members of the first metropolitan board of education under the provisions of the above statute.

OFFICIAL OPINION NO. 32
July 24, 1959

Maj. Gen. John W. McConnell
The Adjutant General
212 State House
Indianapolis 4, Indiana

Dear General McConnell:

This is in answer to your request for an Official Opinion on the following question:

Whether the 1959 amendment to Acts of 1905, Ch. 169, Sec. 302, as found in Burns' (1956 Repl.), Section 9-2227, which raises the equivalent of one day in jail from one dollar of fine to five dollars is applicable to the Indiana Military Code.

The statutes involved are quoted as follows:

(1) Acts of 1953, Ch. 187, Sec. 502, as amended, as found in Burns' (1957 Supp.), Section 45-2202 (c) and (d):

"(c) Summary courts-martial. The adjutant-general, the commanding officer of each camp or other place, division, regiment, battalion, company, air squadron, group or other detachment of the national guard, may appoint for such place or command a summary court to consist of one [1] officer, who shall have power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violations of laws when governing such organizations; and said court when satisfied of the guilt of said soldier, may impose fines not exceeding twenty-five dollars [$25] for any single offense; may sentence non-commissioned officers to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal and the minutes thereof shall be the same as prescribed for summary courts of the armed forces of the United States.

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“(d) All courts-martial of the national guard, including summary courts, shall have the power to sentence to confinement, in lieu of fine authorized to be imposed, provided that such sentence of confinement shall not exceed one [1] day for each one dollar [$1] of fine authorized.”

(2) Acts of 1953, Ch. 187, Sec. 503, as amended, as found in Burns’ (1957 Supp.), Section 45-2203:

“Fines may be collected in the following manner:

* * *

“(b) By commitment to a jail designated by the reviewing authority until such fine shall have been paid, or until one [1] day shall have been served for each one dollar [$1] of the fine imposed.”

(3) Acts of 1953, Ch. 187, Sec. 504, as amended, as found in Burns’ (1957 Supp.), Section 45-2204:

“When a fine shall have been assessed by a court-martial against a member of the national guard to whom no pay is due or about to become due, and such member of the national guard fails or refuses to make payment thereof to the treasurer of the state, and the proceedings of the court shall have been approved by the reviewing authority, the reviewing authority in the case of general or special courts-martial, or the summary court officer in the case of summary courts-martial, shall issue a writ, the form of which shall be approved by the adjutant-general, for the confinement of said member of the national guard, until said fine has been paid or until he has served one [1] day for each dollar [$1.00] of fine imposed and costs of the action accrued.”

(4) Acts of 1953, Ch. 187, Sec. 310, as amended, as found in Burns’ (1957 Supp.), Section 45-2010:

“All matters relating to organization, commissioning and separation of officers, enlisting and discharge of enlisted men, discipline, and government of the national guard, not otherwise provided in this code, shall be decided by the uniform code of military justice gov-
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Concerning the armed forces of the United States, the regulations, customs, and usage of the armed forces of the United States and/or national guard regulations."

(5) Acts of 1905, Ch. 169, Sec. 302, as found in Burns' (1956 Repl.), Section 9-2227:

"Any person imprisoned for failure to pay or replevy any fine or costs may be ordered to be discharged by the court, or by the judge thereof, after being imprisoned one [1] day for every dollar of the fine and costs, if it appear by satisfactory proof that such person is unable to pay or replevy the same; but execution may issue against the property of the defendant, as in case of other judgments."

And the 1959 amendments thereto, as found in Acts of 1959, Ch. 20:

"SECTION 1. Section 302 of the above entitled act is amended to read as follows: Section 302. Any person imprisoned for failure to pay or replevy any fine or costs may be ordered to be discharged by the court, or by the judge thereof, after being imprisoned one (1) day for every five dollars of the fine and costs, if it appears by satisfactory proof that such person is unable to pay or replevy the same; but execution may issue against the property of the defendant, as in case of other judgments.

"SEC. 2. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage."

It is generally held that the military as a whole is under the control of civil authority; nevertheless, subject to this consideration, military personnel are ordinarily governed by laws relating to military affairs rather than by laws regulating civil matters. It has also been held that civil authorities ordinarily have no jurisdiction over, and hence, cannot interfere with the management of the military forces of the states.

Martin v. Riley (1942), 20 Cal. (2d) 28, 123 P. (2d) 488;
This becomes even more applicable here after a reading of Burns’ 45-2010, supra, where it particularly gives to the Uniform Code of Military Justice and the Indiana Military Code power relating to discipline. Since reference is made only to the use of these two bodies of law (the Indiana Military Code and the Uniform Code of Military Justice of the United States) and to no other, it is my opinion that the implication should be that no civil body of law can be referred to when either of these two bodies of law covers the matter.

In addition, Burns’ 9-2227, supra, is a section of a general statute, applying to all public offenses, whereas, the above cited portions of the Indiana Military Code are applicable especially to one group and are, therefore, to be considered special legislation. It is generally held that special legislation, particularly where it is passed later than the general legislation with which it conflicts, is an exception to such general legislation, and as to the group to which it applies, it takes precedence over such general legislation.

General statutes must give way to later special statutes on the same subject matter.

Daly v. Carr (1934), 206 Ind. 554, 190 N. E. 429;

Kigan & Co. v. Ossam (1921), 190 Ind. 554, 131 N. E. 81;


An exception is under Acts of 1953, Ch. 187, Sec. 501, as amended, as found in Burns’ (1957 Supp.), Section 45-2201, where the offense charged is also made an offense by the civil law of this state, and the person is turned over to and tried by civil authorities. The finding and judgment should be governed by civil law and not by military law, and in such case the 1959 amendment to Burns’ 9-2227, supra, applies.

Therefore, it is my opinion that the 1959 amendment to Acts of 1905, Ch. 169, Sec. 302, supra, is not applicable to the
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National Guard and does not alter or modify the provisions of the Indiana Military Code cited in your letter and heretofore set forth in this opinion.

OFFICIAL OPINION NO. 33

July 24, 1959

Mrs. Caroline Hausenstein, R. N.
Executive Secretary
State Board of Nurses Registration and Education
38 North Pennsylvania Street
307 Ober Building
Indianapolis 4, Indiana

Dear Mrs. Hausenstein:

I have your letter of June 9, 1959 requesting my opinion as to whether the statutory requirement that an alien declare his intention of becoming a citizen in order to apply for a license to become a registered or practical nurse has been superseded by changes in the federal naturalization laws.

The requirement in question for an Indiana registered nurse's license is contained in Acts of 1949, Ch. 159, Sec. 11, as found in Burns' (1951 Repl.), Section 63-911, which states in part as follows:

"Any person who makes application to the board for a license to practice as a registered nurse after the effective date of this act shall submit to the board written evidence, verified by oath, that the applicant:

* * *

"(c) is a citizen of the United States or has legally declared intention of becoming a citizen; * * *

The requirement in question for an Indiana practical nurse's license is contained in Acts of 1949, Ch. 159, Sec. 12, as amended, as found in Burns' (1951 Repl.), Section 63-912 which states in part as follows:

"Any person who makes application to the board for a license to practice as a licensed practical nurse after