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.

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
before making payment for said material. You further advise that the vendor has misdescribed the material shipped with the result that a lower freight rate was applied than would have been applicable had the proper description been offered. You desire to know if the State Highway Commission of Indiana would be liable to the railroad company for the additional freight due.

In reply to your question, I desire to advise you that freight rates chargeable by railroad companies are classified and filed with and approved by the Public Service Commission. This is in accordance with Sections 55-114 to Sections 55-118 of Burns Indiana Statutes Annotated for 1933. A portion of Section 55-117 of Burns Indiana Statutes for 1933 is as follows:

“(b) It is hereby declared to be unlawful for any such carrier to charge, demand or collect, directly or indirectly, for the transportation of passengers or property, or for any other service performed by it as a common carrier, any other or different rate or rates, charge or charges, than the rate named and fixed in the schedules and tariffs required to be filed with such commission, as provided in this act, or to charge, demand or collect, directly or indirectly, for any such service any other or different rate or rates, charge or charges, than that adopted by such commission or ordered observed by any court, as provided in this act, * * *.”

It has also been held that “when transportation is interstate, the interstate rate is the legal rate and must be demanded and paid and if a lesser rate is charged and paid intentionally or innocently recovery must be had against the shipper for the difference.”


Therefore, my answer to your question would be yes, that the State Highway Commission would be liable for the payment of the additional freight due and that it would make no difference as to whether the shipment was wholly within the state or was from some point outside of the state, as the Federal Interstate Commerce Act is very similar in its provisions upon this particular question to our own state act.