Consequently, your inquiry resolves itself into a question of fact; namely, whether or not students in the Naval Academy during one of the war periods named were in the service of the United States military forces while they were such students, or whether or not they "shall have served in" one of the wars named. (Section 13690, supra.)

I am informed reliably that students in the United States Naval Academy are inducted into the military service of the country at the time of their entering such academy. It appears that they are subject to all military orders and assignments, and receive compensation and maintenance from the government for their service. If my information is correct, it is my opinion that such students as were in the United States Naval Academy at any time during the period of one of the wars named, and who subsequently received an honorable discharge from such service, are entitled to permits from your department to hunt and fish without license. For a discussion of the various war periods, I would refer you to my opinion to your office under date of June 28, 1933.

PUBLIC INSTRUCTION, DEPT. OF: Appointment of attendance officers.

    July 7, 1933.

Miss Margaret E. Paddock,
   State Attendance Officer,
       Department of Education,
           Indianapolis, Indiana.

Dear Madam:

I have before me your letter of June 23, 1933, which reads as follows:

"We are in receipt of a letter from Mrs. Annette K. Test, city attendance officer, Seymour, Indiana, relative to the term 'appointment' in the following section of the average daily attendance law:

"'Wherever, by the provisions of any law of this state, any action, proceeding, eligibility, appointment, power, right or duty is taken, had, exercised, conferred, possessed, prescribed, performed, or conducted by virtue and on the basis of the annual enumeration of school children such action, proceeding, eligibility, ap-"
pointment, power, right or duty shall hereafter be taken, had, exercised, conferred, possessed, prescribed, performed or conducted by virtue and on the basis of the average daily attendance of school children, as provided in this act, to all interests and purposes as though the term "average daily attendance" of school children were substituted for and appeared in each and every act wherein the terms "enumeration" or "enumeration of school children" or other expressions of like import appear.

"Mrs. Test is of the opinion this does not apply to officers already holding office. She states her district passed the two thousand enumeration mark the last three years and that she received her re-appointment by the local school board several weeks ago.

"I shall very much appreciate having an opinion on this point."

The section of the act pertinent to this question is correctly quoted in your inquiry. (Chapter 238, Acts 1933.) The section of the statute providing for the appointment of attendance officers, substituting the words "average daily attendance" for the words "school enumeration" as provided by chapter 238, Acts of 1933, supra, would read in part as follows:

"Every county and every city having (an average daily attendance) of two thousand or more children of school age shall constitute a separate attendance district. * * * The superintendent of schools of each city having two thousand or more children of school age shall nominate, and the board of school trustees of such city shall appoint, one attendance officer, and, in like manner, one additional attendance officer shall be nominated and appointed for every ten thousand children of school age (on the basis of the average daily attendance) in such city. Every such city may hire additional attendance officers and may require additional services of attendance officers not herein provided for, and may provide additional compensation for attendance officers above the maximum fixed by this act, but such additional attendance officers and such additional compensation shall be paid out of the funds of such
school city. The board of school trustees of any city or town having less than two thousand children of school age may organize such city or town as a separate attendance district under this act and may appoint an attendance officer, in the manner herein provided, but such officer shall be paid entirely out of the funds of such board of school trustees.” (Our italics.)

Section 6448 Burns Annotated Indiana Statutes, Revision of 1926.

Section 6449 of the same revision of the statutes, fixes the terms of office of such attendance officers as follows:

“Attendance officers shall take office on the first of August and shall hold office for one year and until their successors have been elected and qualified unless said officers are removed from office by the state board of attendance. * * *” (My italics.)

It is clear that, after the passage of chapter 238 of the Acts of 1933, supra, any and all appointments of attendance officers as provided by section 6448, supra, should be based upon the average daily attendance of school children. In other words, the appointment of such officer after the act in question became effective, (May 22, 1933) was mandatory only in those cities where the average daily attendance was two thousand or more. It seems equally clear that, in cities where the average daily attendance was less than two thousand, any appointment made after the effective date of the act would have to have been made under the provision of section 6448, supra, which authorized the board of school trustees in such cities to appoint an attendance officer within its discretion. In the latter case, the compensation would have to be paid out of funds in the possession of the board of school trustees, but in either event, the appointment would be valid.

It is my opinion, that the change to the average daily attendance basis only affects the duty or discretion of the board of school trustees to make such appointment at the time of appointment, and the liability for compensation. It in no way affects the tenure of office nor attempts to curtail the statutory term of office of one who was duly and legally appointed under the particular law in effect at the time of such appointment.

If Mrs. Test was appointed by the board of school trustees
of Seymour in good faith before the effective date of chapter 238, supra, her compensation is payable on the basis provided for in the act as an attendance officer in a city having a "school enumeration" of two thousand or more. If her appointment was made after the effective date of said act, and the "average daily attendance" at the time of her appointment was less than two thousand in the city of Seymour, it must be assumed that her appointment was made under authority of the discretionary provision of section 6448, supra, and her compensation is payable out of the funds of the board of school trustees. In either event, her appointment would be valid and her term of office would be for the regular statutory period unless "removed from office by the state board of attendance." (Section 6449, supra.)

TEACHERS' RETIREMENT FUND BOARD: Gross income—whether a teacher should list annuity or disability compensation as such under Gross Income Tax Act.

July 7, 1933.

Teachers' Retirement Fund Board,
State of Indiana,
224 State House,
Indianapolis, Indiana.
Att.: R. B. Hougham, Executive Secretary.

Honorable Sir:
I have before me your request for a construction of the Indiana Gross Income Act of 1933, presenting the following inquiry:

"Should a teacher on annuity or disability compensation list said annuity or disability compensation as gross income according to the new law?"

This tax is imposed by section 3 of chapter 50, Acts of 1933, p. 388 at 391. Directing your attention to section 3 (f), p. 392, we find there the following language:

"Upon the gross income of every person engaged in any business or activity not enumerated in subsections (a) to (e) inclusive, of this section, including, but not in limitation of the foregoing, the gross income from professional services, personal services, sales of real estate, all funds received for the performance of con-