as the other provisions of the act, it is clear that the Legislature intended, and has made ample provisions for, each agency there designated to take all necessary steps to effectuate and expedite the purposes of the statute.

When these provisions are applied to your renewal statute, there appears to be no conflict in the application of the provisions of the two statutes as your statute on renewal of nurses' licenses only requires an application for renewal of license to be mailed by your Board "on or before September 1" for the period beginning the following January 1. It further requires such renewal applications, with the required renewal fee, to be returned to your Board "on or before December 31 of such year," for the period beginning the following January 1.

I am, therefore, of the opinion that your Board is not required to issue a certificate of renewal of license prior to October 1, 1961, for the 1962 calendar year, and that, if such renewal certificates are issued after October 1, 1961, they must be for a two-year period and require payment of a two-year renewal fee.

It is my further opinion that application forms for renewal of such licenses must be mailed to persons requiring renewal of their licenses on or before September 1, 1961, such renewal application form to provide for a two-year renewal upon payment of fees for such two-year period.

OFFICIAL OPINION NO. 12

April 3, 1961

Honorable Matthew E. Welsh
Governor of Indiana
206 State House
Indianapolis, Indiana

Dear Governor Welsh:

You have requested my opinion as to the legal status of House Enrolled Act No. 376, passed by the recent General Assembly, and you have forwarded to me the following written statement received by you from the office of the Secretary

of State concerning the handling of that Enrolled Act. I therefore assume that you do not take exception to any statement of fact therein, and the conclusion to be drawn by me is of course limited to these facts.

> "About 9: A. M., March 10, 1961, Mr. Jack New, Executive Secretary to the Governor, deposited with the Secretary of State House Enrolled Act no. 376, which had been approved by the Governor on March 9, 1961, which was placed on file and given Chapter no. 237.
>
> "About 4:30 P. M. on the same day Mr. New requested H. 376, be returned to the Governor.
>
> "I contacted the Attorney General's office and talked to Mr. Steers, he stated that if the Governor requested the return of the printed Act we could do so and should keep a record of what had occurred. Based upon this information H. 376 was turned over to Mr. New about 4:45 P. M. March 10, 1961.
>
> /s/ *"Kathleen Cleveland*
> Kathleen Cleveland
> Secretary of State Office"

The question of law is this: When an Enrolled Act, duly passed by the General Assembly, has been approved by the Governor and deposited with the Secretary of State within five (5) days following the adjournment of the General Assembly, will the physical return of the document to the office of the Governor, and its retention by him, affect the status of the Act and the duty of the Secretary of State to publish the same?

The process of legislation is provided in the Constitution of Indiana. Your function as to approval of the bills which have passed the General Assembly, and your filing of the same with the Secretary of State is provided in Article 5, Section 14 thereof, as follows:

> "Every bill which shall have passed the General Assembly, shall be presented to the Governor; if he approve, he shall sign it * * * If any bill shall not be

> returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law, without his signature, unless the general adjournment shall prevent its return; in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of Secretary of State; who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor, within two days next previous to the final adjournment of the General Assembly."

It should be noted that if you received the Enrolled Act in question prior to Sunday, March 5th (during the first 59 days of the session of the General Assembly), it would have become a law in any event since you did not file objections to it with the Secretary of State.

> Constitution of Indiana, Art. 5, Sec. 14;
>
> State *ex rel.* White v. Grant Superior Court *et al.* (1930), 202 Ind. 197, 172 N. E. 897.

However, it is my understanding that you received it on the 61st day, March 6, 1961, and thereafter signed the same and filed it with the Secretary of State.

There is no specific statutory or constitutional authority for a return of an Enrolled Act from the Secretary of State to the Governor, and the legal effect of your prior approval of the Enrolled Act duly passed by the General Assembly and your initial deposit of the same with the Secretary of State could not be affected by subsequent action of the Secretary of State, with or without authority, in the absence of some provision in the law for such an effect. The Secretary of State continued to be responsible for the Enrolled Act, and your possession was his possession.

> See: State *ex rel.* White v. Grant Superior Court *et al.* (1930), 202 Ind. 197, 172 N. E. 897.

There has been no similar situation ruled upon by the Supreme Court of Indiana, since in this case the Enrolled Act is not to be found in the office of the Secretary of State, but rather is in your possession after having been actually approved and filed with the Secretary of State. However, there are two general statements made by our Supreme Court which I believe to be controlling in the absence of contrary Indiana authority on exactly similar facts. In the case of Tarlton v. Peggs (1862), 18 Ind. 24, at pages 26 and 27, the Court said:

> "Among other duties devolved upon the Secretary of State, is that of keeping and preserving the manuscripts containing the enrolled acts, &c., of the General Assembly, &c. 1 R. S. 435. As this officer is thus, by the fundamental and statute law, made the custodian of recently passed acts of the Legislature—his office is the place where the citizen should apply for official information in reference to such laws; both as to the time at which they shall take effect, and the contents thereof; it would seem that when acts of the Legislative department have, as in this instance, passed into the hands of this custodian, that they should be regarded as having thus far passed through the ordeal provided by the constitution. In other words, it should be presumed that the Governor has discharged his official duty, and, after due consideration, had concluded to file no objections to the proposed law, and that from thence forward his constitutional right to object no longer exists, and, if no other objection intervened, they should be regarded as operative."

In the case of Mogilner v. Metropolitan Plan Commission of Marion County *et al.* (1957), 236 Ind. 298, 321, 140 N. E. (2d) 220, the Court further stated:

> "Once an enrolled act is authenticated by the presiding officers of the Indiana General Assembly, signed by the Governor, and filed in the office of the Secretary of State, under the law of this state the validity of its enactment may be questioned only for fraud."

It is therefore my opinion that House Enrolled Act No. 376 was duly enacted when it was received by the Secretary of

State. There was no emergency clause, and therefore the act will not be in effect until published by the Secretary of State, including the distribution of the same together with all of the enactments of this recent session of the General Assembly of Indiana.

OFFICIAL OPINION NO. 13

April 5, 1961

Mr. David Cohen, Chairman
State Highway Commission
11th Floor, State Office Building
Indianapolis 4, Indiana

Dear Mr. Cohen:

This is in reply to your request for an Official Opinion stated as follows:

> "Now that Senate Bill No. 136 has been passed and has become a law with the effective date April 15, 1961, by virtue of an emergency clause * * *
>
> "* * * I would like to have your opinion as to what limits there are in unrepealed laws and in Senate Bill No. 136 on the power of the Commission created under Senate Bill No. 136 to delegate authority."

Your question is directed to the power of the Highway Commission to delegate powers which have been granted them in Senate Enrolled Act No. 136, being Chapter 201 of the Acts of 1961. The following statement in regard to Public Administrative Law is generally followed by all states as a basic premise in regard to the further delegation of powers delegated by the Legislature.

> "* * * Apart from statute, whether administrative officers in whom certain powers are vested or upon whom certain duties are imposed may deputize others to exercise such powers or perform such duties usually depends upon whether the particular act or duty sought to be delegated is ministerial, on the one hand, or, on the other, discretionary or quasi-judicial. Merely min-