It is to be noted that in an official opinion of this office dated November 13, 1944, to the Honorable Clement T. Malan, State Superintendent of Public Instruction, it was held a school secretary performing ministerial functions for the school corporation, was not entitled to be licensed by the State Board of Education. A copy of said official opinion is herewith enclosed for your convenience. Employees of school libraries would be in the same classification and would likewise be unable to be licensed by the State Board of Education as a teacher solely by reason of such library employment. The carrying on of their ministerial functions in such employment would not of itself entitle them to membership in the teachers' retirement fund, under the above statute, unless they were licensed and qualified teachers prior to their election or appointment to such positions with said library.

OFFICIAL OPINION NO. 12

March 1, 1945.

Hon. Rue J. Alexander,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 16, 1945, asking for an official opinion on the question,

> "whether or not individuals or employees living in Government owned houses in the Wabash Ordnance Works Property at Newport, Indiana, which is Federal Government owned property, and who work for the Wabash River Ordnance Works are subject to personal property tax,"

and stating that such an opinion is important to you as Commissioner of the Bureau of Motor Vehicles in regard to the requirement that applicants for licenses show either tax receipts or exemption receipts.

Subdivision 17 of Section 8 of Article 1 of the Constitution of the United States provides as follows:

> "The congress shall have power * * *
> "(17) To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; * * *."

Section 255 of Title 40, U. S. C. A., (Oct. 9, 1940, c. 793, 54 Stat. 1083), provides, in part, as follows:

> "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. *Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.*" (Our emphasis.)

In the case of Richard Philip Adams, *et al.* v. The United States, *et al.* (May 24, 1943), 319 U. S. 312, the court said, referring to the statute above quoted:

> "The legislation followed our decisions in James v. Dravo Contracting Co., 302 U. S. 134; Mason Co. v. Tax Commission, 302 U. S. 186; and Collins v. Yosemite Park Co., 304 U. S. 518. These cases arose from controversies concerning the relation of federal and state powers over government property and had pointed the way to practical adjustments. The bill resulted from a cooperative study by government officials, and was aimed at giving broad discretion to the various agencies in order that they might obtain only the necesary jurisdiction. *The Act created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained 'no jurisdiction at all, or partial jurisdiction, or exclusive jurisdiction.'*" (Our emphasis.)

Sec. 62-1001, *B. R. S., 1943 Replacement,* provides, in part, as follows:

> "The jurisdiction of this state is hereby ceded to the United States of America over all such pieces or parcels of land within the limits of this state as have been or shall hercafter be selected and acquired by the United States for the purpose of erecting post-offices, custom-houses or other structures exclusively owned by the general government and used for its purposes: Provided, That an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of the state: * * *."

This section then provides further reservations not pertinent here.

The acquisition of lands by the United States for public purposes within the territorial limits of the state does not of itself oust the jurisdiction of such state over the lands acquired. The jurisdiction of the state is to be determined by whether, under the method of acceptance and cession, the United States government obtained exclusive jurisdiction, partial jurisdiction, or no jurisdiction at all. If, under the cession, the United States government obtained exclusive jurisdiction, then the personal property located within the area

would not be subject to taxation under the personal property tax laws of this state in the absence of congressional consent. Surplus Trading Co. v. Cook, 281 U. S. 647. If the cession was not exclusive, but partial only, the jurisdiction of the state would be determined by the valid terms and reservations of the cession. Superior Bath Co. v. McCarroll, 312 U. S. 176. Where the United States government has not accepted jurisdiction as provided in the Act above quoted, it is presumed that no such jurisdiction has been ceded and accepted. Adams, *et al.* v. U. S., *et al., supra.*

For a further discussion of the question and the citation of other authorities, we refer you to the opinion of the Attorney General, dated October 30, 1943, O. A. G. 1943, page 609. No question of partial cession and acceptance of jurisdiction is here involved. Under the foregoing statute and authorities, the question is whether the statutory steps have been taken to effect cession of exclusive jurisdiction to the United States. An examination of the records in the office of the Governor fails to disclose any record showing compliance with the above statutes with respect to the lands mentioned in your letter. I, therefore, assume that the United States government or its proper agency has not given the notice required by the federal statute above referred to. Therefore, the federal government has not accepted or acquired jurisdiction over the premises in question, and individuals or employees living in the government owned houses within the area referred to are subject to personal property tax.

OFFICIAL OPINION NO. 13

March 14, 1945.

Hon. Thurman B. Rice, M. D.,
Acting Secretary, Indiana State Board of Health,
1098 West Michigan Street,
Indianapolis 7, Indiana.

Dear Dr. Rice:

I have your letter of January 26, 1945, which reads as follows:

> "The official opinion of the State Attorney General is requested on the questions listed below on Chapter