CONSERVATION DEPARTMENT: Fish and game division —whether department may issue free hunting and fishing permits to honorably discharged soldiers, etc.

June 3, 1933.

Hon. H. G. Shinnamon,
License Clerk,
Division of Fish and Game,
Department of Conservation,
Indianapolis, Indiana.

Dear Sir:

I have before me your communication of May 27, 1933, in which you ask whether your department may legally issue free hunting and fishing permits to honorably discharged soldiers, sailors and marines who enlisted in their respective branches of the military service after November 11, 1918, and before July 2, 1921.

The act under which this question arises is section 13691, Burns Annotated Indiana Statutes, Revision of 1926 (Acts 1919, p. 773 as amended in Acts 1920, p. 53). This section reads in part as follows:

"Soldiers and sailors, and their widows and orphans, of the late war with Germany, * * * who are residents of the State of Indiana, shall have and are hereby given all the rights and privileges now held and enjoyed by soldiers and sailors, their widows and orphans, of the late Civil War."

The act conferring certain rights and privileges with relation to fishing and hunting upon soldiers and sailors of the Civil War, and their widows and orphans, reads as follows:

"Any honorably discharged soldier, sailor or marine of the United States who shall have served in the Civil War shall be entitled to fish or hunt during any open season for fish or game in the State of Indiana without procuring a license as required by law."

(Sec. 13690, Burns Annotated Indiana Statutes, Revision of 1926.)

Section 2780, Burns Annotated Indiana Statutes, Revision of 1926, makes it the duty of your department to issue, free of charge, permits to hunt and fish without license, upon re-
quest of any and all persons entitled by law to receive such permits.

The question which arises, in substance, is whether or not soldiers, sailors and marines who enlisted between the dates of November 11, 1918, and July 2, 1921, were "soldiers and sailors * * * of the late war with Germany" within the meaning of section 13691, supra. In this connection, I would call your attention to the fact that "marines" are not expressly mentioned in the latter act. But I think it is clear that the legislature intended the language "soldiers and sailors" to be broad enough to include, and that it does include, members of that branch of the military service designated as "marines," as well as the members of all other active branches of the military service, although not expressly referred to in the statute by their technical designations.

It is a well accepted rule of law that the mere cessation of hostilities does not terminate a war; but that there must be an official declaration by the political department of the government that the state of war no longer exists.

U. S. v. 129 Packages, Fed. Cas. No. 15,941;
U. S. v. 100 Barrels of Cement, Fed. Cas. No. 15,945;
Perkins v. Rogers, 35 Ind. 124.

An "armistice" is merely a suspension of military operations, and has no effect to terminate a war.


The courts have held in numerous cases that the war with Germany did not cease on the day of the Armistice, but that the war was officially terminated by the joint resolution of congress on July 2, 1921, and not before that time.

Zimmerman v. Hicks, 7 Fed. (2nd) 443;
U. S. v. Oglesby Grocery Co., 264 Fed. 691;
Industrial Commission of Ohio v. Rotar, 178 N. E. 208;

In view of these decisions, and in the absence of any words or language in the statute (Sec. 13691, supra) which clearly
show an intent on the part of the legislature to limit the use of the word "war" to a meaning narrower than that which has been given the term by the courts of our land for the greater part of a century, it is my opinion, that honorably discharged soldiers and sailors who are residents of Indiana and who enlisted in the military service of the United States after November 11, 1918, but prior to July 2, 1921, are entitled to free hunting and fishing permits upon application duly made.

Some confusion may arise from the fact that the act extending this privilege to soldiers and sailors of "the late war with Germany" was passed before that war had terminated officially, (Acts 1919, p. 773), and the language of the act inferring that the legislature considered the war as already terminated might be argued in support of the theory that the legislature intended the "war" to mean only the hostilities up to the time of the Armistice on November 11, 1918. However, the legislative body clearly expressed its intention to grant to the soldiers and sailors of the war with Germany "all the rights and privileges now held and enjoyed by soldiers and sailors, their widows and orphans, of the late Civil War" (Sec. 13691, supra). The original act, granting the privilege to those who served in the Civil War, was passed in 1915, almost 50 years after the official termination of that war by presidential proclamation on April 1, 1866. (Sec. Fed. Cas. No. 5539, Chase, 286.) There can be no question but that veterans of the Civil War who enlisted at any time prior to April 1, 1866, are entitled to this privilege. And it seems equally clear that the legislature, in extending this privilege to veterans of the "late war with Germany," intended to extend the same privilege, and to attach the same scope and meaning to the term "war," in the later enactment as in the original act relating to veterans of the Civil War. It is the view of the writer that the word "late," as used in describing the war with Germany, was used in a general descriptive way only, and not in a technical sense so as to terminate the war referred to at a date earlier than its official termination as defined by law.