objector 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-
sary for flood control purposes." In this Section the Commission is also given the authority to construct flood control works or any part thereof and also may obtain flood control works in cooperation with other states or with the United States, or any of their agencies, or in cooperation with cities and towns under the laws relating to flood control or by cooperation with land owners under the laws relating to levees.

At this point, I call attention to the fact that the common law rule, which has been followed under our present laws relating to levees and drains is that a railroad has the burden of constructing or reconstructing their bridges to conform to changes in natural water courses made necessary by the construction of any levees or other artificial public structures required for drainage in the public interest. C. C. C. & St. L. R. R. Co. v. Mumford (1935), 208 Ind. 655, 677; Lake Shore & Mich. Southern Railway Co. v. Clough et al. (1914), 182 Ind. 178, 183; State v. Indiana Railroad (1936), 210 Ind. 222, 229; New York Central R. R. Co. v. Burgh (1939), 216 Ind. 271.

This principle was clearly set out in the case of C. C. C. & St. L. R. R. Co. v. Mumford, supra, in which it was stated that:

"* * * It is well settled that a railroad acquires its right of way, whether in fee or by easement, subject to the right of the state to intersect it with public drains as well as public highways, and subject to the condition that it must maintain its road across such structures at its own expenses so as not to impair their usefulness. It is not important whether the structures were established before or after the railroad is built. Having accepted privileges and franchises from the state under such conditions, it is not entitled to compensation for interruption, inconvenience, or expense occasioned by conforming its way to the requirements of new public structures. This is the common-law rule. * * *:"

(Cases cited.)

In this case it was stated that a drainage district could require a railroad to reconstruct and enlarge its bridges over various creeks and rivers, which was made necessary by the
increased flow due to the construction of a levee to protect the flood way. In so stating the court declared that it was within the police power of the State to accomplish these objects through statutory agencies in the furtherance of a public enterprise. The court then quoted with approval the case of Chicago, B. & Q. R. Co. v. Ill. Ex. Rel. Drainage Commrs. (1906), 200 U. S. 561, 26 S. Ct. Ref. 341 to the effect that:

"* * * But the duty of the company, implied in law, was to maintain an opening under the bridge that would be adequate and effectual for such an increase in the volume of water as might result from lawful, reasonable regulations established by appropriate public authority from time to time for the drainage of lands on either side of the creek. * * *" 

Section 17 of this act sets out certain powers of the Commission and also declared it unlawful to use or maintain any structure in or on any flood way which will adversely affect the efficiency of or unduly restrict the capacity of the flood way and the same are declared to constitute a public nuisance. The commission is given the power to enjoin or abate any nuisance which adversely affects flood control and they are also given the power to remove or eliminate any structure adversely affecting the efficiency of or unduly restricting the capacity of the flood way by an action in condemnation.

In carefully examining Section 17 I find that the powers of the Commission set out therein may be exercised by two methods (enjoin or abate a nuisance and condemnation) on the initiative of the Commission, and in a third manner when proceedings are properly instituted before it by any person desiring to use or maintain a structure in or on a flood way and it is uncertain as to whether it will adversely affect the efficiency of or unduly restrict the capacity of the flood way. In the latter method the Commission upon hearing enters an order determining the fact and permitting or prohibiting the same.

From your letter it is apparent that your question is concerned with the power of the Commission to be exercised on its own initiative. Therefore, assuming that the proposed plan of flood control is executed to the extent that it can be
shown that the flow of the east fork of White River is increased and that the railroad bridge is actually inadequate to carry the flow, then in my opinion, the Commission has the authority, under Section 17 of the flood control act, to take action to enjoin or abate the maintenance of the structure in its present form or to eliminate the same by an action in condemnation. This opinion is limited to the powers of the Commission under the flood control act and no question was presented or considered as to any participation by the federal government in the described project.

OFFICIAL OPINION NO. 7

February 3, 1948.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis 4, Indiana.

My dear Governor:

I have your letter of December 31, 1947, requesting an opinion as to whether or not the Superintendent of the Indiana Soldiers' and Sailors' Children's Home, acting with the approval of the Board of Trustees of said Home, may retain for the maintenance of children, who are residents of the Home, any portion, or all of the monies which are paid to the children from the following sources:

(1). Payments from the Veterans' Administration, where the parent is deceased having had service-connected disability at the time of his death, and;

(2). Social security payments where the parent is deceased, and;

(3). Allotments made by parent who is in military service.

In 1933 the Legislature attempted to impose the burden of support and maintenance of children in the Home on their parent, parents, relatives or other authorized person charged with the responsibility of supporting and educating the child,