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the language would have been held to mean a different thing.

Smith v. The State (1867), 28 Ind. 321;

State *ex rel.* Baker v. Grange (1929), 200 Ind. 506, 165 N. E. 239;

Department of State Revenue v. Crown Develop. Co. (1952), 231 Ind. 449, 109 N. E. (2d) 426;

Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4814, p. 358."

From the foregoing, I am of the opinion such Resolution and any rule to like effect adopted by either of said commissions would be invalid and not within the authority of said commissions since the statute limits the minimum age of a child admitted to such classes to those who have attained three years of age, and a child less than three years of age is ineligible to attend such classes. If any further authority in this respect is deemed advisable or necessary it should be by an amendment of the statute and not by rule or construction.

OFFICIAL OPINION NO. 38

July 7, 1958

Hon. Joda G. Newsom, Chairman
State Board of Tax Commissioners
Room 404 State House
Indianapolis, Indiana

Dear Mr. Newsom:

You have asked my Official Opinion concerning the charging of fees by county auditors under certain circumstances. Your letter making that request is as follows:

"We respectfully request your official opinion and interpretation in regard to the following excerpt from Section 3, Chap. 307 of the Acts of the 90th session of the Indiana General Assembly approved March 14, 1957.

" 'For each application filed pursuant to the provisions of this act, county auditors shall, on behalf of their respective counties, collect a fee of fifty cents (50¢), which fee shall be accounted for and paid into the county general fund at the close of each month, in the same manner as are other fees due the county and no other fee or fees shall be charged by county auditors or employees of their offices either for filing or preparing such application: Provided, *That any financial institution, which is licensed or chartered by the department of financial institutions, or any licensed real estate broker, shall not be required to pay such fee on applications, properly executed and notarized, which are filed in multiple list of twenty-five or more.*' (writer's emphasis)

"In regard to 'any financial institution which is licensed or chartered by the department of financial institutions,' does this refer exclusively to those institutions which are licensed or chartered by the Indiana Department of Financial Institutions or to *all financial institutions*, including National Banks and National Loan Associations, which we understand are licensed or chartered by an agency of the Federal Government and as such are not responsible in any way to the Indiana Department of Financial Institutions, as such department was established by Chap. 40 of Acts of General Assembly in 1933 as amended."

The section of the act which you quote is found in Burns' (1957 Supp.), Section 64-211. The above section concerns the payment of a 50¢ fee to the county auditor for the filing of mortgage exemptions. As the portion which you quote in your letter indicates, this fee is required to be paid by everyone who files a mortgage exemption except licensed real estate brokers and financial institutions, licensed or chartered by the Department of Financial Institutions, when filing multiple lists of 25 or more.

The Department of Financial Institutions is a creature of statute in Indiana, Acts of 1933, Ch. 40, as found in Burns'

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(1950 Repl.), Section 18-201 *et seq.* I do not deem it necessary to discuss all the institutions covered by this act, except to say that it does not include any financial institutions chartered by the Federal Government.

While there is a possibility that the constitutionality of charging a fee to federally chartered institutions and not to state chartered institutions might be raised, I do not deem it advisable to discuss this question in this opinion.

I find that there is no ambiguity in the statute. The answer to your question is: The section of the statute which you underline does refer exclusively to institutions chartered by the Indiana Department of Financial Institutions and does not apply to all financial institutions. I find that the language of the statute admits of no construction and clearly states that only financial institutions which are licensed or chartered by the Department of Financial Institutions are excluded from paying the fifty cents (50¢) fee. Therefore, other financial institutions, not licensed or chartered by the Department of Financial Institutions, must pay the fee. This means National Banks and National Loan Associations must pay the fee.

OFFICIAL OPINION NO. 39

July 9, 1958

Mr. T. M. Hindman
State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Hindman:

This is in response to your letter of June 17, 1958, in which you request an Official Opinion concerning the Board of Trustees of the Department of Water Works in Hammond, Indiana.

There are two sets of facts which give rise to your question, and in order to fully understand the problem, these facts should be enumerated. The first situation is as follows:

The four-year appointive term of one member of the Board of Trustees expired, whereupon the mayor reappointed the