be paid to the claimant when due and should be charged to
the employer’s experience account, but that if upon issue
properly tendered it is thereafter determined that such claim-
ant was ineligible to receive such payments they should be
credited to the employer’s experience fund account as improper
payments.

OFFICIAL OPINION NO. 58
June 14, 1946.

Hon. John R. Donaldson,
Director of Railroad Department,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to the request of the Public Service Com-
mission of Indiana dated June 1, 1946, for an opinion as to
whether there has been a violation of law as charged in a com-
plaint lodged with the Commission by the state representatives
of the Brotherhoods of Railroad Trainmen and of the Locomo-
tive Engineers.

It is charged by the two brotherhoods that the Pennsylvania
Railroad on May 18th and 20th, the Baltimore and Ohio Rail-
road on May 24th, the New York Central Railroad on May
24th, and the Chicago, Indianapolis, and Louisville Railroad
on May 24th, all in this year violated Chapter 232 of the Acts
of 1913 found in Burns’ Indiana Statutes Annotated, 1933,
Sections 55-1321 to 1323. The Act is sometimes called the
regular employees’ law and is as follows:

“It shall be unlawful for any railroad company doing
business in the state of Indiana that operates trains
over its road to allow any person to fill the position of
an engineer, fireman, conductor, baggagemaster, brake-
man or flagman unless regularly employed as such:
Provided, That nothing in this act shall prevent any
railroad company using any person in case of injury or
sickness occurring between terminals to any engineer,
fireman, conductor, baggagemaster, brakeman or flagman.

“Any railroad company violating section one of this act shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each offense, and such company shall be liable for any damages caused by the violation of any of the provisions of this act.

“It shall be the duty of the railroad commission to enforce the provisions of this act.”

The specific charge is that the railroad companies in the instances and on the dates above named operated certain trains with their officials and other employees acting as engineers, firemen, brakemen, flagmen, or conductors who were not regularly employed as such. The letter of the Brotherhood of Trainmen and Engineers states the fact that the employees or officers filling the places may have been previously qualified for the service they were temporarily engaged in on May 18th to the 24th, but that nevertheless it is a violation of law for any of the official staff to be used in train operations. The Railroad Brotherhoods, in their letter of May 29th to the Commission, ask the Commission to prosecute the railroad companies.

On May 17th last at 2:50 P. M., the President of the United States under his war powers seized all of the railroad lines including the railroads above named. From the time of the seizure up until the railroads were officially turned back to their owners on May 26 at 4:00 P. M. all of the railroads were possessed by and operated by the United States Government. This is a matter of common knowledge.

There are many precedents that establish the authority of the government in seizing and operating the railroads, and precedents also to settle the rights and status of the railway corporations during a period of government control found in the decisions where the war powers of the President under the first World War were in issue.

In Northern Pacific Railroad Co. v. North Dakota (1919), 250 U. S. 135, the question arose as to whether or not the rates and charges for service on the railroads in North Dakota on
intrastate traffic as established by the State of North Dakota were the lawful rates during government control. The court held that under the Federal Control Act of March 21, 1918, railroads taken over and administered under the War Powers Act of August 29, 1916 and the President's Proclamation, were in full possession and control of the federal government. It is further ruled in that case that the Federal Control Act being an exercise of a complete, exclusive, and necessarily paramount federal power there can be no room for a presumption that a state control over intrastate rates were to remain unchanged because they had previously existed.

Prior to 1918, the State of New York had a two cent fare law that the State Public Service Commission was obligated to enforce against the railroads. The federal government seized the railroads during the first World War and put into effect rates prescribed by the Interstate Commerce Commission. In the case of Public Service Commission of New York v. New York Central Railroad (1920), 230 N. Y. 149, 129 N. E. 455, 14 A. L. R. 449, the question came before the court whether the state law on intrastate travel was suspended by the Federal Control Act. In an action by the State Public Service Commission of New York to enforce the two cent fare, the court said:

"That the Federal Control Act (U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. Sees. 3115½a—3115½p) was a proper exercise of these powers—that as incident to the control of the roads, the question of fares intra- as well as inter-state was lodged exclusively in the president—has been held by the Supreme Court. Northern Pacific Ry. Co. v. North Dakota, 250 U. S. 135, 39 Sup. Ct. 502, 63 L. Ed. 897. The owners, however, did not lose their property. Their rights over it were suspended. And so as to the states. Any regulations they might have made as to the operation of the roads, any powers they possessed over intrastate traffic, any contract obligations vested in them, were merely suspended while the general government was in possession."

In Missouri Pacific R. R. Co. v. Ault (1910), 256 U. S. 554, the Supreme Court decided that a railroad corporation can not
be held liable for wages earned by its employees for service rendered the railroad Administration during the period of government control, and that the corporation could not be sued for such wages.

In Commonwealth v. Louisville & Nashville R. R. Co. (1920), 189 Ky. 309, 224 S. W. 848, it is held that a railroad company whose property was being operated by the federal government under the Federal Control Law could not be indicted for a violation of a state law providing for certain waiting room facilities.

See also an address by Charles Evans Hughes in 42 Am. Bar Ass'n. Report 232.

There are many such decisions as those cited above and it is clear from the rulings of the higher courts where the Federal Control Act was in issue that the President had ample authority to take over the railroads and control and manage them and that the railway corporations cannot lawfully be made to respond for alleged offenses committed during the period of federal control.

It appears that the acts complained of in the charges filed with the Commission were acts done during the period of federal control and management over the railroads, and the old doctrine of respondeat superior applies.

In my opinion any prosecution you may undertake to enforce the provisions of Chapter 232 of the Acts of 1913 would be without support of either law or fact.

NOTE.—The order of the President, dated May 17, 1946, contains the following provision with respect to the possession, control and operation of the railroads:

"From and after 4:00 o'clock P. M., on the said 17th day of May, 1946, all properties taken under this order shall be conclusively deemed to be within the possession and control of the United States without further act or notice.

"Possession, control, and operation of any plant or facility, or of any transportation system, or any part thereof, or of any real or personal property taken under this order, or which may be taken pursuant hereto, shall be terminated by the Director when he determines that such possession, control, and opera-
tion are no longer necessary to carry out the provisions, and to accomplish the purposes, of this order."

OFFICIAL OPINION NO. 59

June 17, 1946.

Hon. A. V. Burch, Auditor,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of recent date requesting my official opinion upon the following question:

"Is the pension granted by Section 1, Chapter 6 of the Acts of 1945, to the widows of former governors of this state subject to withholding for federal income tax?"

As this question concerns an interpretation of the federal laws I have made inquiry of the Treasury Department and have received a letter from the Commissioner of Internal Revenue bearing reference of IT:P:T:2 RP-4, which is as follows:

"Reference is made to your letter of February 14, 1946, with respect to the status, for Federal income tax purposes, of annual stipends payable to widows of former governors of the State of Indiana under the provisions of section 1, Chapter 6, Acts 1945, a copy of which was submitted.

"The Act provides:

'That there is hereby granted by the State of Indiana to the widow of the governor and the widow of each former governor of the State of Indiana a pension in the sum of three thousand dollars annually during the natural life of said widow and so long as she shall remain unmarried, and there is hereby annually appropriated