part of Act in conflict herewith, passed at this session of the General Assembly, regardless of whether such Act or Acts were passed before or after the effective date of this Act.” (Our emphasis.)

This provision of Section 38 seems to be a “clincher” on the proposition that if there are any conflicts they should be resolved in favor of the powers conferred by Chapter 279.

In conclusion, you are informed that I am of the opinion that the duties referred to in Section 4 of Chapter 10 of the Acts of 1947 can be, and should be transferred to the Division of Auditing and the method of having two pre-audits should be abandoned and all pre-auditing and accounting for the financial transactions of all State agencies should be done by the Director of Auditing.

CHJ:vb

OFFICIAL OPINION NO. 65

July 18, 1949.

Caroline Hauenstein, R. N.,
Executive Secretary,
Indiana State Board of Nurses’ Registration and Nursing Education,
638 K. of P. Building,
Indianapolis, Indiana.

Dear Miss Hauenstein:

Your letter of June 10, 1949 has been received and is as follows:

“There have been several reports made to both the Indiana State Nurses’ Association and to this office regarding a person who is operating a training school for practical nurses in Evansville. The President of the Indiana Practical Nurses’ Association has sent a written report of the training school to this board and is awaiting a reply as to what can be done to abolish the school.
"Will you please give an OFFICIAL OPINION regarding (1) what authority and jurisdiction this board would have to enforce the provision in the Nurse Practice Act, Chapter 159, approved March 8, 1949, and (2) what procedure should be followed?"

In answering the above question it might be well to consider in general the provisions of the statutes regarding nurses in this state which were repealed by the 1949 law (63-901 et seq., Burns' 1943 Replacement same being Chapter 46, Acts 1905, As Amended).

Under the above statutes the only person required to secure a license from the State Board to practice as a nurse was one who used the title of "a registered nurse," "trained nurse," or "graduate nurse," or one using abbreviations thereof or using any other words, letters or figures to indicate that the person using the same was a trained, registered or graduate nurse. (63-909 Burns' 1943 Replacement.)

From the foregoing it was clear that at the time of the enactment of Chapter 159 of the Acts of 1949, any person who did not practice nursing under such forbidden title would not have to have any special qualifications and was not required to be licensed.

Chapter 159 of the Acts of 1949 replaced all of the previous statutes regarding nursing and changed the title of the nurses board to Indiana State Board of Nurses' Registration and Nursing Education. Such new name of said board is also reflected in the title of said act. However, when the various sections of said act are carefully considered it will be found that while said board is given the authority to prescribe the standards and the curriculum of nursing schools and hospitals training students for the profession of a registered nurse or for that of a practical nurse, that in fact no prohibition exists against a person practicing nursing without any license whatever, unless they attempt to use a title or abbreviation thereof indicating they are a registered nurse, certified nurse, trained nurse or graduate nurse or unless they assume or use a title or abbreviation thereof indicating that they are a licensed practical nurse. A person who does not use or attempt to use any of such titles is expressly authorized by the statute to practice nursing without a license. This is clearly indicated
from Section 27 of said Chapter 159 of the Acts of 1949, which in part reads as follows:

"Any person, including firms, associations or corporations, who either:

"* * *

"(f) conducts a school of nursing or a program for the training of practical nurses unless the school or program has been accredited by the board; or

"(g) who otherwise violates any provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than one hundred fifty dollars for a first offense. Each subsequent offense shall be punishable by a fine of not less than one hundred dollars nor more than one thousand dollars or imprisoned for a period not to exceed one hundred eighty days or within the discretion of the court any such person may be both fined and imprisoned. Provided, however, That this Act shall not be construed as prohibiting the performance by any person of such duties as are required in the physical care of a patient and/or carrying out medical orders prescribed by a licensed physician, except that such person shall not assume the title of the professional, registered, graduate, trained or certified nurse or a licensed practical nurse."

From the foregoing it is at once apparent that under clause (f) of said section of said statute it is made a misdemeanor subject to fine and imprisonment, to conduct a school of nursing or a program for the training of practical nursing unless the school or program has been accredited by the board. Yet, in the same section of said statute, under the proviso to clause (g), a person is expressly authorized to practice nursing, without licensure, as long as they do not assume the prohibited titles. In other words, the legislature has attempted by the foregoing to permit a person to carry on the practice of nursing without a license and without any stated qualifications and at the same time prohibited any private school from carrying on any training program to assist those who do not desire to become licensed nurses and thereby prevent them from acquiring any knowledge of the business in which they intend to become engaged.
The foregoing proposition raises great doubt as to the constitutionality of clause (f) of Section 27 of Chapter 159 of the Acts of 1949.

It is to be readily admitted that the police power of the state, in the promotion of health, safety and morals of its citizens, is universally recognized and that this power has been placed in the hands of the legislature to determine what is the proper subject of the exercise of such police power of the state. It is also readily conceded that where there has been an attempt by the legislature to define the police power of the state, and where any possible reason exists for the protection of the safety, health or morals or general welfare of its citizens, the courts will not interfere with such legislative prerogative. This includes the rights to regulate education in public and private schools.

State, ex rel. Clark v. Haworth, School Trustee (1890), 122 Ind. 462;
Freund on Police Power, page 253, Sec. 266;

The following authority affirms the foregoing propositions, with the qualification, also noted in the above New York case, that the power to prohibit or regulate private schools is subject generally to the same limitations as exists in a case of private property or rights generally.


Under the police power the legislature may regulate education in private schools in many respects, but can not be arbitrary, and must be limited to preservation of public safety, health or morals.

Anno: 39 A. L. R. 480;
53 L. R. A. (N. S.) 53.

Attention is called to the case of Columbia Trust Co. v. Lincoln Institute of Kentucky (1910), 138 Ky. 804, 129 S. W. 113, in which the constitutionality of a Kentucky statute attempting to regulate private schools was in issue. In hold-
ing said act unconstitutional, on page 115 of the Southwestern citation, the court said:

"* * * And we do not think it will be controverted that, unless it can be shown that the establishment of such an institution as the one under consideration is in some way inimical to the public safety, the public health, or the public morals, the act which forbids its operation is an exercise of arbitrary power. In other words, the act in question must find its justification in the police power of the State, or it must be declared to be invalid."

A diligent search of the authorities has failed to reveal a case directly in point with the facts herein involved. However, our Indiana Supreme Court has held that the exercise of the police power by the legislature can not be unreasonable, arbitrary or capricious and must have rational grounds for such legislation.

State Board of Barber Examiners v. Cloud (1942), 220 Ind. 552, 558.

From the foregoing, in answer to your question numbered one (1) as to the authority of the board to enforce said act as against the school referred to, I am of the opinion the act clearly gives the board the right to take necessary steps to enforce the provisions of said act, but that in my opinion if said school does nothing more than attempt to give instructions in practical nursing, without fraudulently advertising itself as a qualified and recognized school by the board, that clause (f) of Section 27 of said 1949 Act would be declared unconstitutional and unenforceable. Since it is the only section of the law giving the board jurisdiction over any such school any such authority of the board is seriously questioned.

In answer to your second question as to procedures which might be available, I wish to advise said section of the statute declares the operations of such a school to be a misdemeanor and the legality of said section of the statute could be tested
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by filing of a criminal proceeding through the prosecutor of said county. In such event the constitutionality of said provision of said law could be judicially determined.

OFFICIAL OPINION NO. 66

July 19, 1949.

Mer. Bernard E. Doyle, Chairman,
Alcoholic Beverage Commission,
Illinois Bldg., Room 201,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of June 6, 1949 which reads as follows:

"Will you kindly give me your official opinion as to whether or not the excise and enforcement taxes on alcoholic malt beverages are applicable to beer sold at military post exchanges or sold in other United States government areas?"

In the case of Standard Oil Company of California v. Johnson (1942), 316 U. S. 481, 62 Supreme Court, 1168 it was held:

"Army post exchanges are 'arms of the government' deemed by it essential for performance of 'governmental functions,' and they are integral parts of the War Department, share in fulfilling duties entrusted to it, and partake of whatever immunities it may have under the Constitution and federal statutes, * * *"

Our Indiana Appellate Court in the case of Department of Treasury v. Midwest Liquor Dealers (1943), 113 Ind. App. 569 held that the excise tax as provided by statute was a privilege tax imposed by the State of Indiana upon the manufacturer or wholesaler for the privilege of sale or gift, or the withdrawal for sale or gift, of alcoholic beverages and not a direct tax upon the commodity itself intended to be passed