

## OFFICIAL OPINION NO. 32

April 18, 1945.

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

Dear Governor:

I have your letter of April 9th in regard to the tenure of office of the present members of the Indiana Board of Pharmacy. Your letter is in part as follows:

“Recently on request from this office you handed us an opinion concerning the State Athletic Commission, which it appeared was not being appointed in accordance to the provisions of the act creating the terms thereof.

“After reading your opinion carefully, it appears this same question might arise as to the present State Pharmacy Board. The present record on file in this office shows all five members of said State Board of Pharmacy to have been appointed on August 26, 1941 for a term of four years which are to expire August 26, 1945.

“Will you please give me your official opinion advising me if the members of this Board are properly serving in accordance with the provisions of the laws affecting same.”

The Act providing for the Indiana Board of Pharmacy is Chapter 108 of the Acts of 1899. Section 1 (63-1101 Burns' 1943 Replacement) reads as follows:

“On the taking effect of this act, the governor of Indiana shall appoint five (5) pharmacists, no more than three (3) of whom shall belong to the same political party, who shall constitute a board to be styled the Indiana Board of Pharmacy. Two (2) members of said board shall be appointed and hold office for one (1) year, one (1) for two (2) years, one (1) for three (3) years and one (1) for four (4) years, and each until his successor is appointed and qualified,

and the term of office of each person thereafter appointed shall be four (4) years. Annually after these first appointments, the governor shall appoint pharmacists to fill vacancies as they occur by expiration of term of appointment. Any vacancy occurring at other times in said board shall be filled by a pharmacist appointed by the governor for the unexpired term. All of said appointments shall be made by the governor from pharmacists of recognized experience and ability, who are actually engaged in the retail drug business. No person in any manner connected with any school of pharmacy shall be eligible to serve on said board. Any member of said board may be removed by the governor for cause."

This Act, like the one creating the State Athletic Commission, provides for four (4) year staggered terms. The principles of law as set forth in my opinion No. 24 of April 2, 1945 concerning the State Athletic Commission, are equally applicable to the Indiana Board of Pharmacy. In other words, the cycle of terms as provided in the law was established by the first appointments made thereunder and no executive change can alter the cycle.

An investigation of the records with regard to the Indiana Board of Pharmacy reveals that on May 1, 1899, three (3) days after the effective date of the Act, appointments were made for the original terms. Thereafter all appointments were made to expire on May 1st of the appropriate year until May 1, 1910. I find no record thereafter until 1926, but an extended review of the various appointments made is unnecessary in this opinion, since the original appointments fixed the terms of office to begin on May 1st.

The last appointments were made on August 26, 1941 and purported to be for four (4) years. There is nothing on the record to indicate which appointees were intended for the various terms. In that situation, as stated in my former opinion, none of the members is holding a commission for any fixed and determinable term and he is subject to replacement upon proper appointment and qualification of members for the appropriate statutory terms. In any event, the term of any person appointed for a full four (4) year term on August 26, 1941, would expire on May 1, 1945.