:

"The appointments of officers and warrant officers of the national guard may be terminated or vacated in such manner as the several states, territories, or the District of Columbia shall provide by law."

By the terms of Section 10004, Burns Indiana Statutes, 1926 (Section 45-1208 Burns Revised Statutes 1933), it is provided that:

"45-1208 (10004). Dismissal of officers.—No commissioned officer shall be dismissed from the service
except by the sentence of a legally constituted court-martial, rendered after a fair trial, and approved in the manner prescribed in the portion of this act organizing courts-martial: Provided, That no provision herein shall in any way apply to the revoking of commission by the governor, upon the finding of an examining board, or for negligence of duty, loss of interest, dilatoriness in making required returns and reports, failure to comply with instructions, or frequent unauthorized absence from meetings of command, as provided in existing regulations.”

Section 3 of Article 12 of the Indiana Constitution provides that “all militia officers shall be commissioned by the Governor”, and undoubtedly the legislature by the terms of the proviso in the above cited statute intended to invest in the Governor the power of revocation of the commission which the terms of the Constitution empowered him to issue, upon either the finding of an examining board, or for negligence of duty, loss of interest, dilatoriness in making required returns and reports, failure to comply with instructions or frequent unauthorized absence from meetings of command.

I am therefore answering your question to the effect that the Governor has the authority to revoke the commission of a national guard officer for any of the causes last above set forth, irrespective of whether or not a court-martial imposed sentence.

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HIGHWAY COMMISSION, STATE: Liability for additional freight due when vendor has misdescribed material shipped.

January 6, 1936.

Hon. James D. Adams,
Chairman, State Highway Commission,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your letter of January 2, 1936, in which you advise that the Highway Commission has purchased certain material from vendors F.O.B. destination and requires paid freight bills covering shipments to be submitted