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-
houses are properly guarded, that only reliable agents are employed, and only trustworthy enlisted men are detailed for duty in them or in connection with the property.

* * *

“(c) Officers responsible for state and federal property shall be charged for any damage to or loss or destruction of the same, unless they show to the satisfaction of the adjutant-general, by proper evidence, that the damage, loss or destruction was occasioned by unavoidable causes, and without fault or neglect on their part.

“(d) If an article of state or federal property be lost or damaged by the neglect or fault of any officer or soldier, he shall be subject to pay for the value thereof or the cost of repairs, in a sum to be determined by the proper authority, upon the demand of the adjutant-general.

“(e) The amount charged against an enlisted man on the muster and payrolls on account of loss or damage to, or repairs to military property shall not exceed the value of the article or cost of repairs; and such charge will only be made on conclusive proof, and never without an inquiry if the soldier demands it.” (Our emphasis)

Acts of 1953, Ch. 187, Sec. 602, as found in Burns' 45-2302, supra, reads as follows:

“Whenver it shall appear that an officer or former officer, responsible for any national guard, state or federal equipment, property, or military stores, has failed to return said issues or any part thereof, on demand of proper authority, or any arms or other issues have been damaged beyond the injury resulting from the necessary use of such articles issued, or that a deficiency at any time exists in the number of quantity of such state and federal arms, property, or military stores, the amount of such unnecessary damages or losses shall be determined by a board of survey, appointed in accordance with appropriate national guard regulations, and
such amounts shall be collected by law in the name of the state of Indiana and paid into the military fund thereof; and it is hereby made the duty of the attorney-general of the state to bring such suit in the name of the state of Indiana, and cause the amounts so collected to be paid into the military fund of the state of Indiana.” (Our emphasis)

The immediately foregoing section of the Code is applicable by its terms only to “an officer or former officer.” “Officer” is defined by the Acts of 1953, Ch. 187, Sec. 102, as amended and as found in Burns’ (1957 Supp.), Section 45-1802, as a commissioned officer, including warrant officer, in the armed forces of the State of Indiana. The Indiana Military Code clearly differentiates between officers and enlisted men.

See Acts 1953, Ch. 187, Sections 201 and 301 as found in Burns’ (1957 Supp.), Sections 45-1901 et seq., and 45-2001 et seq.

Although subsection (d) of Burns’ 45-2301, supra, provides that a soldier shall be subject to pay for the value or cost of repairs of an article lost or damaged by his fault or neglect, subsection (a) of the same section also provides that the commanding officer is nevertheless primarily responsible and pecuniarily liable with subordinate officers and such soldiers for the preservation of military property. This statute contains no specific authority to file legal action to collect damages for loss or injury of military property by an enlisted man.

I have found two provisions of the Indiana Military Code which purport to incorporate the regulations, customs, usages, principles and spirit of the military practices with respect to Armed Forces of the United States, and which might, at first glance, seem applicable here. Acts of 1953, Ch. 187, Sec. 513, as amended and as found in Burns’ (1957 Supp.), Section 45-2213 would seem but an adjunct to the specific provisions of the Indiana Military Code respecting the exercise of military discipline by commanding officers or courts-martial. On the other hand, the language of the Acts of 1953, Ch. 187, Sec. 310, as amended and as found in Burns’ (1957 Supp.), Section 45-2010, provides that the regulations, customs, and usage of the Armed Forces of the United States and the National Guard
regulations, together with the Uniform Code of Military Justice will be incorporated into and made a part of the aforementioned Indiana Military Code as found in Burns' 45-2001 et seq., supra.

In the light of Burns' 45-2010, supra, I have examined the federal statute with regard to property accountability as found in 10 U. S. C. A. § 4832 which provides that the Secretary of the Army may prescribe regulations for the fixing of the responsibility for army property. The language of the federal military law as found in 10 U. S. C. A. § 4837 (e) provides that the amount of any damage, or cost of repairs, to equipment caused by negligence of a member of the army who was using such property when it was damaged, should be deducted from his pay. The current Army Regulation 37-104 concerning reimbursement to the United States for government property damaged by military personnel and paragraph 13-3 of section (1) of Ch. 13 thereof provides that the amount of damage or cost of repairs to equipment caused by negligence of a member will be deducted from his pay. Other language on the subject of the liquidation of indebtedness of enlisted members which contain the same import as the foregoing may be found in paragraph 13-101, Sec. 5, Ch. 13, Army Regulation 37-104.

Your attention is also called to the provisions of Article 108 of the Uniform Code of Military Justice as found in 10 U. S. C. A. § 908 and as found in the Indiana Military Code in Burns' 45-2010, supra. This article makes provision for the court-martial of any person who, through neglect, damages, destroys, or suffers to be damaged or destroyed any military property of the United States.

It is my opinion upon a consideration of all of the foregoing that the Adjutant General of the State of Indiana has no authority to go outside the jurisdiction of his department to file suit against an enlisted man for damages to federal and state property caused by or through such enlisted member's negligence, but a remedy is available to the Adjutant General in the form of collection from the responsible officer and courts-martial procedure against the enlisted man.