of the Acts of 1945, are not available for a former licensee of the State of Indiana who does not renew such license within the required six (6) months after date of discharge.

2. The answer to question number one obviates the necessity of any answer to your question number two.

3. In answer to your third question it is pertinent to note the above statute only applies to a person "who at the time of such induction was or is a licensee of the State of Indiana."

Under the provisions of Section 63-1110 Burns 1933, same being Section 4, Chapter 108, Acts 1899, as amended, a registered pharmacist's license expires on the thirtieth day of June next succeeding the date of issuance thereof.

Under the foregoing rule of statutory construction the provisions of Chapter 87 of the Acts of 1945 are only available to those who were "licensees" of the State of Indiana at the time such person was inducted into military service.

A licensee is generally defined as "one who holds a license."

Words and Phrases, Vol. 25, page 187;

I am therefore of the opinion the pharmacist referred to in your third question who was delinquent in renewing his license at the time of being inducted into military service is not entitled to the benefits of Chapter 87 of the Acts of 1945.

OFFICIAL OPINION NO. 4

January 22, 1946.

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

My dear Governor:

I have your letter in which you request an official opinion on the following question:

"During the operation of the Civilian Conservation Corps, there were several buildings erected by that
agency in the various state parks and forests. These buildings are temporary in nature, but at the present time the lumber and material in these buildings could be disposed of to ease the shortage of building materials. I would like to have your official opinion as to whether these buildings may now be sold, and if so who has authority to sell them and into what fund should the proceeds go.”

The Civilian Conservation Corps (hereafter referred to as C.C.C.) was created by Act of Congress approved June 28, 1937, (16 U.S.C.A. 584), succeeding the agency known as Emergency Conservation Work, which was established by Executive Order 6101, dated April 5, 1933, under the Act of March 31, 1933 (48 Stat. 22). Effective July 1, 1939, the C.C.C. was made a part of the Federal Security Agency (53 Stat. 561; 5 U.S.C.A. 133). The Labor-Federal Security Appropriation Act, 1943, approved on July 2, 1942, provided for the liquidation of the C.C. not later than June 30, 1943. The C.C.C. was continued under the supervision of the Federal Security Administrator for the purpose of liquidation on or before June 30, 1944. This history is set forth in Executive Orders and Administrative Material, page 206 (1945—Bobbs Merrill).

By 16 U.S.C.A. 584 1. the Director of the C.C.C. was authorized to enter into such cooperative agreements with states as may be necessary for the purpose of utilizing the services and facilities thereof. By 16 U.S.C.A. 584 n. the personal property as defined in an Act of May 29, 1935, Chapter 156, (49 Stat. 311), belonging to the C.C.C. and declared surplus by the Director was to be disposed of by the Procurement Division, Treasury Department.

The Act of May 29, 1935, Chapter 156, (49 Stat. 311), provided that the Director of Procurement, United States Treasury Department, be and he is hereby authorized and directed to transfer to federal agencies, either permanent or emergency, personal property which is no longer required for use by the Emergency Conservation Work, including equipment, tools, materials, and buildings, when so declared surplus by the Director of the Emergency Conservation Work: provided, that upon the recommendation of the de-
partment under which the technical work of the camp was organized and supervised any such surplus property that is not desired by any federal agency may be transferred without cost, except for expenses incident to transfer, to the forestry, park, conservation, or educational departments of the states.

Also, Chapter 475, Title II of the U. S. Statutes approved July 2, 1942, (56 Stat. 569, p. 809) which was an appropriation Act, provided an appropriation for all necessary expenses to enable the Director of the C.C.C. to provide for the liquidation of the C.C.C., and the conservation and disposition of all of the property of whatever type (including camp buildings, accessories, equipment and machinery of all types) in use by said Corps, and for all other necessary expenses as may be incurred in connection with the liquidation of said C.C.C.; provided that said liquidation be completed as quickly as possible, but in any event not later than June 30, 1943.

Said statute also provided that notwithstanding any of the provisions of 16 U.S.C.A. 584 n, the Director of the C.C.C. is authorized during the fiscal year 1943 to dispose of any camp buildings no longer needed for C.C.C. purposes, and housekeeping and camp maintenance equipment necessary in connection therewith be transferred with or without reimbursement to other federal agencies or upon such terms as may be approved by the Administrator of the Federal Security Agency to any state, county, municipality, or non-profit organization for promotion of conservation, educational and recreational or health purposes.

Chapter 221, Title II of the U. S. Statutes, approved July 12, 1943, 57 Stat. 499, p. 463 was identical with the 1942 statute just discussed except that an appropriation was made for the Federal Security Administrator to liquidate the C.C.C. camps on or before June 30, 1944. By this time the C.C.C. was under the supervision of the Federal Security Administrator. By this Act he was to dispose of the C.C.C. property in the same manner provided for in the 1942 statute.

Based upon the foregoing federal statutes it is apparent that the C.C.C. Director or Federal Security Administrator had authority to turn over to the states the C.C.C. property,
Also, by 16 U.S.C.A. 584 n. and the Act of May 29, 1935, (Chapter 156, 49 Stat. 311) it is further evident that the buildings used in the C.C.C. work were expressly designated as personal property.

On September 6, 1939, the United States Attorney General wrote an official opinion (Opinions of Attorneys General, Vol. 39, p. 338) which has some bearing on this question. The question before him was whether the Director of the C.C.C. had authority to abandon property attached by the United States to leased premises. In answering the question the Attorney General pointed out that in such cases the C.C.C. had entered into leases of land for camp sites, using the standard form of lease prescribed by the Secretary of the Treasury which provided that the government shall have the right during the existence of the lease to make alterations, attach fixtures, etc., upon the leased premises which fixtures, additions or structures so placed upon the premises shall be and remain the property of the government and may be removed therefrom by the government prior to the termination of the lease provided that the premises be restored to the same condition existing at the beginning of the lease.

The structures involved in the opinion consisted, among other things, of two rigid type buildings known as mess kit washhouse and oil house. It further appeared that a Board of Inquiry of Army officers of the C.C.C. found that none of the permanent improvements had any salvage value to the government and it was recommended that they be left intact for the use of the lessors in full settlement of all claims against the government. It further appeared that the C.C.C. submitted the matter to the Procurement Division of the Treasury Department with the recommendation that this surplus government property be abandoned and turned over to the lessors pursuant to the Act of May 29, 1935 (49 Stat. 312). The Procurement Division held that it was not surplus property and that it had no jurisdiction to pass upon the matter.

The Attorney General held that there is no express requirement, and there can be no implied requirement, that improvements attached to leased premises must be removed when removal would involve the expenditure of public funds
greatly in excess of any salvage value. He further held that the disposition of such improvements on the termination of the lease is a proper subject of agreement with the lessor, and that an officer authorized to make a contract for the United States had implied authority thereafter to modify the provisions of the contract by supplemental agreement, particularly when, as here, it is greatly in the interest of the United States to do so. He concluded that the Director of the C.C.C. was authorized to consummate the settlement recommended by the Board of Inquiry and to abandon the property.

In the case of Kleinschmidt v. Brown (U.S. District Court, Ark., 1939), 28 Fed. Supp. 86, there was a suit brought by the plaintiff and others against A. T. Brown, officers and employees of the Federal Government to restrain defendants from removing buildings comprising a C.C.C. camp on land leased by plaintiffs to the Federal Government. The buildings were located on premises which were leased by the plaintiffs to the Federal Government. There were no provisions in the lease as to whether or not buildings placed on such lands should become fixtures. The buildings consisted of a bathhouse, two mess halls, a hospital, a headquarters building, the officers’ quarters, foreman’s quarters, and eight barracks, which were fabricated in sections. The evidence showed that the buildings were suitable for use by a C.C.C. camp and were the kind usually built for the same and were necessary for the use and occupation of the lands leased as a C.C.C. camp.

The question presented was whether under the lease the improvements placed upon the property by the lessee became fixtures and a part of the realty, so that at the expiration of the lease period and the quitting of possession by the lessee, the lessee could not remove the improvements.

The court held that this matter was to be determined by the law of that state and that under such law the improvements placed upon the lands were and remained trade fixtures and were removable by the lessee upon expiration of the lease term.

The Indiana law seems to be to the same effect and is clearly indicated in the case of Home Owners’ Loan Corporation v. Eyanson (1943), 113 Ind. App. 52, where the court
held that a furnace set upon the concrete floor of the basement was not attached to the real estate so as to prevent its removal. From the foregoing authorities it therefore appears that the buildings erected by the C.C.C. are personal property.

The files of the Conservation Department are very incomplete but those papers which have been submitted to me for examination indicate that specific buildings and equipment constructed and provided by the C.C.C. have been transferred by two different methods.

One method of disposition is by means of supplemental agreement similar to the one described in the opinion of the United States Attorney General, above cited. This supplemental agreement recites the execution of the lease to the United States, the demand by the state for the restoration of the premises and the advantage to the United States which will be obtained by an abandonment of the improvements. It is then stipulated that the lease was terminated as of a certain date and that the government abandons and relinquishes to the state the improvements specifically described, the state releases the United States from all liability for failure to restore the premises, etc.

The other method consists of a letter addressed to the State of Indiana by a representative of the War Department, enclosing shipping tickets in triplicate, each of which specifically describes items of structures and equipment located at a particular camp and containing an acknowledgment of receipt. The letters of transmittal recite that the officer signing the letter has been instructed to transfer the items named in the shipping ticket to the addressee and in some instances at least specify that these instructions are authorized by the Director of the C.C.C.

In each instance the transferee is named as "State of Indiana, Dept. of Conservation."

Assuming that the person executing the papers on behalf of the United States Government was authorized to do so, I believe that either of these methods would transfer title to the specific articles described. The first method falls within the opinion of the United States Attorney General, above cited, and the second transfer would be authorized

I am also of the opinion that the transferee in each case would be the State of Indiana and not the Department of Conservation, as I find no authority for the department to acquire, own or hold title to any property in its own name. (See O.A.G. (1915-1916) p. 482). In any event it is the property of the state of which the Conservation Department has only "care, custody and control."

Sections 60-717 and 718, Burns' (1943 Replacement);
Milwaukee v. McGregor (1909), 140 Wis. 35, 37; 121 N.W. 642.

It follows then that the State of Indiana is the owner of all the items named and described in the supplemental agreements and shipping tickets executed between the United States and the Department of Conservation.

Since it has been determined, first, that the buildings and equipment hereinbefore referred to are personal property and must be disposed of as such and, second, that under certain conditions and circumstances they are the property of the State of Indiana, only two questions remain to be answered.

(a) By whom and by what authority should the property be disposed of and

(b) Into what fund should the proceeds from the sale be directed?

An examination of the statutes of the State of Indiana reveals that the only authority for the disposition of this type of personal property is to be found in the Acts of 1941, Chapter 156 (Burns' 1945 Supplement, Volume 10, Section 49-1723 to 49-1727, inclusive). This Act provides that:

"* * * whenever any officer, board, commission, department, institution or agency of the state shall have in his or its charge any tangible property, other than real estate, and including equipment, materials and supplies, which because of obsolescence or for any other cause, * * * the head of each of such boards,
shall make report of such fact to the auditor of state: * * *." (Our emphasis).

The succeeding sections of this Act then authorize the sale of any and all such property after an appraisal and notice by publication. The Act specifically outlines the procedure to be followed by the Auditor of State in accomplishing the sale of such property. The concluding section requires that after the expenses of the advertising, all monies received from such sale shall be credited to the funds from which such property was purchased.

In view of the fact that no original purchase is involved in this transaction and no specific fund was used to purchase the property referred to herein, I am of the opinion that these monies derived from such a sale by the Auditor would go into the general fund of the state. It might be thought that under Sections 60-730 and 60-731 of Burns' 1933 Revised Statutes of Indiana, that the funds received from the sale of this property should be directed into the funds of the Division of State Parks or the Division of Forestry of the Conservation Department.

An examination of these two last mentioned statutes, however, reveals that they were enacted primarily to operate in cases where it is necessary to reimburse the Federal Government for emergency conservation work. In any event, these statutes only provide the chief administrative officer of the Conservation Department might determine that a profit had been made from the sale of property coming into the department's hands as a result of some federal conservation program and that an amount up to fifty per cent of the sale could be set aside and retained by the Conservation Department as a separate fund known as the Emergency Conservation Work Fund.

It is clear, however, that the purpose of this fund is exclusively for the reimbursement of the United States Government for its portion or share of the proceeds of such sale. The section directs that any unexpended remainder in the Emergency Conservation Work Fund, after the United States shall have been reimbursed, shall then be paid into the State General Fund. Since the instant case involves no question of reimbursement to the United States, it would then seem
clear that any funds derived from the sale of this C.C.C. equipment, including buildings, should go directly into the General Fund of the State of Indiana.

To summarize then, it is my opinion that the buildings in question which were erected by the C.C.C. are personal property, they are owned by the State of Indiana, they are to be sold by the Auditor of State in the manner above indicated and the proceeds of the sale are to be paid into the General Fund of the State of Indiana.

OFFICIAL OPINION NO. 5
January 23, 1946.

C. C. Chapin, M.D.,
Superintendent of the Logansport State Hospital,
Logansport, Indiana.

Dear Doctor Chapin:

Your letter of January 9, 1946, received in which you desire to know if you can force the family or county officials to receive patients discharged by you from the Logansport State Hospital which patients are discharged as incurable and harmless patients under the provisions of Section 1, Chapter 70 of the Acts of 1945.

Section 1, Chapter 70 of the Acts of 1945 is as follows:

"Any patient may be discharged from any hospital for insane, by the superintendent thereof, when sufficiently recovered or upon restoration to mental health. Incurable and harmless patients shall be discharged whenever it is necessary to make room for recent cases. All dangerous patients shall be retained in the hospital. Whenever any patient is discharged by the superintendent of any hospital for insane for the reason that such patient is sufficiently recovered to be released or has been restored to mental health, it shall be the duty of the superintendent of such hospital to send a verified certificate to the court by which such patient was committed, stating the name of the patient, the date on which such patient was committed to such