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practic under the provisions of Acts of 1955, Ch. 42, Sec. 5 (b), *supra*, if such applicant meets all requirements of said section of said statute for licensure by reciprocity as outlined in Official Opinion No. 28 of this office issued April 28, 1958.

By the foregoing it is not here intended to qualify or supersede the scope and effect of the foregoing 1958 Official Opinion No. 28, except to answer the one question presented: That the prior failure of an applicant to pass a chiropractic examination given by the Indiana Board would not in and of itself preclude him from having the Indiana Board further consider and determine his eligibility to licensure under the reciprocity provisions of the statute. The general authority of the Indiana Board to consider and determine the right of chiropractic licensure by reciprocity is hereby fully recognized and reaffirmed as stated in said 1958 O. A. G., No. 28.

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### OFFICIAL OPINION NO. 53

October 14, 1958

Mrs. Corrine Henn, Director  
Indiana State Personnel Bureau  
311 W. Washington Street  
Indianapolis 4, Indiana

Dear Mrs. Henn:

This is in reply to your letter of September 26, 1958, in which you request an Official Opinion relative to the granting of leaves with pay for educational purposes. Specifically you state seven examples of a variety of requests for educational leave with pay. These requests vary in amount from leave with reduced pay to leave with full pay and vary in period of time covered from brief periods to a very extended period.

The Acts of 1941, Ch. 139, Sec. 30, as found in Burns' (1951 Repl.), Section 60-1330, provides as follows:

"The rules shall provide for the hours of work, holidays, attendance regulation and leaves of absence in the various classes of positions in the classified service. They shall contain provisions for annual, sick, and special leaves of absence with or without pay or with

reduced pay, and may allow special *extended leaves* for employees disabled through injury or illness arising out of their employment, and the accumulation of annual and sick leaves." (Our emphasis)

Although the foregoing statute specifically directs the promulgation of a rule concerning leaves with and without pay, it is to be noted that the provision for granting extended leaves is limited to leaves for employees disabled through injury or illness arising out of their employment.

In accordance with the foregoing statute, the Indiana State Personnel Board adopted rule 11-9 which reads as follows:

"(A) Subject to prior approval by the State Personnel Board, an appointing authority may authorize leave with pay for a regular employee for the purpose of securing special education or training, other than departmental in-service, directly appropriate to the employee's position, or engaging in officially directed tasks not ordinarily a part of a given position where physical absence from a position is involved."

The above rule, although specifically providing for educational leave, must be construed so as not to be broader in scope than the statute which authorized the promulgation of the rule.

It is my opinion that leaves with or without pay for educational purposes could not be granted for any extended period in view of the express language of the statute limiting extended leaves to cases of injury and illness. This is not to say that annual and sick leaves may not be accumulated.

It is also noted that any written agreement signed by the employee, whereby the employee would agree to return to state service after a period of education, would not be binding with respect to enforcing a personal service. It is a well-established rule of law that a court will not require a person to specifically perform a personal service; however, there may be a remedy in damages for breach of contract. In view of this fact, the Indiana State Personnel Board, in approving or disapproving a leave with pay, must of necessity weigh this factor in granting such leaves.

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In addition, I am also of the opinion that each individual request for leave must be weighed in light of the benefit that will accrue to the State of Indiana as opposed to personal gain received by the individual concerned. In applying the above principle, the Indiana State Personnel Board has the responsibility to analyze each specific request for an expenditure of public funds in order to safeguard the public interest and to prevent expenditures of public funds wherein the benefit would accrue to an individual rather than to the State of Indiana.

Therefore, with respect to the seven example requests cited in your letter, a granting of each individual request is a matter of policy to be determined by the Indiana State Personnel Board within the scope of the express language of the statute that *extended leaves* are limited to cases involving injury or illness arising out of their employment.

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### OFFICIAL OPINION NO. 54

November 21, 1958

Mr. H. Pierre Haflich, Executive Secretary  
Indiana Real Estate Commission  
145 W. Washington Street, 6th Floor  
Indianapolis 4, Indiana

Dear Sir:

This is in reply to your letter in which you request an Official Opinion on the following question:

“Under the Real Estate License Law does the (Indiana Real Estate) Commission have the power to deny the issuance of a license to such applicants whose credit rating is deemed unsatisfactory by the Commission.”

The Indiana Real Estate Commission is an administrative board and agency created by statute, and as such it has no common law or inherent powers, but only such power and authority as is conferred upon it by statute.