although, from the limited information contained in your question, I do not see how such purchases would sustain any real relation to *enforcement.* As the question stands, and without further information to show exactly what is intended, the question is answered in the negative.

ADJUTANT GENERAL, DIVISION OF: Public officials, right of mayor of city to hold commission in State Militia. National Guard.

May 12, 1937.

Captain Norman E. Hart,
139th F. A.,
Commanding 2nd Engineers,
Princeton, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 11, in which you submit two questions as follows:

> *"First:* Is the position of an officer in the National Guard a lucrative office as defined in section 9, article 2?
>
> *"Second:* Mayor Hall, by virtue of his office as mayor, acts as City Judge of the City of Princeton, and as such has been construed to be a judical officer of the State, and does section 16, article 7, prohibit such a judicial officer from holding a commission in the National Guard?"

In reply to these questions beg to say that article 2, section 9, of the Constitution of Indiana, provides that,

> "* * * nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted: Provided, that offices in the militia to which there is attached no annual salary * * * shall not be deemed lucrative:"

I am informed by the Adjutant General of this State that officers in the state militia, below the rank of major, do not receive an annual salary. It is my opinion, therefore, that your first question should be answered in the negative insofar as such section of the constitution forbids holding two lucrative offices.

Section 16, article 7 of the constitution provides that,

> "No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office."

Our Supreme Court, in the case of Howard, et al., v. Shoemaker, 35 Ind., page 111, has held that the mayor of a city is a judicial officer, within the meaning and intent of the section of the constitution above quoted. The question therefore arises as to whether or not, having been elected to a judicial office, he is now permitted to hold any office of trust or profit while so acting as a judicial officer.

In the case of Smith v. Moore, 90 Ind., page 294 at 297-298, our Supreme Court has said:

> " 'Office' has been defined to mean public employment, and its legal meaning to be, an employment on behalf of government in any station of public trust; a place of trust, by virtue of which a person becomes charged with the performance of certain public duties. 5 Wait's Actions and Defenses, p. 1, *et seq.*, and authorities cited. With this definition of the words 'eligible,' and 'office,' the constitutional provision may be read as follows: No person elected to any judicial office shall, during the term for which he shall have been elected, be legally qualified to be employed on behalf of government in any station of public trust, other than a judicial office. In other words, be legally qualified as an officer, to perform the duties of a public office, other than judicial."

This definition of an office under the constitutional limitation further narrows the question to whether a first lieutenant on the staff of the 2nd Battalion, 139 F. A., is a station of trust by virtue of which such officer becomes charged with the performance of certain public duties. An examination of the statutes relative to the duties of the militia reveals no statutory duties of such officer to the State as a separate unit of government or to the public generally. The trusts and duties of such office are owed to and enforceable by the Army and its officers as an organization, and are in no way public. The position of a first lieutenant in the militia is, therefore,

not an office of trust or profit under our Constitution, nor is such an office under the State.

This precise question has been decided in other jurisdictions under similar constitutional limitations and in each case the distinction has been made between a civil office under the constitution and a military office. In such cases the military position not being an office under the state, the holding of such and a public office have not been deemed incompatible.

Ex Parte Dailey, 246 S. W. 91;
State, ex rel. Tzschuck, v. Weston, 4 Neb. 234;
People v. Duane, 121 N. Y. 367.

Upon the foregoing I am, therefore, of the opinion that your second question should be answered in the negative.

HEALTH, STATE BOARD OF: Tourist cabins; lease of tourist cabins; sanitary facilities of tourist camps.

May 12, 1937.

Verne K. Harvey, M.D.,
Director, State Board of Health,
State House Annex,
Indianapolis, Indiana.

My dear Doctor:

Your letter of May 8 has been submitted to me for consideration and study.

You state two questions to which you ask answers,

"1. If a lease or contract drawn up between the owner and the operator sets forth that the owner is renting or leasing a plot of land equipped with cabins, or not so equipped, to be used by the lessee in operating a tourist camp is the owner held responsible for any infractions of the law which would necessitate changes of a permanent nature?"

"2. If an owner leases a plot of ground to another person and the lessee then decides to use this ground for tourist camp purposes can the owner be held responsible for:

1. An adequate supply of satisfactory drinking water?