

construction that there is no provision for acceptance in the first instance would make null and void the first part of this section providing for transfer upon the petition of a majority of the electors. Therefore, we are constrained to hold that the provision for acceptance applies in both cases.

In the first sentence in Section 4696 G. C. the word "may" is used as permissive and in the second sentence the word "shall" is mandatory. This same sentence uses the term "board of education" in the singular, thus limiting the mandatory feature to the board making the transfer.

If the acceptance by the board of education applies in both instances, the word "may", as used in the third sentence could not be held to mean "may" when a majority of a petition is filed, and "shall" when a seventy-five per cent petition is filed. The place of the acceptance of both the majority petition and the seventy-five per cent petition leads to the conclusion that it is discretionary with the accepting board in both cases.

It is therefore my opinion that the words "may accept", as used in the third sentence of Section 4696, do not make it mandatory upon the county board of education to accept territory transferred to it by another county board of education.

In Volume 2, at page 357, Opinions of the Attorney General for 1921, will be found an opinion which would seem to hold that it is mandatory upon the county board of education to whom territory is transferred to accept same. It will be noted that in the question submitted it was presumed that it was obligatory upon the county board of education to accept, and the question is whether it requires a petition of seventy-five per cent. of the electors to make it obligatory to accept transfers. The question is answered in a single paragraph, and it is believed that if the question had been whether or not it was obligatory upon the county board of education to accept a transfer, it would not have been answered in the manner in which it was. Therefore, that opinion is modified to the extent that it is in conflict with this opinion.

Respectfully,

C. C. CRABBE,

Attorney-General.

2118.

CIVIL SERVICE—ACTUAL PERIOD OF THE WAR WITH SPAIN AND
WAR WITH THE CENTRAL POWERS OF EUROPE—SECTION 486-10,
GENERAL CODE, CONSTRUED.

SYLLABUS:

- (1) *The war with the Central Powers of Europe ended in contemplation of law on July 2, 1921, upon the ratification of the treaty by the senate.*
- (2) *The Spanish-American war ended with the ratification of the treaty of peace which was on February 6, 1899.*
- (3) *Any soldier, sailor, marine or Red Cross nurse who served in the army, navy or hospital service of the United States during the time in which the wars*

above referred to were in progress, being honorably discharged and a resident of Ohio, is entitled to the exemption provided in Section 486-10 of the General Code.

COLUMBUS, OHIO, December 31, 1924.

Civil Service Commission of Ohio, Columbus, Ohio.

Gentlemen:—

In your recent communication you request my written opinion upon the following:

“Section 486-10 of the General Code reads in part as follows:

‘Any soldier, sailor, marine or Red Cross nurse who has served in the army or navy or hospital service of the United States in the war of the Rebellion, the war with Spain, or the war with the Central Powers of Europe who has been honorably discharged therefrom and is a resident of Ohio, may file with the civil service commission a certificate of service and honorable discharge, whereupon his name shall be placed upon an eligible list by the commission, from which eligible list he may be appointed to any position in the civil service of the state which such appointing power may deem him qualified to fill.’

In the Spanish-American War, according to our information, Congress declared war April 21, 1898, Senate ratified the treaty with Spain February 6, 1899, and the President signed the treaty February 10, 1899, and in the World War Congress declared war April 6, 1917, the armistice was signed November 11, 1918, upon which date hostilities were actually terminated but the treaty was not actually signed before July, 1921.

We have received several applications of ex-service men to be placed upon the Veterans’ Register in accordance with the provisions of Section 486-10 of the Civil Service Law, who enlisted in the service of the United States subsequent to the cessation of hostilities but prior to July, 1921. We would respectively desire your opinion as to the actual period of the war with Spain and the war with the Central Powers of Europe within the meaning of Section 486-10 of the General Code.”

Section 486-10 to which you refer, in so far as your question is concerned, in substance provides that any soldier who has served in the army, navy or hospital service of the United States in the war with Spain or in the war with the Central Powers of Europe who has been honorably discharged therefrom, and is a resident of Ohio, is entitled to the benefits of being placed upon the civil service list without an examination.

At the outset it must be remembered that the power to declare war under the provisions of Article 1, Section 8, Clause 12 of the Federal Constitution is vested in Congress. With respect to the war with the Central Powers of Europe, in so far as the United States participated therein, it will be noted that Congress declared war against Germany on April 6, 1917. On December 7th of the same year war was declared against Austria Hungary. In this declaration of war the usual language which in substance authorized and directed the President “to employ the entire naval and military forces of the United States and the resources of the government; and to bring the conflict to a successful termination”, etc., was used. From the provisions of the above language it will be apparent that anyone who was properly a member of any branch of the naval or military forces of the country was, theoretically speaking, in the war. This must be true because by reason of his service he

was subject to call at any time to prosecute the war in any capacity in which his superior officers determined.

This being true, it must necessarily follow that he was in the war for the period which the war terminated. This will then bring us to the real question which you present: When did the war between the United States and the Central Powers end?

There is an interesting case in this respect found in 256 Fed. 707, *U. S. vs. Hicks*. In this case there was a criminal prosecution instituted in December, 1918. Under a statute which because of the provisions thereof were effective "for the duration of the war", it was contended by the defense that the war was ended on November 11, 1918, and that the defendant could not legally be found guilty of the offense charged. The court in its opinion referred to the President's declaration to congress that the war ended on November 11, 1918, and concluded that this statement should be accepted as *prima facie* correct until events show the contrary, and upon this theory the case was reversed and a new trial granted. It was pointed out that if at the time the case was re-tried and other evidence in reference to the duration of the war was available, in conflict with the President's Proclamation, it could be taken into consideration at the time of the trial. It was pointed out that it was a criminal statute and should be literally construed in favor of the defendant.

However, while this case is somewhat interesting, it affords no basis as a precedent for the reason that the determination therein seems to be in direct conflict with the Supreme Court of the United States upon a similar question.

In the case of *Hamilton, Collector, vs. Kentucky Distilleries Co.*, 40 Sup. Ct. Rep., 106, the question of when the war ended in connection with the war time prohibition act was considered. While the case considered by said court differed in many respects from the case before us, it is believed that in so far as the same applies to the present situation the following quotation from the court's opinion sums up the law:

"In the absence of specific provision to the contrary, the period of war has been held to extend to the ratification of the treaty of peace or the proclamation of peace."

The opinion, in support of these contentions, cites, among others, *Hijo vs. U. S.*, 194 U. S. 315. The latter case is an interesting one and deals with the question of when the Spanish-American war ended, and in unequivocal language states:

"A state of war did not in law cease until the ratification * * * of the treaty of peace."

It is clearly pointed out in this opinion that the protocol or truce does not terminate war, but such action is a suspension of armies or ceasing of hostilities, and that hostilities may re-commence without a new declaration of war.

The act of July 2, 1921, among other things, provides:

"The state of war declared to exist between the Imperial German Government and the United States of America by the joint resolution of Congress approved April 6, 1917, is hereby declared at an end."

Sec. 10384 Barnes Fed. Code. Supp.

Said act further provides:

"The state of war declared to exist between the Imperial and Royal

Austro-Hungarian Government and the United States of America by the joint resolution of Congress approved December 7, 1917, is hereby declared at an end."

Sec. 10386 Barnes Fed. Code, Supp.

From the foregoing citations and discussion it is the conclusion of this department that:

(1) The war with the Central Powers of Europe ended in contemplation of law on July 2, 1921, upon the ratification of the treaty by the senate.

(2) The Spanish-American war ended with the ratification of the treaty of peace which was on February 6, 1899.

(3) Any soldier, sailor, marine or Red Cross nurse who served in the army, navy or hospital service of the United States during the time in which the wars above referred to were in progress, being honorably discharged and a resident of Ohio, is entitled to the exemption provided in Section 486-10 of the General Code.

Respectfully,

C. C. CRABBE,

Attorney General.

2119.

APPROVAL, BONDS OF HARRISON TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, \$2,000.00, SCHOOL IMPROVEMENTS.

COLUMBUS, OHIO, December 31, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2120.

APPROVAL, BONDS OF ROYALTON TOWNSHIP, CUYAHOGA COUNTY, \$4,889.85, FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, December 31, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.