

OPINION 35

OFFICIAL OPINION NO. 35

April 30, 1952.

Sister M. Bernadette, R.N.,
Secretary,
Indiana State Board of Nurses'
Registration and Nursing Education,
307 Ober Building,
38 North Pennsylvania Street,
Indianapolis 4, Indiana.

Dear Sister Bernadette:

Your letter of April 2, 1952 has been received and reads as follows:

"This board would like an Official Opinion in regard to the term of office for board members.

"Presently there is a member on the board who was appointed in March 1947 to fill an unexpired term, (pursuant to a prior Act) which ended in August 1949. In 1949 this person was appointed to a three year term.

"The term of office is defined in Chapter 159, Approved March 8, 1949, Section 2, which reads as follows:

"Sec. 2. There is hereby created the Indiana State Board of Nurses' Registration and Nursing Education, hereinafter referred to as the board, which shall consist of five (5) members to be appointed by the governor. Subject to death, resignation or removal and subject to approval of the governor, present members of the Indiana State Board of Examination and Registration of Nurses shall serve as members of the board created by this act until the expiration of their respective terms. Upon the expiration of said members' respective terms, the governor shall appoint their successors for terms of three years. Each member so appointed shall serve until his or her successor shall have been appointed and qualified. Any vacancy occurring in the membership of the board for any cause shall be filled by appointment by the governor for the unexpired

term. Members of the board may be appointed for more than one term: Provided, that no person shall be eligible to serve on the board more than six consecutive years; however, reappointments may be made after three years have lapsed.'

"Will you please give an *OFFICIAL OPINION* on the following questions:—

"1. Is a board member eligible for appointment to two consecutive terms after having filled an unexpired term of office?

"2. Is a board member eligible for reappointment to a second term under the following circumstances:—

"a. Was appointed to fill an unexpired term (under the 1931 Act, which was revoked by the 1949 Act) which ended in August 1949;

"b. Was appointed to a three year term in August 1949 which expires in August 1952?

"The other matter which has come to the attention of this board on which we are soliciting your legal counsel relates to releasing the rank of Indiana Schools of Nursing on the state board examinations. The Indiana State Nurses Association is promoting an active campaign to improve standards of the Indiana Schools of Nursing. One of its chief objectives in releasing publicity about the standards of schools in Indiana is to reach those persons who are directly affected by the quality of the poorer schools. In this relation they are interested to get specific information to the high school counselors who direct applicants to Schools of Nursing.

"In the past the standing of the schools has been kept confidential between this board and the respective schools, and in reviewing the past records it will be found that generally the same schools have continued in the upper third, middle third and lower third in the overall State picture for the last ten year period.

OPINION 35

“The Board would like to release this information to the State Nurses Association providing there is no legal involvement. For this reason I have been asked to request an *OFFICIAL OPINION* on the following matter:

- “3. Is there any legal reason why the Indiana State Board of Nurses’ Registration and Nursing Education cannot adopt the policy to release the ‘rank of Indiana Schools of Nursing on the State board of examinations’ to the Indiana State Nurses’ Association for publication?”

Section 2 of Chapter 159 of the Acts of 1949 is Section 63-902 Burns’ 1951 Replacement.

Article 2, Section 11 of the Constitution of Indiana provides as follows:

“In all cases in which it is provided, that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.”

While the above constitutional provision does not seem to have been construed by the Indiana Supreme Court in a case involving persons appointed or elected to a statutory office where they have previously occupied such office under a *pro tempore* appointment, it has been considered by our Court where the office was one created by the Constitution. In most of the cases both this section of the Constitution and Section 3 of the Article 15 of the Constitution of Indiana providing in substance that public officers shall hold their office until their successor has been elected and qualified, have been construed in relation to each other.

In the earlier cases including the case of *Gosman v. The State ex rel. Schumacher* (1885), 106 Ind. 203, 6 N. E. 349, a somewhat restricted interpretation was given such constitutional provisions as to the eligibility of the person to continue in office beyond the restricted, specified number of years.

However, the last referred to case seems to have been somewhat qualified by the later case of the State *ex rel. Reese v. Bogard* (1891), 128 Ind. 480, 27 N. E. 1113, and the case

of State *ex rel.* Fares v. Karger (1948), 226 Ind. 48, 54, 77 N. E. (2d) 746.

In view of the foregoing authorities, I am of the opinion your question No. 1 should be answered in the affirmative, that said board member is eligible for appointment to two consecutive terms after having filled a *pro tempore* appointment. This person has not had six (6) consecutive years of service and in my opinion the statute should be construed in conjunction with the foregoing provision of Article 2, Section 11 of the Constitution of Indiana. This obviates the necessity of any answer to your question No. 2.

As to your third question, under the statute creating your board, Section 63-901 Burns' *et seq.* same being 159 of the Acts of 1949, it is required that your board accredit schools of nursing (Section 63-908 Burns' 1951 Replacement) and that applicants for a registered nurse certificate have completed the prescribed curriculum in such an accredited school of nursing, hold a diploma therefrom, and pass a written examination in such subjects as the board may determine (63-911 Burns' 1951 Replacement).

From the foregoing it would therefore appear that such grades received on such written examination by the board would be matters of public record and subject to examination by any person properly interested. It would not be incumbent upon the board to furnish any individuals or groups lists of such grades. However, since I do not find any statute making such information confidential, the furnishing of such information would be permissible under the law as long as it was not necessary to use public monies to compile the same, and such list being furnished to the organization specified in your request would therefore be a matter of policy to be determined by your board rather than a question of law for this office.