

## OFFICIAL OPINION NO. 103

September 18, 1945.

Hon. Chas. W. Kern,  
Commissioner of Labor,  
State of Indiana,  
Room 225 State Capitol,  
Indianapolis 4, Indiana.

Dear Sir:

This will acknowledge receipt of your letter making inquiry relative to Chapters 314 and 23 of the Acts of 1945.

The pertinent part of Section 1 of Chapter 314 of the Acts of 1945, page 948 is as follows:

“\* \* \* *Provided*, That for the period beginning with the date of passage of this act and *ending with the termination of the war* or March 15, 1947, whichever occurs first, girls between the ages of sixteen and eighteen years may be employed until 10 o'clock in the evening in any occupation except those which the commissioner of labor by regulation or otherwise, determines to be dangerous to life or limb, or injurious to the health or morals of such girls.” (Last emphasis ours.)

In reference to the above act you state:

“It now becomes necessary for the Division of Labor and its Bureaus to know what act, event, declaration, or proclamation, shall be accepted as constituting the ‘termination of the war’ within the meaning of this Act.”

The pertinent part of Chapter 23, page 23, Acts of 1945, appears in Section 1, and is as follows:

“\* \* \* Section 1. (a) The laws of this state respecting the number of hours per day or per week, the number days per week and the hours within which any female, eighteen years old or over, may be employed in industry, or forbidding with respect to employees, male or female, work or labor on Sunday, shall

be suspended *for the duration of the war* or the duration of any contract heretofore or hereafter made by any industry for the production of equipment or production or furnishing of materials or supplies or for services in aid of the war program, whichever may be longer, with respect to any industry which files written notice with the commissioner of labor of such industry's employment of, or intent to employ such persons under conditions otherwise prohibited by statute: *Provided, however,* That in no event shall this subsection be operative on or after March 15, 1947." (First emphasis ours.)

Concerning this provision of the statute, you state in your letter:

"It now becomes necessary for the Division and its Bureaus to know what act, event, declaration or proclamation, or what we can accept as marking the end of the 'duration of the war' as provided in this Act."

The pertinent language is, therefore, "For the duration of the war" and "Ending with the Termination of the War." It, therefore, becomes necessary to determine when the war terminates in the legal sense.

It is well settled that the cessation of hostilities or an armistice does not terminate the war in a legal sense until that is followed by some formal action by a competent authority terminating the war and re-establishing peace.

Hamilton v. Kentucky Distilleries & Warehouse Co. (1919), 251 U. S. 146;  
 Kahn v. Anderson (1920), 255 U. S. 1, 9;  
 In re Miller (1922), 281 F. 764, 776, (Appeal dismissed), 262 U. S. 760;  
 Sichefsky v. U. S. (1922), 277 F. 762, 764;  
 Vincenti v. U. S. (1921), 272 F. 114;  
 Weisman v. U. S. (1921), 271 F. 944, 945;  
 The Protector (1871), 12 Wall. (U. S.) 700;  
*Ex parte* Givins (1920), 262 F. 702, 705;  
 Kneoland-Bigelow Co. v. Michigan Central R. R. Co. (1919), 207 Mich. 546, 553;  
 State v. Dixon (1923), 66 Mont. 76, 99.

In the case of *Kahn v. Anderson, supra*, it was said at page 9: "That complete peace, in the legal sense, had not come to pass by the effect of the Armistice and the cessation of hostilities, is not disputable."

In the case of *Kneoland-Bigelow Co. v. Michigan Central R. R. Co., supra*, the court said at page 553:

"\* \* \* The existence of war and restoration of peace are determined by action of the legislative, supplemented by the executive, department of government. Such determination is conclusive and binding upon the courts. War having been declared, that condition must be recognized by the courts as existent until the duly constituted national power of the country officially declares to the contrary, even though actual warfare has long since ceased."

It has been held that the exclusive right to begin and terminate War is in Congress. In 27 R. C. L., page 95, it is said: "The Federal Constitution vests in Congress plenary war powers. Congress can begin, carry on, and terminate wars, without any express limit as to time, means or manner."

The Federal Constitutional provision appears in Article 1, Section 8, which provides in part as follows:

"The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

"\* \* \*

"(11) To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;"

In the case of *Perkins v. Rogers (1871)*, 35 Ind. 124, it is said at page 167:

"The foregoing authorities clearly establish the following propositions. First, that the war making power is, by the constitution, vested in Congress, and that the President has no power to declare war or conclude peace, except as he may be empowered by Con-

gress. Second, that the existence of war and the restoration of peace are to be determined by the political department of the government, and that such determination is binding and conclusive upon the courts, and deprives the courts of the power of hearing proof and determining on a question of fact either that war exists or has ceased to exist. Third, that the courts will take judicial notice of the existence of war or the restoration of peace when proclaimed by the President.  
\* \* \* ”

In the case of *Industrial Commission of Ohio v. Rotar* (1931), 124 Ohio St. 416, 179 N. E. 135, it was stated at page 137:

“As to the exact time when the war was ended, there is some confusion in the decisions. It is held in *First National Bank of Pittsburgh v. Anglo-Oesterreichische Bank (C. C. A.)* 37 F. (2d) 564, that, as regards the statute of limitations, the joint resolution of Congress of July 2, 1921, (42 Stat. 105), did not terminate war with Austria, since such resolution was not legally binding upon Austria, and the restoration of peace can be accomplished only by bilateral treaty. This is in spite of the fact that the proclamation of the Peace Treaty by the President stated that peace was proclaimed as of July 2, 1921. However, the fact that the war with Austria-Hungary was ended by joint resolution of Congress upon July 2, 1921, is recognized by the Supreme Court of the United States, and by other federal courts, in *Swiss Nat. Ins. Co., Ltd. v. Miller, Alien Property Custodian*, 267 U. S. 42, 45 S. Ct. 213, 69 L. ed. 504; *Miller, Alien Property Custodian v. Camp (D. C.)* 280 F. 520; *In re Miller, Alien Property Custodian (C. C. A.)* 281 F. 764; *Zimmerman v. Hicks, Alien Property Custodian (C. C. A.)* 7 F. (2d) 443.”

In the case of *Hamilton v. Kentucky Distilleries & Warehouse Co.*, *supra*, the court said at page 107:

“\* \* \* But there is nothing in the words used to justify such a construction. ‘Conclusion of the war’

clearly did not mean cessation of hostilities; because the act was approved ten days after hostilities had ceased upon the signing of the armistice. Nor may we assume that Congress intended by the phrase to designate the date when the treaty of peace should be signed at Versailles or elsewhere by German and American representatives, since by the Constitution a treaty is only a proposal until approved by the Senate.

\* \* \*

In the above case, the court also said at page 165:

“In the absence of specific provisions to the contrary the period of war has been held to extend to the ratification of the treaty of peace or the proclamation of peace. *Hijo v. United States*, 194 U. S. 315, 323; *The Protector*, 12 Wall. 700, 702; *United States v. Anderson*, 9 Wall. 56, 70. \* \* \*”

In the case of *United States v. Anderson* (1869), 76 U. S. 56 at page 70, the court said:

“\* \* \* In a foreign war, a treaty of peace would be the evidence of the time when it closed. \* \* \*”

In the case of *Hijo v. United States*, 194 U. S. 315 at page 323, the court said:

“\* \* \* A state of war did not in law cease until the ratification in April, 1899, of the treaty of peace. ‘A truce or suspension of armies,’ says Kent, ‘does not terminate the war, but it is one of the *commercium belli* which suspends its operations. \* \* \* At the expiration of the truce, hostilities may recommence without any fresh declaration of war.’ 1 Kent, 150, 161. \* \* \*”

The usual method of terminating war is by treaty of peace by the belligerents. It has been held that war is not concluded until the treaty of peace is made and becomes effective. This would be under ratification by the Senate under the Constitution of the United States.

- Hamilton v. Kentucky Distilleries & Warehouse Co., *supra*;
- Hijo v. United States, *supra*;
- United States v. Anderson, *supra*;
- Sultzbach Clothing Co. v. Lockwood (1921), 255 U. S. 581;
- Arnold v. Ellison (1928), 96 Pa. Super. 118, 121;
- Zeliznik v. Lytle Coal Co. (1924), 82 Pa. Super. 489;
- Nephews v. U. S. (1908), 43 Ct. Cl. 430, 436.  
 (In this case it was held that a state of war with Spain did not cease until the ratification of the treaty in April, 1899);
- Inland Steel Co. v. Jelenovic, *et al.* (1926), 84 Ind. App. 373, 378.

Also, as recognizing ratification of the treaty as terminating the war, see Sipyak v. Davis (1923), 276 Pa. 49; Garvin v. Diamond Coal and Coke Co. (1924), 278 Pa. 469. For a general discussion, see article "The Termination of the War" in 10 Mich. Law Review 819.

In *First National Bank of Pittsburgh v. Anglo-Oesterreichische*, 37 F. (2d) 564, it was held that the joint resolution of July 2, 1921 did not terminate the First World War as to Austria because bilateral action by the belligerents is required to restore peace, and such resolution was unilateral only and not binding upon Austria. The statement in the above case is not wholly in accord with authority on international law and the categorical statement in the opinion that peace "can be accomplished only by a bilateral treaty of peace" overlooks the possibility that a war may bring about the condition on the part of one of the belligerents that there remains no competent authority to execute a bilateral peace treaty.

There is authority for a view that a treaty of peace executed by both sides is not essential to the termination of the war. *U. S. v. Hicks* (Dist. Ct.) (1919), 256 F. 707, which latter case also questions the rule that the exclusive power to terminate war and re-establish peace is in Congress. This case is not in accordance with the weight of authority.

However, under all the foregoing authorities, it is clear that the present war has not been terminated in the legal sense and will not so terminate until formal action is had by competent authority terminating the war and re-establishing peace.

The courts have used the date of the ratification of the peace treaty as the termination of the war with Spain. The dates used for the termination of the Civil War were those fixed by the President by proclamation and adopted by Congress. (It must be remembered this war was in the nature of an insurrection and not war with a foreign nation.) The First World War is generally recognized as terminated by the Joint Resolution of Congress, July 2, 1921.

Until there is some such formal action terminating the present war, it must be considered as not terminated in the legal sense even though actual hostilities may be at an end.

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OFFICIAL OPINION NO. 104

September 18, 1945.

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

My dear Governor:

This will acknowledge receipt of your letter of September 14, relative to the appropriation for the Indiana State Nurses Association. The language in question appears in Chapter 186, page 485, of the Acts of 1945, and the pertinent part is as follows:

“That the appropriation herein made is for the purpose of aiding the state nurses association in recruiting students and nurses for the war efforts and that any balance remaining unexpended *at the close of the war* shall thereupon revert to the general fund.”

It will be noted from the above language that this appropriation does not revert to the general fund until the close of the war. I enclose herewith copy of official opinion No.