prosecutor is entitled to this fee, your attention is directed to Chapter 128, Acts of the Indiana General Assembly, 1937, which is an amendment in part of the original fee and salary law and reads as follows:

"Prosecuting attorneys and their deputies shall receive for their services the compensation provided in this Act, which compensation shall be paid monthly, from the general fund of the county, in the manner now provided by law for the payment of official salaries, and they shall receive no other compensation, fee, per diem, per centum or other remuneration whatsoever. No payment of salaries shall be made until the prosecuting attorney or his deputy has made a report of all fees collected and has paid such fees into the county treasury."

This Act was approved upon the same day that the dog tax law was approved. It is my opinion that the Fee and Salary Act controls and that the prosecutor is accordingly not permitted to retain the $5.00 fee as his personal property. This should be put into the county treasury as other fees of the prosecuting attorney are collected and paid.

NURSES, EXAMINATION AND REGISTRATION OF: Authority to prescribe educational requirements as prerequisite to examination. Legal status of rules and regulations.

June 8, 1938.

Miss Cordelia Hoeflin, R. N.,
Secretary, Indiana State Board Examination
and Registration of Nurses,
301 State House,
Indianapolis, Indiana.

Dear Madam:

Receipt is acknowledged of your letter of recent date requesting an official opinion on the following questions:

"We wish your interpretation of the clause in our law under section 4. Under this section does this board have the power to set the educational requirements of four years of high school or more for matriculation to accredited schools of nursing in Indiana?"
"Do any requirements made by this board have the same legal status as any provision or clause in the Indiana Nurse Practice Act?"

The "section 4" to which you refer is Section 4, Chapter 182, of the Acts of 1921, as amended by Section 1, Chapter 105 of the Acts of 1929 (Burns' Indiana Statutes Annotated, 1933, section 63-905), which reads as follows:

"Educational requirements—Training schools.—The state board of examination and registration of nurses is authorized to draw up and establish at its annual meeting a schedule of the minimum educational requirements and record them in a book kept for that purpose as provided for in this Act which applicants for examination to practice nursing must comply with before they shall be entitled to an examination for such license, but any such requirements which said board shall prescribe after the taking effect of this Act shall not affect students of nursing who are already in training on June 1, 1921. Nor shall any change in the schedule of requirements hereafter adopted affect the right of any student nurse to adhere for a term of three (3) consecutive years to the schedule in effect at the time he or she entered training, unless such student so elects. Students of nursing who are already in training on June 1, 1923, shall not be required to have more than one (1) year of high school education. Each applicant for examination in addition to complying with the requirements as set forth in this Act by the state board of examination and registration of nurses, shall furnish satisfactory evidence to the board that he or she is twenty-one (21) years of age and of good moral character, and has been graduated from a training school for nurses connected with a hospital approved by the board, where a suitable course of three (3) years' instruction is given. Two (2) years of such training shall be spent in a hospital or hospitals and one (1) year or a part thereof may be spent in recognized colleges, universities or normal schools, or with public health nursing organizations, subject to the approval of the state board of examination and registration of nurses. Such board is also authorized to prescribe and
establish at its annual meeting a schedule of the minimum requirements and rules for the recognition of training schools and hospitals as set forth in this Act so as to keep these requirements in line with the modern and progressive methods of nursing. All such schedules of requirements for nurses' training schools and hospitals for the training of nurses shall be recorded by the secretary of the board in a book kept for that purpose. (Acts 1921, ch. 182, sec. 4, p. 470; 1929, ch. 105, sec. 1, p. 314.)”

The only portion of this section which affects your inquiries is the first part thereof which is repeated for emphasis:

“The state board of examination and registration of nurses is authorized to draw up and establish at its annual meeting a schedule of the minimum educational requirements and record them in a book kept for that purpose as provided for in this Act which applicants for examination to practice nursing must comply with before they shall be entitled to an examination for such license * * *.”

From the language last above quoted, it is obvious that the Legislature granted your board authority to establish, at its annual meetings a schedule of minimum educational requirements.

That such a grant by the Legislature was a proper one within the meaning of the constitution, is no longer open to question.

Carroll Perfumers, Inc. v. State, — Ind. —, 7 N. E. (2d) 970;

Dunn, Auditor, et al. v. City of Indianapolis, 208 Ind. 630;

Wallace v. Feehan, 206 Ind. 522;


While it is true that such requirements established by the board pursuant to statutory authority must be reasonable, Wallace v. Feehan, supra; Blue v. Beach, supra; I do not believe it can be successfully asserted that requiring four years of high school training can be deemed unreasonable. It is
unnecessary to point out that educational requirements in the professions are being constantly raised. Especially is this true in those professions which deal with the health, safety or welfare of the public.

I have disregarded that portion of your inquiry which would require more than four years of high school education in as much as the entire high school course can be, and usually is, completed in four years.

Section 28-3413, Burns' Indiana Statutes Annotated 1933.

Turning again to the section of the statute above quoted, it will be noted that:

"The board * * * is authorized to draw up and establish * * * minimum educational requirements * * * which applicants for examination to practice nursing must comply with before they shall be entitled to an examination for such license."

It will thus be seen that the power of the board is to refuse an examination if the applicant has not complied with the prescribed educational requirements; not to make these requirements a prerequisite to matriculation in an accredited school.

With regard to your second question I call your attention to the case of Wallace v. Feehan, supra, page 533, which recites:

"It is obvious from the foregoing that this court has recognized that the General Assembly can confer upon administrative boards the authority to make rules and regulations which have the force of statutory enactments * * * such rules and regulations as may be adopted must be reasonably appropriate and calculated to carry out the legislative purpose and must be entirely within the power conferred upon such agency * * *".

See also Blue v. Beach, supra, pages 130 and 131 and cases there cited.

In conclusion it is my opinion that:

1. The board has power at its annual meeting to set educational requirements of four years of high school as a prerequisite to taking an examination for a license.
2. The board does not have authority to adopt such requirements as a prerequisite for matriculation to accredited schools of nursing in Indiana.

3. Requirements made by the board have the same legal status as any provisions or clauses in the Indiana Nurse Practice Act if they are reasonably appropriate to carry out the legislative purpose and are entirely within the powers conferred upon the board.

ARCHITECTS, STATE BOARD OF: Whether registered architects may certify plans of which he is not the author.

June 8, 1938.

Hon. Leighton Bowers,
Secretary, Indiana State Board of
Registration for Architects,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you request an official opinion as to whether the practice by a registered architect of certifying, or attaching his seal, and otherwise assuming authorship of plans and specifications made by others not registered, would constitute a violation of the provisions of "The Indiana Architectural Act."

From other parts of your letter, I assume that when you refer to "plans and specifications made by others not registered" you do not have reference to draftsmen, students, clerks of works, superintendents and other employees of those lawfully practicing as registered architects, who act under the instruction, control or supervision of their employers, but that your question is limited to that class of cases where a registered architect causes his seal to be affixed to plans and specifications, or drawings, of which he is not the author and which have not been made under his personal supervision.

Thus limited, I am of the opinion that the affixing of the registered architect’s seal to such plans and specifications would be a violation of the provisions of "The Indiana Architectural Act." In fact, the Act seems to so expressly provide in section 68-126 of Burns’ Indiana Statutes Annotated, 1933,