lished by the above quoted statute while he is away from his court on vacation even though a judge pro tempore were during such time exercising the official functions and discharging the duties of his court.

OFFICIAL OPINION NO. 5
January 21, 1948.

Mr. Forrest V. Carmichael,
Executive Secretary,
Indiana State Teachers' Retirement Fund,
336 State House,
Indianapolis 4, Indiana.

Dear Mr. Carmichael:

Your letter of January 8th, 1948 has been received requesting an official opinion regarding the following question:

"Is a public school teacher entitled to service credit in the Indiana State Teachers' Retirement Fund for years of work done in 'Civilian Public Service' during World War II, more commonly known as conscientious objectors' camp service?"

Your inquiry involves an interpretation of Chapter 97 of the Acts of 1941 (Sec. 28-4322, Burns 1933 R. S. Supp.) Particularly to be determined is the question whether Section 6 (Sec. 18-4327, Burns 1933 R. S. Supp.) applies to a conscientious objector who was assigned to a civilian public service camp. That section reads as follows:

"Any teacher who enters the defense service on a full time basis, through volunteer or statutory selection, shall retain his contractual rights in any teachers' retirement fund of which he may be a member under the laws of the state of Indiana. Contributions and payments into such retirement fund shall be made as is now provided in the event that a member of such fund is granted a leave of absence under existing law pertaining to such fund or funds. Such teacher shall be deemed to have been granted a leave of absence for the duration of such service."
Defense service is defined in Section 1 of the Act (Sec. 28-4322, Burns’ 1933 R. S. Supp.) as follows:

“That inasmuch as Congress has decreed that it is imperative to increase and train the personnel of the armed forces of the United States, this act shall provide protection by the State of Indiana for its public school teachers whom the necessity of war or a state of emergency has called to leave their positions and employments as public school teachers to defend the nation; that this act shall preserve the status and contract rights held under the laws of the state to any public school teacher who enters the military or naval service of the United States, or any allied or auxiliary war service, such as the Red Cross, Salvation Army and similar services connected with the armed forces of the country all of which services are hereinafter referred to as defense service; this act shall place those teachers in such a position that said defense service shall not operate as an interruption of teaching service but that all contract rights held as a teacher at the time of entering such defense service shall be preserved during absence in the country’s defense the same as if they had not entered therein.” (Our emphasis)

It thus becomes apparent that in order to qualify as having been engaged in defense service a teacher must have been in a “similar service” “connected with the armed forces of the country.” The title of the Act is consistent with the definition. It reads:

“AN ACT concerning public school teachers who have entered or who shall enter the military service or services auxiliary thereto, of the United States of America.”

Conscientious objectors are subject to two classifications:

(1) Those who objected to combat service but had no religious objection to non-combatant service. Those persons were inducted through the selective service system and were subject to army and navy regulations and jurisdiction.
(2) Those who conscientiously objected to non-combatant service and were not inducted into the armed forces but were "assigned to work of national importance under civilian direction, * * *." See Hopper v. U. S. (1942), 142 Fed. (2d) 167.

At the time the case of Roodenko v. U. S. (1945), 147 Fed. (2d) 752, was decided there were 108 camps maintained for conscientious objectors to non-combatant service. Of these 105 were operated by religious organizations and 3 by the government. The particular one in question in that case was operated by the Department of the Interior. Neither the army nor the navy had control over assignees to those camps. In fact the court said at page 755:

"* * * They may not be court martialed or disciplined by the army because they are not subject to nor a part of the armed services."

In the various federal cases, practically all of the constitutional questions with respect to classification of conscientious objectors on the basis of religious belief with respect to the taking of property without due process of law and with respect to involuntary servitude have been discussed. The unanimous opinion has been that there is no constitutional exemption from serving the country in some essential capacity in time of need. The exemption in the case of conscientious objectors was entirely statutory and unless asserted by the objector did not apply. For that reason it has been decided that one who asserted such exemption had no constitutional objection to assignment to civilian work of national importance. See cases cited, supra and Van Ribber v. U. S. (1945), 151 Fed. (2d) 444.

I have discussed the federal cases to some extent because the Indiana statute which grants service credit in the teachers' retirement fund requires that the applicant shall have engaged in a "similar service" connected with the armed forces of the country and the reasoning of the federal cases seems to clearly indicate that except for an indirect connection through selective service system there was no connection between civilian service and the armed forces. (It should be noted parenthetically, however, that the same reasoning would not apply in the case of a conscientious
objecror who was inducted for non-combatant service.) I am therefore of the opinion that one who was assigned to civilian public work of national importance in lieu of induction through the selective service system, was not engaged in defense service as defined in the Act and therefore not entitled to the service credit as set forth in Section 6, supra.

OFFICIAL OPINION NO. 6

January 23, 1948

Hon. C. R. Black, Secretary,
Flood Control & Water Resources Commission,
522 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Mr. Black:

I have your letter presenting the question of the authority of the Commission to require the owner of a private bridge, specifically the Pennsylvania Railroad bridge over the east fork of White River near Columbus to enlarge the same and make it adequate to carry the entire flood flow which will be increased if a proposed plan of flood control is executed.

In this regard it is necessary to examine Chapter 318 of the Acts of 1945 (Burns’ 1933, Sections 27-1101-1123) which created the Indiana Flood Control and Water Resources Commission and prescribed its powers. The statute must be construed as a whole in order to determine the legislative intent. Snider v. State ex rel. Leap (1934), 206 Ind. 474-478; State v. Ritter Estate (1934), 221 Ind. 456, 469; and in examining Chapter 318 I find that the general declaration of intention is set forth in Section 2 and that it is declared among other things that the channels and flood ways of rivers and streams should be kept free and clear of interference or obstructions which will unduly restrict the capacity of the flood ways and that the necessary works should be constructed according to a comprehensive plan to control floods and preserve the water resources.

I find that in Section 15 it is specifically stated that “The Commission shall have jurisdiction over the public and private waters in the State and the lands adjacent thereto neces-