school year for such position begins July the 1st, the filing of reports at the end of her school term would be controlling, or would the "expiration of the school term" as used in the statute be controlling, and would the expiration of the school term be construed to mean the regular school term for most teachers in the school corporation and being the time when most of the classes are excused sometime previous to June 30th.

In the case of Haas v. Holder, Trustee, *supra,* on page 269 to page 272 of the opinion, the court clearly indicates that the purposes of such statute on notices of non-reemployment is for uniformity in time for issuance of teacher's contracts so that teachers may know whether they will be reemployed for the coming school year. I believe such a construction is reasonable and equitable and consistent with the intent of the legislature in enacting said statute.

I am, therefore, of the opinion a vocational agriculture teacher serving under a contract in a township school which runs from July 1 to June 30th of the school year, would under the statute be required to be notified in writing not later than five (5) days after the expiration of the regular school term of regular classes in the township school corporation, that she would not be re-employed for the coming school year. In all other school corporations, a notice must be given on or before May 1 of the school year.

OFFICIAL OPINION NO. 60

July 20, 1951.

Honorable Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

> "We have recently completed an examination of the State Fair Board to December 31, 1950 and we find

that a member of the board was elected to the General Assembly at the election held in November, 1950 and that after his election as a member of the General Assembly, he did during the balance of November and December of 1950, draw *per diem,* mileage and other expense.

"This has raised a question in our mind as to whether a member of the General Assembly and receiving an annual salary can also serve as a member of the State Fair Board and receive *per diem* for such service. We would like your official opinion as to whether or not the holding of such offices is contrary to any of the provisions of the constitution or of the statute creating the State Fair Board and prescribing its powers and duties.

"It is our understanding that this member did not attend any of the meetings of the Fair Board in January or February, 1951 during the time that the General Assembly was in session."

In that case it was said:

"In the case of O'Donoghue v. United States (1933), 289 U. S. 516, 77 L. ed. 1356, 53 S. Ct. 740, at page 1360 of the Law Edition, Mr. Justice Sutherland, speaking for the court in words which cannot be surpassed, had this to say as to the distribution and separation of powers as provided by the Federal Constitution:

> 'The Constitution in distributing the powers of government, creates three distinct and separate departments—the legislative, the executive, and the judicial. This separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital—namely, to preclude a commingling of these essentially different powers of government in the same hands.
>
> * * *
>
> 'If it be important thus to separate the several departments of government and restrict

> them to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that each department should be kept completely independent of the others—independent not in the sense that they shall not cooperate to the common end of carrying into effect the purposes of the Constitution, *but in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments.* * * *' ",

and the Supreme Court said, in discussing the case of Saint v. Allen (1930), 169 La. 1046, 126 Sou. 548:

> "As was done in the cases before us, counsel for the defense in that case argued that the three members of the Legislature so employed by the highway commission, were not 'exercising power' belonging to the executive department; they were not officers, but only employees of the department. In answering this contention and in deciding for the plaintiffs, the Court stated:
>
> > ' * * * The language of article 2 of the Constitution, however, leaves no doubt that it is not a law against dual office holding. It is not necessary, to constitute a violation of the article, that a person should hold office in two departments of government. It is sufficient if he is an officer in one department and at the same time is employed to perform duties, to exercise power, belonging to another department. The words "exercise power," speaking officially, mean perform duties or functions.' "

Section 1 of Article 3 of the Constitution of Indiana reads as follows:

> "The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one

> of these departments, shall exercise any of the functions of another except as in this Constitution expressly provided."

The word "function" in this provision of the Constitution has recently been construed quite broadly. In the case of State *ex rel.* Black v. Burch (1948), 226 Ind. 445, 80 N. E. 2d 294, in which it was held that the legislator could not hold *any position* in the executive or administrative branch of government.

Until 1921, the Indiana State Fair Board was a private corporation for a public purpose, established pursuant to an act entitled: "AN ACT for the encouragement of Agriculture, approved February 14, 1851." In 1921 the assets of that corporation were transferred to the State of Indiana, in trust, for purposes of that corporation and the present statute constituting the Indiana State Fair Board is Chapter 214 of the Acts of 1947.

That the management of the State Fair as now provided is an executive-administrative function is to be fairly implied from the 1947 statute, *supra,* and from the case of Scott v. Indiana State Board of Agriculture (1922), 192 Ind. 311, 136 N. E. 129. In this regard see also 1943 O. A. G., 55, and 1943 O. A. G., 129. In this regard see also 1943 O. A. G., 55, and 1943 O. A. G., 306. It is, therefore, my opinion that a legislator who was also purporting to serve on the State Fair Board would be exercising a function of another department of government.

Section 2 of Article 9 of the Constitution of Indiana reads as follows:

> "No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided,* That offices in the militia to which there is attached no annual salary, and the office of Deputy Postmaster where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: *And provided, also,* That counties containing less than one thousand polls, may

> confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person."

A public office within the meaning of Section 9 of Article 2 is defined by the case of Schelmadine v. City of Elkhart (1920), 75 Ind. App. 493, 495, — N. E. —, as follows:

> "A public officer may be defined as a position to which a portion of the sovereignty of the state attaches for the time being, and which is exercised for the benefit of the public. The most important characteristic which may be said to distinguish an office from an employment is, that the duties of the incumbent of an office must involve an exercise of some portion of the sovereign power. * * *",

and in the case of State *ex rel.* Black v. Burch, *supra,* it was said at page 456:

> "In performing their respective jobs none of these relators were vested with any of the functions pertaining to sovereignty. '. . . An office is a public charge or employment, in which the duties are continuing, and prescribed by law and not by contract, invested with some of the functions pertinent to sovereignty, or having some of the powers and duties which inhere within the legislative, judicial or executive departments of the government, and emolument is a usual, but not a necessary element thereof.' Wells v. State (1911), 175 Ind. 380, 94 N. E. 321."

Section 6 of Chapter 214 of the Acts of 1947, same being Burns' 15-221, defines the powers and duties of the Indiana State Fair Board as follows:

> "The Indiana State Fair Board shall have power to hold state fairs at such times and places as it may deem proper and expedient and have the entire control of the same, fixing the amounts of various premiums offered embracing the various products of farm, field, garden, animal husbandry, or other industries relating to agriculture, including any article of science and art as it may deem expedient and proper. Said board is authorized to receive contributions and

> donations which may be made for the furtherance of its purposes. Said board shall also have complete control of said state fair grounds, the buildings and other equipment thereon and all property and property rights held for the furtherance of its purposes, and it is authorized to purchase such other property, equipment, and material and erect such other buildings or make improvements thereof, as may by it be deemed necessary to the proper control of the exhibitions held under its direction and to rent buildings or space therein, or space on said grounds for exhibitions during fairs and for such other purposes at other times as the board may determine; to fix and collect rentals for the same, to fix and collect entrance fees, admission fees, and privilege fees, as may be deemed just and proper; * * *"

Section 3 of Chapter 214 of the Acts of 1947, same being Burns' 15-218, provides in part as follows:

> "* * * The members of the board shall receive ten dollars ($10.00) per day and actual travel expenses for each day actually employed on official business. Said *salary and expenses* to be paid out of the funds of said board as hereinafter provided. * * *"

It is apparent that the Indiana State Fair Board and its members fall within the foregoing definitions of lucrative offices. For that reason a legislator purporting to act as a member of the State Fair Board would be holding two lucrative offices. Furthermore, there is a strong public policy to the effect that the legislature which regulates and provides the funds to administrative departments of government should not have a personal interest in any department, nor should a legislator put himself in the position in which an improper influence could be placed upon him in the exercise of his duties, due to employment with any state department or agency. See Black v. Burch, *supra*. This policy is illustrated by Section 30 of Article 4 of the Indiana Constitution which reads as follows:

> "No Senator or Representative shall, during the term for which he may have been elected, be eligible

> to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the people."

In a summary of the related court decisions, it is quite apparent that the reasoning of the law would be in violation for the same person to hold two distinct offices such as these enumerated. It certainly must be a logical conclusion that the spirit of the law was intended by the framers of the Constitution in creating these prohibitions for the benefit of the citizens of the State. There is no question but that such holding could never be considered as a good public policy. Therefore, it is my opinion that it is contrary to the Constitution of the State of Indiana, as interpreted by the Supreme Court, for a member of the legislature to serve as a member of the Indiana State Fair Board.

OFFICIAL OPINION NO. 61

July 23, 1951.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House, Room 304,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

> "Preliminary 1950 census figures indicate the City of Gary, Calumet Township, Lake County, Indiana, will have a population of 132,496 inhabitants.
>
> "If the population is declared to be substantially the same upon an official pronouncement,
>
> "(a) Under what law will justice of said Calumet Township operate thereafter?