

An analysis of the 1945 Act above quoted indicates that the time limitation, not exceeding one (1) year in seven (7) follows the provisions of the statute for giving leaves of absence for study, professional improvement, temporary disability or for U. S. military, naval or allied service, and precedes the clause of the 1945 Act providing for leaves of absence for exchange teaching and other educational employment as defined and approved in each case by the Board. Under the above quoted rules of statutory construction, it is evident that the exception of one (1) year in seven (7) does not apply to the granting of leaves of absence for exchange teaching and other educational employment as defined by the Board unless there is evident in the Act a legislative intent to the contrary. There is nothing in the Act in my opinion which indicates such a legislative intention, and it is, therefore, my opinion that where leaves of absence are given for exchange teaching and other educational employment as defined and approved in each case by the Board, the limitation upon leaves of absence not exceed one (1) year in seven (7) would not be applicable in such cases.

OFFICIAL OPINION NO. 108

October 2, 1945.

Hon. Ralph F. Gates, Governor
State of Indiana,
State House,
Indianapolis 4, Indiana.

My Dear Governor:

This will acknowledge receipt of your letter of September 24th, relative to our letter to you of September 18th, in which we enclosed copy of official opinion No. 103. In connection therewith you ask the following question:

“The question remaining on which I wish an opinion is whether or not the activities now being carried on by this Association, as evidenced by the correspondence received from Miss Helen Teal, Executive Secretary of the Indiana State Nurses Association, which I

am attaching hereto, comes within the meaning of 'in recruiting students and nurses for the war efforts.' "

As pointed out in our letter of September 18 the appropriation has not reverted and will not revert until the "close of the war." The close of the war will not occur until formal action has been taken to accomplish that result by proper national authority. As pointed out in a number of cases cited in the opinion enclosed in our former letter, the war powers and war statutes do not end upon the cessation of armed hostilities and are not limited to victories over the enemy.

In the case of *Stewart v. Kahn*, 11 Wallace 493, at page 507, it was stated by the United States Supreme Court:

"In the latter case the power" (war powers) "is not limited to victories in the field and the dispersion of the insurgent forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and *to remedy the evils which have arisen from its rise and progress.* * * *'" (Our emphasis.)

In an opinion given by the Attorney General of the United States to the President under date of September 1, 1945, it is said:

"The broad basis of governmental power on which the various emergency and wartime statutes rest cannot therefore, be said to have been terminated by recent developments, including the unconditional surrender of our enemies. * * *'"

As pointed out in the enclosures with your letter of September 24th, the situation in connection with the procurement and recruiting of nurses, which the Legislature was apparently seeking to assist, has not terminated with the end of actual organized fighting. There still remains the necessity of care and treatment for the wounded and ill which are the products of the war effort. The fact that the Legislature did not provide for the balance of the appropriation to revert to the general fund until the "close of the war" indicates that it was its understanding that the war efforts would continue until that time and that it was intended that the appropria-

tion be available until that time. It is my opinion that the appropriation is available for the recruiting of students and nurses to alleviate the situation produced by the war and the war efforts until the legal termination of the war by formal action by competent national authority.

OFFICIAL OPINION NO. 109

October 2, 1945.

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

My Dear Governor:

I have your letter of September 12, 1945, in which you make the following inquiry:

"In checking the official commission records on file in this office, I found that in accordance with the existing record here I was to make the appointment of four members to the State Teachers' College Board of Indiana as of August 26, 1945. Since the records here reveal former Governor, Henry F. Schricker, appointed the present four members on August 26, 1941, for a term of four years and to expire on August 26, 1945. I have purposely delayed making these appointments.

"1. In what manner should I make appointments at the present time to fill the vacancies created by the expiration of the terms of the present members of this board?

"2. Is Senate approval necessary and in what manner should this be handled if it is necessary, since, of course, they are not in session?"

The State Normal School was originally established in the special session of the Indiana Legislature of 1865. The provision for appointment of trustees is Section 2 of Chapter 36,