December 29, 1944.

Opinion No. 111

Hon. Everett L. Gardner, Director
Indiana Employment Security Division,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

Your letter of December 8th, 1944, received, in which you refer to an official opinion of this office under date of March 6th, 1944, addressed to the Hon. Dudley A. Smith, Director of State Personnel, holding "during the war time emergency and the existence of the manpower shortage with reference to obtaining employees for the operation of state government, the limitations contained in Section 60-1323, Burns 1933 Supplement, and Section 60-1324, Burns 1933 Supplement, which limit the time that a provisional appointee may be employed or the time that an emergency employee may be employed, are suspended and held in abeyance during the time of such emergency." This opinion was followed by an opinion addressed to you under date of October 2, 1944, construing the above statutes and reaffirming the finding made in the previous opinion.

You desire an official opinion as to the application of the former opinion, as follows:

(1) If certain disbursements to employees covered by said former opinions were made in 1942 and 1943, and consequently prior to the time of the giving of such opinions, are said opinions retroactive to the period following the beginning of the war on December 7th, 1941.

(2) Are the above referred to opinions also applicable in their effect to a regulation of the State Personnel Board which contains parallel restrictions and limitations to those contained in the provisions of the statute to which said opinions apply? In other words, are parallel restrictions contained
in personnel regulations suspended for the war period in the same manner as those provisions of the statute to which the opinion was directed?

In the case of Center School Township v. State, ex rel. Board, etc. (1897), 150 Ind. 168, the Supreme Court held no vested rights had been acquired to certain tax funds which were appropriated to the School Township by the township trustee under a construction placed upon the law by the Supreme Court, which decision of the Supreme Court was thereafter overruled by a subsequent decision of the Supreme Court. On page 173 of the opinion, the court said:

"The decisions of a court of last resort, the authorities assert, are not the law, but are only the evidence or exposition of what the court construes the law to be, and in overruling a former decision by a subsequent one the court does not declare the one overruled to be bad law, but that it never was the law, and the court was therefore simply mistaken in regard to the law in its former decision. The first decision, upon the point on which it is overruled, is wholly obliterated, and the law as therein construed or declared must be considered as though it never existed, and that the law always has been as expounded by the last decision. Haskett v. Maxey, 134 Ind. 182; Ram's Legal Judgments, 47."

In answer to your first question, I wish to advise it was clearly intended that the above opinions state the law as it had existed since the emergency arose, and they would therefore apply to the period mentioned in your letter with equal force and effect as to the period after their date.

In answer to your second question, I wish to advise said former opinions are equally applicable to regulations of the State Personnel Board containing parallel restrictions and limitations to those considered in the prior opinions, as the statutes construed in said opinions were those particularly applying to the State Personnel Board.