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?

2. Adequate sanitary toilet facilities?
3. Proper drainage of camping grounds?
4. Renovation of buildings?

"Please bear in mind none of the items referred to above are mentioned in the lease."

Section 5 of chapter 214, Acts of 1935, provides that "the State Board of Health shall have general supervision of the health and sanitary condition of all tourist camps in this State, and shall have the power to make, promulgate and enforce such rules and regulations as may be necessary or desirable for the preservation of the same * * *." Pursuant to the power granted in section 5, your department has promulgated rule SE 18, which provides for the sanitary regulations for camps. Rules or by-laws adopted by departments or boards of health, by virtue of legislative authority, have the force and effect of law. People v. Robertson, 302 Ill. 422, 134 N. E. 815. Since the rules of the board have the force and effect of law and since it has been held that a public nuisance arises out of the violation of public rights or the doing of unlawful acts (Toledo Disposal Company v. State, 89 Ohio State, 230, 106 N. E. 6), the question then becomes, what are the liabilities of a lessor and lessee respectively in the leasing, operating or maintaining of a tourist camp, which camp is not equipped in a sanitary manner as provided by rule SE 18 of your department?

In the case of Haggart, et al., v. Stahlin, et al., 137 Ind. 43 at 54, the Supreme Court said "the landlord is liable where he rents his premises for the purpose of the establishment thereon of a nuisance."

Perhaps no case deals with the question of liability for a nuisance more thoroughly than that of Louisville and Nashville Terminal Company v. Jacobs, reported in 61 L. R. A. at page 188. In that case the Tennessee Supreme Court said:

> "There is no doubt that, should a landowner erect or create a nuisance upon his land he cannot rid himself of liability therefrom by a grant of the property to another."

Continuing then, the opinion says further,

> "If the landlord lets premises, not in themselves a nuisance, but which may or may not be used by the

> tenant so as to become a nuisance, and it is entirely at the tenant's option so to use them or not, and the landlord receives the same rent whether they are so used or not, the landlord cannot be made responsible for the act of his tenant."

Thus to answer your questions specifically, if the landlord rents or leases a plot of land to be used for tourist camp purposes, he may be held responsible for any infractions of the law. Of course, the fact that he may be held responsible for such infractions does not release the tenant from liability. On the other hand, if a plot of ground is leased and there is no purpose for which it is to be used designated or within the intention of the contracting parties, then if a lessee were to establish a camp, which, because of noncompliance with rule SE 18, became a nuisance, it is my opinion that the tenant should be proceeded against. However, if it could be shown that the landlord had notice of the maintenance of this nuisance, it is my opinion that he might also be proceeded against on the theory that by permitting the tenant to operate the camp, the landlord would be guilty of a continuing or a maintaining of a public nuisance.

OIL INSPECTION DEPARTMENT: Approval of bond to secure payment of oil inspection fees.

May 14, 1937.

Hon. Presley J. L. Martin,
Chief Oil Inspector,
Department of Audit and Control,
State House,
Indianapolis, Indiana.

Dear Mr. Martin:

Your letter of May 12 has been received. You request an official opinion approving the form of bond enclosed and inquire whether your department can require all bonds given for inspection fees to be a uniform bond.

The bond, a copy of which has been submitted, is approved as to legality and form.

On the question as to whether the auditor would be authorized to require a uniform form of bond, I desire to say that