that after strip mining operations have been completed, the property will be restored to certain conditions. The common purposes of these provisions as included in both the ordinance and the state statutes have been expressly stated to be for protecting the property, the welfare and health of the people of the state and county by providing for the conservation and improvement of areas of land subjected to strip mining and to decrease soil erosion, the hazards of floods and generally to restore the use and enjoyment of such lands.

Accordingly, it is my opinion that on the permissive use of lands for strip mining in excess of 250 tons per annum, the ordinance and state statutes are in conflict and the state statutes prevail over and supersede the ordinance in question on the obtaining of a permit and the furnishing of a bond to insure the restoration of the property to certain conditions after strip mining operations are completed.

OFFICIAL OPINION NO. 96
November 29, 1946.

Hon. Ross Techemeyer,
Executive Secretary,
Public Employes' Retirement Fund,
Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sir:

I am in receipt of your letter of October 25, 1946, in which you call attention to the impending transfer of the United States Employment Service to the Indiana Employment Security Division. You call attention to the fact that the employment service was operated by the state until January 1, 1942, when it was transferred to the federal government by the Governor at the request of the President, at which time the state employes became employes of the federal government. The employes of the federal government are now to become employes of the state and these employes fall into three classes:

(a) Employes who were employes on January 1, 1942, and who have continued to serve under the federal govern-
ment and who will be re-transferred to the state on November 1st.

(b) Employees who were hired by the federal government during its period of operation before January 1, 1946, who will be transferred to the state on November 15, 1946.

(c) Employees who were hired by the federal government after January 1, 1946, who will be transferred to the state on November 15, 1946.

You then ask the following questions and request my official opinion upon these questions:

"Question pertaining to Employee A:

"In your official opinion, can this board consider that Employee A was on a leave of absence granted under rules in force and be given credit for prior service as set out in Section 6?"

"If your answer to the above is in the affirmative, the next question is:

"Is the period between January 1, 1942, and December 31, 1945, to be included as prior service, or is prior service to be computed only to December 31, 1941?"

"If your answer to the first question is in the affirmative, and to the second question that the credit for prior service shall include the period January 1, 1942, to December 31, 1945, the question then arising is:

"Does membership service begin January 1, 1946, or November 15, 1946, and if January 1, 1946, to receive the full benefit of the law, can the board accept contributions based upon the employee's salary (January 1, 1946) for the period January 1, 1946, to November 14, 1946? (See last paragraph of Section 6, Ch. 340, Acts of 1945.)"

"Question pertaining to Employee B:

"Based upon the assumption that the answer to the second question in those pertaining to Employee A is in the affirmative, would Employee B be entitled to prior service credit for the period of his employment previous to December 31, 1945?"
"If your answer to the first above question is in the negative—

"Would State Employment begin with November 15, 1946, and employe be required to wait six months before becoming eligible for membership?

"The question pertaining to Employe C is very simple, and is:

"Would the date of employment begin with actual date of employment, or would the date of beginning employment be November 15, 1946?"

The transfer of Employment Service from the state to the federal government was accomplished as a result of an exchange of telegrams as follows:

"To Honorable Henry F. Schricker:

"Now that this country is actually at war, it is more than ever necessary that we utilize to the fullest possible extent all of the manpower and womanpower of this country to increase our production of war materials. This can only be accomplished by centralizing recruiting work into one agency. At present, as you know, the United States Employment Service consists of fifty separate state and territorial employment services whose operations are loosely coordinated by the federal government. In order that there may be complete responsiveness to the demands of national defense and speedy, uniform, effective action to meet rapidly changing needs, it is essential that all of these separate employment services become a uniformly and of necessity nationally operated employment service. I have, therefore, given instructions to the proper federal officials that the necessary steps be taken to accomplish this purpose at once. I ask that you likewise instruct the proper officials of your state to transfer to the United States Employment Service all of the present personnel, records, and facilities required for this operation. Inasmuch as the Federal Government is already paying practically one hundred per cent of the cost of operation and the state personnel has been recruited
on a merit basis, there will be no difficulty in transferring state employees into the federal service. These employment offices will continue to serve the Unemployment Compensation Agency so that there will be no need to set up duplicate offices. I shall appreciate your advising me, at once, of your full cooperation so that the conversion of the present employment service into a truly national service may be accomplished without delay.

"(Signed) Franklin D. Roosevelt,
President,
United States of America."

"Franklin Delano Roosevelt,
Washington, D. C.

"Pursuant to your telegram of December 19, I have discussed the federalization of employment service activities now performed by the Indiana Employment Security Division, with the Board and Director of that Division and have arranged with them to comply with your request.

"Indiana labor and industry have cooperated whole heartedly with our state organization which is a completely integrated agency and does not consist of two separate organizations for administration of unemployment compensation on the one hand and employment service on the other. I am quite sure that federalization of a part of that organization will not result in any greater efficiency in operation. However, I assure you of our desire and willingness to cooperate with you during the present emergency, and for that reason I am taking the initial steps to comply with your request. In this compliance it is my understanding that the federalization is for the duration of the present war and that upon cessation of the emergency the employment service functions will be returned to the control of the people of Indiana.

"Henry F. Schricker,
Governor of Indiana."
The Public Employes' Retirement Act, being Chapter 340, page 1589, Acts of 1945 (Sec. 60-1601 et seq., Burns' 1945 Pocket Supplement) contains the following pertinent provisions:

"Sec. 4 * * *

"'Effective Date' in the case of a department shall mean January 1, 1946. * * *

"'Employe' shall mean any person in the employe of the state. * * *

"'Employer' shall mean the State of Indiana or any department as herein defined or any municipality included in the Fund.

"'Prior Service' shall mean all service as an employe rendered prior to the effective date * * *.

"Sec. 6. (a) Each employe in service on the effective date, or on an approved leave of absence under rules in force, provided said leave of absence shall not have extended for more than one year continuously from said effective date, who shall have become a member of the Fund, shall receive credit for prior service for all service rendered his immediate employer prior to such effective date and subsequent to his attaining age twenty-five, in any position and in any department in the service of such employer, for which the employe shall have received compensation: Provided, however, that any employe of the state shall be entitled to prior service credit only if he shall have been in active service of the state or on an approved leave of absence from the state service on the date on which this act shall take effect. * * *"

A leave of absence has been defined in State v. Grayston (1942), 349 Mo. 700, 163 S. W. (2d) 335, as follows:

"The common meaning of the term signifies temporary absence from duty with an intention to return, during which time remuneration is suspended."

In Wimerding v. Bonaschi (1938), 2 N. Y. S. (2d) 124, the court held that where a teacher was employed upon the effec-
tive date of a Retirement Fund Act and resigned to take another position which was deemed to be temporary and with an intention to return to his teaching position and was afterwards reinstated to that teaching position, he must be considered as having been upon a leave of absence during the period of such temporary other employment.

I call your attention to the last statement in Governor Schricker's telegram in which he states:

"* * * In this compliance it is my understanding that the federalization is for the duration of the present war and that upon cessation of the emergency the employment service functions will be returned to the control of the people of Indiana."

It would appear abundantly clear from this statement that the transfer of these employes to the federal government was understood to be temporary and not a complete severance of their employment by the state. Under the decisions above cited it must be held that they were on leave of absence from the state during the period of their federal employment.

Your first question must, therefore, be answered in the affirmative, and if these employes return to state service within one year from the effective date of the Act they are entitled to prior service credit.

In answer to your second question I call your attention to the fact that prior service is limited to "service rendered his immediate employer prior to such effective date." His immediate employer is the State of Indiana, and he is entitled to prior service credit only in regard to the service rendered to the State of Indiana, which would be that service rendered prior to January 1, 1942.

Your remaining questions except for the last are conditioned upon answers to the above questions contrary to the answers given, and are therefore not discussed.

In regard to your last question, it is my opinion that, consonant with the above interpretations, an employe who was employed by the Federal government after January 1, 1946, would become a member of the Retirement Fund under the provisions of Section 5 (b) of the Public Employes' Retirement Act, by reason of his employment by the state, which employment would begin at the time he enters state service.
It is, therefore, my opinion that an employe of the state
who on January 1, 1942, became an employe of the federal
government by reason of the transfer of the employment serv-
vice from the state to the federal government and who returns
to state employment by reason of the re-transfer of the em-
ployment service to the state, if such re-transfer occurs be-
fore January 1, 1947, must be considered as having been upon
an approved leave of absence during the period of federal
operation, but is entitled to prior service credit for the period
of his state employment prior to January 1, 1942.

An employe who was not an employe of the state at the time
of such transfer from the state to the federal government is
not entitled to prior service credit but is to be considered as
having entered state employment at the time of the re-transfer
from the federal government to the state.

OFFICIAL OPINION NO. 97

December 3, 1946.

Miss Irene F. Prosch, Secretary,
State Board of Beauty Culturist Examiners,
328 State House,
Indianapolis, Indiana.

Dear Miss Prosch:

Your letter concerning the powers of inspectors of your
board requests an official opinion on the following question:

"Does an inspector employed in this department have
the authority, under the statutes of our Indiana Beauty
Culturist Law, to close a beauty shop?"

I find no statute authorizing inspectors of your board to
close a beauty shop. Under Section 63-1822 Burns' 1943 Re-
placement, same being Section 22, Chapter 72, Acts 1935, said
board is granted authority to employ whatever number of
inspectors are necessary to carry out the provisions of said
Act and to fix their compensation. They would therefore be
working under the authority and direction of the board.

Under Section 63-1823 Burns' 1943 Replacement, same
being Section 23, Chapter 72, Acts 1935, said inspectors are