OFFICIAL OPINION NO. 33

April 4, 1946.

Hon. Noble R. Shaw, Director,
Indiana Employment Security Division,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your recent letter in which you ask my official opinion upon the following questions:

"1. Are the members of the review board of the Indiana Employment Security Division considered as members of the classified or unclassified service of the state, under the provisions of the Indiana Personnel Act?

"2. If the members of the review board are in the unclassified service of the state, are they entitled to vacation pay under the provisions of the Indiana Personnel Act, the rules of the Indiana Personnel Board, or section 2 of regulation 2 of the departmental personnel regulations of the Indiana Employment Security Board?

"3. Is Mr. John A. Rothrock, as chairman of the review board of the Indiana Employment Security Division, entitled to vacation pay of fourteen days, based upon one day of vacation for each month of his service in that position?"

Chapter 139 of the Acts of 1941 (Section 60-1302, Burns' 1943 Replacement) reads in part as follows:

"As used in this act and in the definitions provided in this section, unless a different meaning appears from
the context, the following terms shall have the following meanings:

"(a) 'State service' means all public services in all offices and employments in the following named institutions and agencies (except members of boards and commissions of the following named institutions and agencies and except the chief administrative officer of each of the following named institutions and agencies, but not excepting directors of county departments of public welfare): * * * unemployment compensation division, including Indiana State Employment Service; * * *"

"* * *"

"(g) 'Classified service' means all offices and positions of trust and employment in the state service except those placed in the unclassified service by this act."

Section 8:

"The state service as defined in this act is hereby divided into the unclassified service and the classified service as follows:

"(a) The unclassified part of said state service shall consist of the following:

"* * *"

"(3) The board of review of the unemployment compensation division.

"(b) The classified part of said state service shall include all civil offices and positions in said state service at the time when this act takes effect other than those in the unclassified service: Provided, That this section shall not be construed so as to include in the state service any person or persons, who are excluded in the definition of the term 'state service' in paragraph (a) of section 2 of this act."

Section 8 (e) of the Indiana Employment Security Act (Section 52-1508, Burns' 1943 Supplement) reads as follows:
“(e) Review board. The board shall establish a review board. Such board shall consist of three (3) members who shall be appointed by, and serve at the pleasure of the board. * * *”

Section 3 of Rule 11 of the Indiana Personnel Board reads as follows:

“Sec. 3. Vacation Leave. Vacation leaves with pay shall be earned by all regular permanent employees in the classified service at the rate of one working day for each full month of service, except that county welfare departments, to comply with local custom, may grant employees less but not more than one working day’s vacation for each full month of service. In cases where such exception is made, county welfare boards shall make a report in writing to the personnel board stating the reasons therefor. No vacations shall be granted during the original working test period, but upon completion thereof, vacation time shall be allowed for time served during such period. Appointing authorities shall determine the time at which vacations shall be taken. Vacations may be accumulated for not more than eighteen working days. In computing vacations, all official holidays shall be deducted and Saturdays shall count as a whole day. Vacations earned but not taken prior to January 1, 1942 under the policies of the former Bureau of Personnel affecting the State Department of Public Welfare, the Employment Security Division and State Board of Health, and vacations earned but not taken prior to July 1, 1941 for all other institutions and departments enumerated in Rule 1 (B), will be allowed for those employees on the pay roll January 1, 1942.” (Our emphasis.)

Section 2 (a) and (b) of Regulation 2 of the departmental personnel regulations of the Indiana Employment Security Division read as follows:

“Sec. 2. Annual Leave or Vacations.

“(a) Subject to the provisions of rule 11, section 3, each permanent employee shall be entitled to annual
leave with full pay computed on the basis of one working day for each complete month of service. Such annual leave shall be cumulative for not more than eighteen days. Accumulated annual leave shall be granted by the Director of the Indiana Employment Security Division at such time or times as will least interfere with the efficient operation of the Indiana Employment Security Division.

"(b) A permanent employee who has resigned, or who has been laid off shall be entitled to and receive pay for all accumulated leave computed on the same basis as permanent employees remaining in the service. An employee dismissed as provided by section 3 of rule 12 shall forfeit all accrued leave."

From the above statutes it is readily apparent that the review board is a part of the unclassified services of the state. Under Section 8 of the Employment Security Act the review board serves at the pleasure of the employment security board. This is wholly contrary to any conception of merit system service. Since both Section 3 of Rule 11 of the Indiana Personnel Board and Section 2 of Regulation 2 of the Departmental Personnel Regulations of the Indiana Employment Security Division, above quoted, referred only to permanent employees in the classified service, neither would apply to a member of the review board who serves at the pleasure of the employment security board (which under the case of Tucker v. State (1941), 218 Ind. 614, must be construed as meaning at the pleasure of the Governor).

Therefore, I am of the opinion:

(1) That members of the review board of the Indiana Employment Security Division are not considered as members of the classified services of the state under the provisions of the Indiana Personnel Act, but are members of the unclassified services.

(2) As the members are in the unclassified services they are not entitled to vacation pay under the provisions of the Indiana Personnel Act, the rules of the Indiana Personnel Board, or the regulations of the Indiana Employment Security Board.
(3) Mr. John A. Rothrock, as Chief of the review board of the Indiana Employment Security Division, is not entitled to vacation pay of fourteen days based upon one day of vacation for each month of his service in that position, he having terminated his employment and being entitled only to pay during his actual employment.

OFFICIAL OPINION NO. 34
April 5, 1946.

Senator John W. Van Ness,
Valparaiso,
Indiana.

Dear Senator:

I have your letter of March 29, 1946 in which you ask for an official opinion upon the following question:

"Did the 1945 session of the General Assembly abolish the office of township trustee?"

In your letter you state that this question was raised by someone who contended that Section 455, page 949, of the Indiana Election Code of 1945 (Chapter 208, page 680) repealed Section 5 of Chapter 133 of the Acts of 1859, as amended by Section 3, Chapter 226 of the Acts of 1889 (Burns' 1943 Repl. Sec. 65-102), and also repealed Section 1 of Chapter 37 of the Acts of 1877, thus abolishing the election of township trustees in Indiana.

Article 18 of the Indiana Election Code, same being Section 175, Chapter 208, Acts of 1945, Vol. I, provides as follows:

"Township trustees, township assessors, justices of the peace, constables, three (3) members of the township advisory board, and such other township officers as may be provided for by law, shall be elected at the general election held on the first Tuesday after the first Monday in November, in the even-numbered year preceding the expiration of their term of office, and every four (4) years thereafter, and such election shall be