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his intention of becoming a citizen in order to apply for a license to become a registered or practical nurse has been superseded by changes in the federal naturalization laws.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
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; * * *"

In discussing your question it should be noted that a similar requirement was imposed by Acts of 1959, Ch. 201, Sec. 1, quoted as follows:

"Any person applying to the Board of Medical Registration and Examination of Indiana, or its successor, for a certificate for a license to practice the healing arts in any form or manner, shall in addition to all other requirements, now or hereafter prescribed, be required to furnish said Board with proof, satisfactory to said Board, that said applicant is a citizen of the United States of America or a citizen of one of the territorial possessions of the United States of America or has filed his intent to become a citizen of the United States of America."

Your letter refers to the fact that the requirement that aliens file a declaration of intention of citizenship preparatory to being granted citizenship has been excluded by the Congress of the United States. The federal statute to which you allude is found in 8 U. S. C. A. § 1445 (f), quoted as follows:

"Any alien over 18 years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe. Nothing in this sub-section shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing a petition for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States
citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding, action, or matter arising under this chapter or any other Act.”

(Our emphasis)

The above quoted section which became effective June 27, 1952, is permissive in nature, i.e., a declaration of intention to become a citizen of the United States may be filed. Such declaration is not evidence of lawful admission, however, lawful admission is a condition precedent to filing. Thus a safeguard may inure as a result of such filing.

The state statutes in question relate to the qualifications for licensure of nurses for practice within the State of Indiana, and as such, are an exercise of the police power which is inherent in the Indiana General Assembly.

A statement of the rule concerning the exercise of police powers is found in 16 C. J. S. Constitutional Law § 177, quoted as follows:

"The police power rests with the individual states, and is primarily vested in the state legislatures. * * *"

The federal statute as found in 8 U. S. C. A. § 1445 (f), quoted above, clearly only relates to naturalization which is a subject upon which the Congress of the United States has exclusive legislative jurisdiction.

A general statement of this principle is found in 3 C. J. S. Aliens § 123, quoted as follows:

"Congress has the full power and exclusive jurisdiction of naturalization."

See also United States Constitution, Art. 1, Sec. 8 (4).

The statutes in question relate to two different subjects i.e., naturalization and nurse licensure, the former being a matter of federal legislative jurisdiction and the latter a matter of state legislative jurisdiction. Therefore, it is my opinion that the Indiana statutes relating to the qualifications for nurse licensure are not superseded by changes in the federal
statutes relating to naturalization and that written evidence, verified by oath, that the applicant is a citizen of the United States or has legally declared an intention of becoming a citizen is still required for licensure as a registered or practical nurse.

OFFICIAL OPINION NO. 34

July 29, 1959

Major General John W. McConnell
The Adjutant General
212 State House
Indianapolis, Indiana

Dear General McConnell:

Your recent inquiry has been under consideration with respect to the following request:

"Respectfully request this office be furnished a legal opinion as to whether or not the Adjutant General, of the State of Indiana, has any authority to go outside the jurisdiction of his department and file suit against an enlisted man for damages to federal and state property, caused by or through his negligence."

Article VI of the Indiana Military Code, as found in the Acts of 1953, Ch. 187, Sec. 601 et seq. and as found in Burns' (1957 Supp.), Section 45-2301 et seq., pertains to public property and military equipment. Burns' 45-2301, supra, reads in part as follows:

"(a) The officer in permanent or temporary command of a station is responsible for the security of all public property of the command, whether in use or in store, and although for purposes of periodical accountability to proper authorities, it may all have been officially accepted and receipted for by any subordinate officers, the commanding officer is nevertheless responsible and pecuniarily liable with them for the strict observance of the regulations in regard to its preservation, use and issue. He will take care that all store-