within the definition of "current driving license" in the original 1947 Act, as found in Burns' 47-1045(n), supra, the intent of the Legislature, as evinced by its action in the 1949 session, compels the conclusion that the General Assembly intended the term "current driving license," as used in Burns' 47-1052, supra, and its superseding section, 47-2001(b)(2), supra, with reference to suspensions following the conviction for the offense of driving while under the influence, to be applicable to drivers' license alone and not to registration certificates or plates.

It is, therefore, my Official Opinion in answer to your question that the law of Indiana, as contained within the "Indiana Motor Vehicle Safety-Responsibility and Driver Improvement Act" does not require the Bureau of Motor Vehicles or its Commissioner to suspend all registration certificates and plates registered in the name of a person convicted of driving under the influence. It is only the operators' or chauffeurs' license that the Bureau of Motor Vehicles or the Commissioner is required to suspend upon convictions of driving under the influence for the prescribed period, and until such time as the Bureau receives proof of future financial responsibility concerning any motor vehicle registered in the name of the convicted driver.

OFFICIAL OPINION NO. 25

May 8, 1964

Mr. William F. O'Neill
Director
Department of Veterans' Affairs
707 State Office Building
Indianapolis, Indiana

Dear Mr. O'Neill:

This is in response to your letter of April 1, 1964, wherein you request an Official Opinion. Your questions pertain to the right of county recorders to charge fees for the recording of discharge papers for veterans of the Armed Forces.

You have specifically cited the Acts of 1963, Ch. 204, Sec. 1, as found in Burns' (1963 Supp.), Section 49-1308a, and
the Acts of 1925, Ch. 131, Sec. 3, as found in Burns’ (1961 Repl.), Section 59-1104.

Your specific questions may be stated as follows:

(1) Does the Act heretofore quoted [Acts of 1963, Ch. 204, Sec. 1] repeal or affect the Acts of 1925, page 325, Section 3?

(2) Does this statute [Acts of 1925, Ch. 131, Sec. 3] mean only those veterans who have served in the Armed Forces during time of war are exempt from the fee recording charges?

In order to answer your questions, it is necessary that we consider the pertinent parts of Burns’ 49-1308a, supra, and Acts of 1925, Ch. 131, Secs. 1 and 2, as found in Burns’ (1961 Repl.), Sections 59-1002 and 59-1003, in addition to Burns’ 59-1004, supra, which you cited. These sections are set forth, in whole or in part, as follows:

49-1308a

“The recorders of the various counties of this state shall, on behalf of their respective counties, tax and collect upon proper books to be kept in their offices for that purpose, the fees and amounts provided herein on account of services rendered by said recorders. The fees and amounts so taxed, which shall be in full for all services of the recorder, shall be designated as ‘Recorder’s Costs’: Provided, that they shall not belong to or be the property of the recorder and shall be paid into the county treasury at the close of each calendar month. The fees so taxed and collected shall be as follows:

*   *   *

“(18) For recording all other instruments not enumerated herein, except where the fee therefor is otherwise provided by law, thirty cents [$0.30] for each one hundred [100] words, or fraction thereof, but no fee shall be less than one dollar [$1.00].

*   *   *

“(21) * * *
“1. Where any document is recorded by any photographic reproduction method, two dollars [$2.00] for the first page and one dollar [$1.00] for each page thereafter regardless of the number of words on such page and provided such page is not larger than a legal size page.” (Our emphasis)

59-1002

“For the purpose of providing a special and permanent record for recording discharges from the army or navy or any other branch of the naval, military or other service of the United States, of soldiers, sailors, marines or members of any other branch of the service, and residents of the state of Indiana, who have served in any capacity in any of the wars in which the United States has been engaged, the recorder of each county, at the expense of the county, is hereby authorized and required to procure, immediately, a sufficiently large and well-bound book of good material, in which he shall record all discharges of such soldiers, sailors, marines or other such persons who served in any capacity in any such war, which are delivered or presented to such recorders for recording.” (Our emphasis)

59-1003

“Such book providing for the recording of discharges from the army, navy, or any other branch of the service, shall consist of printed forms in blank, similar to and in conformity with the wording of the forms of discharge used by the United States government, the size of type being reduced to permit the printing of the form of the discharge on one [1] page of said record, and each book shall be provided with an alphabetical index.”

59-1004

“It shall be and is hereby made the duty of the recorders of the several counties of the state of Indiana, and as a part of their official duties, to record all discharges from service in any war in which the United States has been engaged, of soldiers, sailors, marines
or members of any other branch of the service, without charge, and no fee shall be assessed or collected by the counties or recorders thereof for such recording.” (Our emphasis)

Your first question is whether the Acts of 1963, Ch. 204, supra, repeals or affects the Acts of 1925, Ch. 131, Sec. 3, supra. The title to the 1963 amendment, which is an amendment to the act providing fees to be charged by the various county recorders, on account of services rendered, reads as follows:

“AN ACT to amend an act entitled ‘An Act fixing the fees of county recorders and repealing all laws in conflict therewith, approved March 11, 1955; and repealing all laws in conflict herewith,’ being Chapter 147 of Acts of the General Assembly of the year 1959, by providing fees to be charged where an instrument is recorded by photographic reproduction.”

It is emphasized that no where in the 1963 amendment is there any repeal section, either specific or general. The only reference to repeal is that contained in the title, which is in reference to the 1959 amendment. It is further noted that the title indicates that the purpose of the 1963 amendment is “providing fees to be charged where an instrument is recorded by photographic reproduction.” (Our emphasis)

The original fee act, is the Acts of 1895, Ch. 145, Sec. 117. The 1963 Act is the latest amendment thereto. An examination of the statutes shows that the original act was amended by the Acts of 1949, Ch. 174, Sec. 1, the Acts of 1955, Ch. 322, Sec. 3, and the Acts of 1959, Ch. 147, Sec. 2, prior to the 1963 amendment. These prior amendments contain certain general and specific repealing sections; however, in none of these amendments is there any reference to the Acts of 1925, Ch. 131, supra, pertaining to recording of discharges of veterans of the army, navy, or any other branch of the service.

In my 1959 O. A. G., pages 295, 298, 299, No. 58, the following statements were made, which statements are particularly applicable in the instant case:
"It is a recognized rule of statutory construction that when specific provisions of a statute are irreconcilably inconsistent with general provisions of another statute with relation to the same subject matter, the specific provisions will prevail and this is true although the general provisions are passed subsequent to the act containing the specific provisions.

State of Indiana et al. v. LaRue's, Inc., et al. (1958), — Ind. —, 154 N. E. (2d) 708.

"However, it is also settled in this state that repeals by implication are not favored and the repugnancy between two acts must be wholly irreconcilable in order for one act to affect a repeal of another act or a part thereof.

County Department of Public Welfare of Lake County et al. v. Nichols' Estate (1945), 223 Ind. 467, 62 N. E. (2d) 146;

Medias et al. v. City of Indianapolis et al., (1939), 216 Ind. 155, 23 N. E. (2d) 590, 125 A. L. R. 590.

"The courts will, if possible, construe apparently conflicting statutes so as to give full force and effect to each.

Ross, Trustee et al. v. Chambers (1938), 214 Ind. 223, 14 N. E. (2d) 1012;


"In Marks v. State (1942), 220 Ind. 9, 40 N. E. (2d) 108, the Court said, in part, as follows, at page 17:

'In Lewis' Sutherland Statutory Construction, a long-recognized and respected authority, it is said (Vol. 1, § 267, pp. 510, 511): "If two statutes can be read together without contradiction, or repugnancy, or absurdity, or unreasonableness, they should be read together, and both will have effect. It is not enough to justify the inference of repeal that the later law is
different; it must be contrary to the prior law. It is not sufficient that the subsequent statute covers some or even all the cases provided for by the former, for it may be merely affirmative, accumulative or auxiliary; there must be positive repugnancy; and even then the old law is repealed by implication only to the extent of the repugnancy. If, by fair and reasonable interpretation, acts which are seemingly incompatible on contradictory may be enforced and made to operate in harmony and without absurdity, both will be upheld, and the later one will not be regarded as repealing the others by construction or intendment. As laws are presumed to be passed with deliberation and with a full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable."

The primary object of statutory construction, as stated in my 1961 O. A. G., pages 421, 424, No. 70, is to ascertain and effectuate the intent of the Legislature as shown by the whole act, the law existing before its passage, the changes made and the apparent motive for making them. When the 1963 amendment, as found in Burns’ 49-1308a, *supra*, is so construed, it is apparent the 1963 Legislature primarily intended to make provisions for charges where any document is recorded by photographic method. It is particularly noteworthy that no change was made in subsection (18) of Burns’ 49-1308a, *supra*.

It is emphasized that subsection (18) provides an exception to the blanket provision contained therein, by stating that it is inapplicable "*where the fee is otherwise provided by law.*" (Our emphasis) In the case of soldiers, sailors, marines or members of any other branch of the services of the United States, *the fee is otherwise provided by law*, namely by the provision of the 1925 Act, being Burns’ 59-1004, *supra*, which
provides "no fees shall be assessed or collected by the counties or recorder thereof for such recording." (Our emphasis)

In addition the 1963 amendment added provisions to Burns' 49-1308a, supra, which pertains to charges to be made for recording of instruments by photographic reproduction methods. This amendment which is an unnumbered paragraph immediately following subparagraph (21) reads, in part, as follows:

"That notwithstanding any provisions to the contrary the recorders of the various counties of this state shall, on behalf of their respective counties, tax and collect, upon proper books to be kept in their offices for that purpose, the fees and amounts provided herein on account of services rendered by said recorders * * *"

The phrase "any provisions to the contrary" does not create new fees where no right to charge a fee existed before but relates to the conflict between existing complex methods of charging fees based on the nature of the individual document and the new method of charging for any document solely on the basis of the number of pages.

The resulting effect of this construction of the amendment is illustrated within the section itself by subparagraph (3) which provides that no charge shall be made for recording official bonds of public officers, deputies, appointees or employees. Such service being specifically performed without charge, it would so remain, but in those instances where a fee was charged for a particular service such fee would be uniform under the new system.

The 1925 Act and 1963 Act can be read together, without contradiction or unreasonableness, and when so read, both will have effect. Therefore, in answer to your first question, it is my opinion that the 1925 Act, as found in Burns' 59-1002 to 59-1004, supra, was not repealed by the 1963 Acts, as found in Burns' 49-1308a, supra.

In further answer to your first question, it is my opinion, that in the event a county does not provide the type of recording service, for discharge papers, for service rendered by soldiers, sailors, marines and members of any other branch of
service of the United States, as specified in the 1925 Act, *supra*, then such county recorder is required to perform an equivalent recording service, whether it be by microfilm or other photographic method, and such recording service shall be performed without charge to such veteran.

Your second question reads:

"Does this Statute [Acts of 1925, Ch. 131, Sec. 3.] mean that only those veterans who have served in the Armed Forces during time of war are exempt from the fee recording charges?"

The answer to this question is dependent upon the meaning to be ascribed to the words "during time of war." Section 3, of the 1925 Act, *supra*, being Burns' 59-1004, *supra*, makes the exemption qualification that of "service in any war in which the United States has been engaged."

In the case of Beley v. Pennsylvania Mut. Life Ins. Co. (1953), — Penn. —, 95 A. 2d 202, 215, the court said:

"The word War has many meanings. In addition to being an armed conflict, it may be defined as an act of opposition, as an inimical contest, as hostility and strife * * * The word War may take on still further meanings when conjoined to another word which has acquired a particular significance because of the history of the times. Thus, the phrase Cold War has painted a canvas of dramatic and tragic scope and depth beyond the capacity of imagination a decade ago."

A classic example of our changing concept, as to the definition of war, is found relative to the action in Korea. In 93 C. J. S. War & National Defense, Sec. 1, p. 7, it is said:

"With respect to the Korean conflict, it has been held that the action waged there was not a 'war' within what may be termed the constitutional or legal sense of that word, *but that the plain, ordinary, and generally accepted meaning of the word 'war' is war in fact, and it is clear that there was war in fact in Korea." (Our emphasis)
In Beley v. Pennsylvania Mut. Life Ins. Co., supra, on page 213, the court said:

"In discussing the principles of law involved in this case, we must assert at once that to deny that the Korean military action is not war in its popularly accepted meaning is to deny the evidence of one's senses. Courts normally take judicial notice of whatever is unquestioningly accepted by informed society as fact * * *"

An examination of our Indiana statutes, pertaining to veterans' benefits, indicates our Legislature has been consistently fair and generous in their consideration of legislation affecting service personnel. In my experience, it is equally true that county recorders have been fair and generous in their aid and assistance to veterans.

Periodically, since the conclusion of World War II, our nation has been faced with military crises. There was Korea and now the latest is Viet Nam. Newspaper accounts indicate that over 500 deaths, among service personnel, have occurred in Viet Nam—a figure greater than the number of combat deaths which occurred in the Spanish American War. The deaths in Viet Nam certainly evidence a trademark of war.

In view of changing world conditions and the present policy of our government in dealing with crises, which confront our country, it seems only reasonable and logical to conclude that the word "war" as used in the 1925 Act, supra, may properly include the so-called "cold war," which we have experienced since World War II.

Therefore, in answer to your second question, it is my opinion that the reference to "service in any war in which the United States has been engaged," as set forth in Burns' 59-1004, supra, can be reasonably and properly held to include the so-called "cold war," which has existed since the Korean crisis.