It is, therefore, my opinion that an employee of the state who on January 1, 1942, became an employee of the federal government by reason of the transfer of the employment service from the state to the federal government and who returns to state employment by reason of the re-transfer of the employment service to the state, if such re-transfer occurs before 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 employee who was not an employee 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 Replacement, 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
granted authority "to enter upon and inspect any beauty culture shop or beauty culture school at any time during business hours." These are the only provisions I find in the statute regarding the duties of such inspectors.

Under Section 63-1815 Burns' 1943 Supplement, same being Section 15, Chapter 72, Acts 1935, said board is authorized to suspend or revoke certificates of beauty operators and licensees of said board on the grounds mentioned in Section 14 of said Act, after specific charges have been filed against such licensee, notice of hearing is given, and hearing held, pursuant to the detailed provisions of said statute. This is the only formal procedure authorized by said Act for suspension or revocation of any such license.

Where an office is created by statute, public officers may exercise only such powers as are expressly authorized by statute.

Blue v. Beach (1900), 155 Ind. 121, 131;
Wallace v. Dohner (1929), 89 Ind. App. 416, 420;
Chicago etc. R. R. Co. v. Public Service Commission (1941), 221 Ind. 592, 594.

As was said by the Supreme Court of this State in the case of Department of Insurance v. Church Members Relief Association (1939), 217 Ind. 58, at 60:

"* * * When the right to do a thing depends upon legislative authority, and the Legislature has failed to authorize it, or has forbidden it, no amount of acquiescence, or consent, or approval of the doing of it by a ministerial officer, can create a right to do the thing which is unauthorized or forbidden. The administrative officers of the state, as well as the appellee, were bound by the statute. * * *"

From the foregoing authorities it is clear the inspector employed by the State Board of Beauty Culturist Examiners does not have the authority to close a beauty shop but may only present the question of the violations of the beauty culture law to the board for their formal action in the matter.