same borrower, whether he has one place of business licensed or more than one such place licensed.

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STATE BOARD OF ACCOUNTS: School Bus Drivers—
Whether school bus drivers inducted into the U. S. Army under the Selective Service Act of 1940 are entitled to complete their contracts if they return before the date of expiration of such contracts.

May 13, 1942.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

This is in response to your letter of April 10 in which you ask for an opinion upon the following question:

"Is a school bus driver, inducted into the U. S. Army under the Selective Service Act of 1940, entitled to complete his contract with a school corporation if he returns before the date of the expiration of that contract?"

The Selective Service Act of 1940, to which you refer above, is the "Selective Training and Service Act of 1940" which is found in U. S. Code Annotated, Title 50, Section 301, et seq (1941 Pocket Part). Section 308 of this act provides that any person inducted into the military service under the act should, upon discharge from the service, be entitled to re-employment within forty days after he is relieved from such training if he makes proper application. This is to be done if the person is employed by the United States Government and its various agencies or if a person was employed by a private employer. A private employer must re-employ unless his circumstances have so changed as to make it impossible or unreasonable to do so.
Your attention is now called to paragraph (C) of subsection (b) of Section 308, U. S. Code Annotated (1941 Pocket Part), which reads as follows, to-wit:

“(C) if such position was in the employ of any State or political subdivision thereof, it is hereby declared to be the sense of the Congress that such person should be restored to such position or to a position of like seniority, status, and pay.”

I note that in this paragraph the word “should” is used and, therefore, the provision is not mandatory but it only expresses the intention of the Congress. It is, therefore, not binding in a legal sense upon the State or any of its political subdivisions. However, it carries some weight and is of great persuasive value especially in the light of the present emergency. The provisions of the above section, which was enacted September 16, 1940, were extended on August 18, 1941, by Section 357 of Title 50, U. S. Code Annotated (1941 Pocket Part). The foregoing provision in regard to re-employment of persons inducted under the Selective Service Act is the only one that I find in regard to re-employment.

The 1941 legislature enacted an act, Chapter 161, Acts 1941, concerning the transportation of school children and providing for the repeal of certain laws. In this act provision was made for the awarding of school bus drivers’ contracts. Section 1 of this act provides for the manner in which school bus drivers’ contracts shall be let. It provides that contracts for the services of school bus drivers shall be made for a period of not less than one year or more than four years with the further proviso that no contracts shall be let which shall extend beyond the close of the school year, during which the term of the trustee and advisory board in office at the time such contract was awarded expires. Section 2 of the act reads as follows, to-wit:

“All vacancy which occurs during any school year shall be filled temporarily by appointment by the trustee for the remainder of the school year without advertising and should there continue to be a vacancy, such vacancy shall be filled before the beginning of the next school year in the manner hereinbefore provided.”
In view of the foregoing provisions in the state and federal laws, I am of the opinion that a school bus driver who is inducted into military service under the Selective Training and Service Act of 1940 or the Service Extension Act of 1941 should, if time permitted, be given the opportunity to complete his contract. I should like to point out, however, that the only possible situation permitting this eventuality would be for the school bus driver to be discharged from military service before the letting of the new contract at the beginning of the next school year. The most likely possibility, however, is where a school bus driver was inducted into the Army and during his period of service a new contract was let. I am of the opinion that, if a new contract was let during the absence of a school bus driver in service in the military forces, under the law as it is now written, he would not be entitled to complete his contract.

I feel that I should also call your attention to the following language used in Section 2 of the act in question reading as follows, to-wit:

"It shall be further provided in said contract that the school bus driver shall not sell or assign his contract to any other person as driver, except in case of sickness or of death in his family and in no case without the expressed approval of the trustee."

It is indeed unfortunate that the legislature made no provision for the re-employment of the school bus drivers after their return from military service. The legislature of 1941 did make provision for the re-employment of policemen, firemen and school teachers after their return from military service. There should be a correction of this apparent oversight by the next legislature.