

Opinion No. 45-4799

October 2, 1945

BY: C. C. McCULLOH, Attorney General

TO: J. B. Mitchell, Director Drivers' License Division Bureau of Revenue P. O. Box 1686 Santa Fe, New Mexico

{*140} Your letter dated September 28, 1945 refers to sub-section (i) of Section 68-305 of the 1941 Compilation as amended by Chapter 42, Laws of 1945, and you inquire what is the meaning of the phrase, "for the duration of the present war and for six months thereafter."

Subsection (i) of this Act was added to the Section in 1945 and provides as follows:

"Provided that a person over the age of seventeen (17) years who is certified by the State Transportation Director as being a school bus driver may be issued a Chauffer's license for the duration of the present war and for six (6) months there after."

The matter of termination of emergency war legislation, both federal and state, is one of great importance at the present time and legal principles applicable to federal emergency legislation would also be applicable to state emergency legislation.

On September 1, 1945, the Attorney General of the United States made a report to the President concerning {*141} the termination of federal emergency legislation. Since this report and letter to the President states most of the authorities involved and, in my opinion, is a correct interpretation of the law, I am taking the liberty of quoting the same here:

"First of all, it should be borne in mind that the war powers of the President and the Congress do not automatically cease upon the termination of actual fighting. As the Supreme Court said in *Stewart v. Kahn*, 11 Wall. 493, at 507: '(The war power) * * * is not limited to victories in the field and the dispersion of the insurgent forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress.' See also *Hamilton v. Kentucky Distilleries Co.*, 251 U.S. 146.

The broad basis of governmental power on which the various emergency and wartime statutes rest cannot, therefore, be said to have been terminated by recent developments, including the unconditional surrender of our enemies. Questions do arise at the present state, however, with regard to the time which the Congress has specified in individual statutes as being the termination date of the powers therein conferred. As will appear in the attached compilation, certain of the wartime statutes are made effective only "in time of war," or "during the present war," or "for the duration of the war." Still other expressions may be found of similar character.

Speaking generally, I believe that statutes of the type just mentioned should be considered as effective until a formal state of peace has been restored, unless some earlier termination date is made effective by appropriate governmental action. In *Hamilton v. Kentucky Distilleries Co.*, supra, Mr. Justice Brandeis, speaking for the court, said: 'In the absence of specific provisions 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.' Again, in *Commercial Cable Co. v. Burleson*, 255 Fed. 99, 104, Judge Learned Hand rejected the contention that certain wartime powers conferred on the President in the First World War had terminated with the Armistice of November 11, 1918, and added: 'Even if I were to assume that the power were only coextensive with a state of war, a state of war still existed. It is the treaty which terminates the war.' See also *Kahn v. Anderson*, 255 U.S. 1, 10; *Ware v. Hylton*, 3 Dall. 199, 236; 22 Op. A. G. 190 (1898). It is perhaps unnecessary to add that the Congress can at any time, in response to changed conditions, repeal or amend any wartime statute or group of statutes.

"I turn to another group of statutes: those which are to be terminated 'upon the cessation of hostilities, as proclaimed by the President.' Speaking once more in general terms, I believe that a provision of this type should be interpreted to refer to a formal proclamation, issued after you have determined that the facts warrant such action. Any less formal action on your part would not in my opinion be given by the courts the legal effect of terminating a wartime statute, in the absence of proof in the document itself that it was your intention so to do. See *Hamilton v. Kentucky Co.*, supra."

I am also advised that the Attorney General of Kansas and the Attorney General of California have been called upon to render opinions pertaining to this same question and in both these states the opinions have been in conformity with the opinion of the United States Attorney General.

{*142} For the reasons stated, I am, therefore, of the opinion that subsection (i) remains in force until the same is terminated by the Legislature or until the war officially ends by a proclamation of the President or a joint resolution of the Congress of the United States.