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In answer to your first question I am, therefore, of the opinion administrative, clerical, and supervisory personnel for the County Superintendent of Schools office are employed by the County Board of Education. In answer to your second question, I am of the opinion the County Board of Education fixes the salaries of such employees in the office of the County Superintendent of Schools and that their allowance and approval become mandatory upon the Board of County Commissioners and the County Council.

OFFICIAL OPINION NO. 25
April 10, 1958

Mr. Joe McCord, Director
Department of Financial Institutions
410 State House
Indianapolis, Indiana

Dear Mr. McCord:

This is in response to your request for my Official Opinion concerning the application of the 1957 "Currency Exchange Act" to the following questions:

"1. In cases where attorneys, in closing real estate sales, issue their checks for stamps, abstract and recording fees, and distribution of balance of sale price to vendors, would such attorneys be subject to the provisions of the Currency Exchange Act?

"2. If the same acts are performed by a real estate broker, would the broker be liable for a license under the Currency Exchange Act?

"3. Where attorneys prepare income tax returns for clients and write their checks for the amount of tax disclosed, receiving the cash from the client, would they, the attorneys, be subject to the licensing provision of the Currency Exchange Act?

"4. Where an individual, who is not an attorney, prepares income tax returns and receives cash for the amount of tax disclosed on the return and issues his
check to the Internal Revenue Department, would such services render the individual subject to the provisions of the Currency Exchange Act?

"The above questions have been submitted to us by a firm of attorneys and, before attempting to answer them, we would appreciate your official opinion covering them."

It is my further understanding that the firm of attorneys which has submitted these questions to you makes no extra charge for handling the money of their clients or for issuing their own personal checks in payment of the liabilities of such persons.

The law to which the questions relate is the Acts of 1957, Ch. 301, as found in Burns' (1957 Supp.), Section 18-3401 et seq. The title of said act is:

"An Act relating to persons engaged in the business of selling and issuing checks, drafts, money orders, and other instruments for the transmission or payment of money as a service or for a fee or other consideration; providing for the investigation, licensing and regulation of such persons; prescribing penalties and fixing the effective date thereof." (Our emphasis)

Doubtless the questions which you have received arise in part because of the all-inclusive definition of the term "person" as contained in Section 2 of that act [Burns' (1957 Supp.), Section 18-3402], in addition to which the persons and activities described in your query are not expressly exempted from the act in Section 4 [Burns' (1957 Supp.), Section 18-3404], which itemizes the persons and organizations to which the act does not apply.

However, it is basic that said act can apply only to the class of persons includable in the above-quoted title, being those who are "engaged in the business of selling and issuing checks, drafts, money orders, and other instruments for the transmission or payment of money as a service or for a fee or other consideration; * * *." Section 3 of that act, Burns' (1957 Supp.), Section 18-3403, which defines what constitutes a violation of the act and Section 17 of such act, Burns' (1957
Supp.), Section 18-3417, which provides penalties for violations of the act, conform to the title and evidence a legislative intent that such act apply only to such persons as are "engaged in the business" as described in said title.

The phrase "engaged in the business of" is not expressly defined in the Currency Exchange Act. In such a situation, the courts have stated as a rule of statutory construction that the Legislature will be deemed to have adopted the former judicial interpretation of terms in subsequent enactments, unless otherwise provided. As stated in Indiana Trust Co. v. Griffith (1911), 176 Ind. 643, 651, 95 N. E. 573:

"* * * for if the legislature uses words that have received a judicial construction, they are presumed to be used in that sense, unless the contrary intent can be gathered from the statute." (Citing authorities)

The phrase "engaged in the business of" has been the subject of judicial interpretation on several occasions. The meaning attributed to that phrase by the courts is well summarized in the case of Snyder v. Heinrichs (1944), 115 Ind. App. 129, 55 N. E. (2d) 332. In said case the court was considering the question of whether a tavern keeper who loaned a patron $200 and had previously loaned money to other customers and friends was engaged in the business of making loans of $300 or less so as to be governed by the regulatory provisions of the Small Loan Act. In that case, in holding that such person was not so engaged in the business of making such loans, our Indiana Appellate Court stated: (115 Ind. App. 131 to 133)

"It is apparent that this act has application only to persons, firms or corporations engaged in the business of making loans of $300 or less. In Vandalia R. Co. v. Stillwell (1914), 181 Ind. 267, 291, 104 N. E. 289, we find the word ‘business’ defined as ‘that which occupies the time, attention or labor, of men for the purposes of profit or improvement, as their principal concern.’ This definition is in accord with that universally adopted by the courts in construing statutes pertaining to ‘business’ and its regulation, or to persons ‘engaged in business’ or ‘engaged in the business of,’ etc. The United States Circuit Court of Appeals in Roseland v. Phister
Mfg. Co. (1942), 125 F. (2d) 417, 419, in commenting on the word ‘business’ as used in the Clayton Act authorizing recovery of treble damages for injuries to business by combinations in restraint of trade, has this to say: ‘The word business . . . signifies ordinarily that which habitually busies or engages, the time, attention or labor, as a principal serious concern or interest. In a somewhat more truly economic, legal, and industrial sense, it includes that which occupies the time, attention, and labor of men for the purpose of livelihood or profit—persistent human efforts which have for their end pecuniary reward. It denotes “the employment or occupation in which a person is engaged to procure a living . . .”’ That our own court has adopted this meaning of the word ‘business,’ as used in the very act now under consideration, is indicated by the following quotation from Stevens v. Grossman (1935), 100 Ind. App. 417, 420, 196 N. E. 123: ‘There is nothing in the stipulated facts to indicate that appellee, George Grossman, or his assignor, were in the business of making loans, to the contrary it clearly shows that his assignor was in the contracting business and made no loans whatsoever. Since appellee, George Grossman, or his assignor, were not in the business of making loans it is not necessary for him or them to have a license nor are their acts in the instant case governed by this act.’ In the case at bar there is nothing in the complaint to indicate that the appellee was engaged ‘in the business of making loans of money, credit, goods or things in action in the amount or of the value of three hundred dollars ($300) or less’ and, therefore, a failure to allege the possession of a license under the provisions of the Small Loan Act is not fatal to said complaint and the demurrer thereto was properly overruled.”

In your first and second questions, the attorney or real estate broker is engaged in the activity of closing real estate sales, which activity has long been recognized as and associated with the law practice or real estate business as a regular and usual part of such business. As a normal incident of such activity, oftentimes the entire purchase price is paid to said attorney or real estate broker with the understanding that such persons
issue their checks in payment of documentary stamps, recording fees, abstract bills and for distribution of the balance to the seller. Said acts amount to an accommodation to the client, being merely incidental to and dependent upon the primary purpose of representing a client in a real estate closing.

In your third and fourth questions, the attorney or individual (often an accountant) is engaged in the activity of representing a client as a tax consultant, which activity has long been recognized as and associated with the law practice or accounting business as a regular and usual part of such business. As a normal incident of such activity, some clients (particularly those not having checking accounts) pay the attorney or tax consultant in cash an amount including both the fee for preparing the tax return and also the total amount of the client's liability for federal and gross income tax. After depositing this to an account (usually a firm account), the attorney or tax consultant will issue a check in payment of each of such tax liabilities,—oftentimes filing the return for the client. Said acts likewise amount to an accommodation to the client, being merely incidental to and dependent upon the primary purpose of representing and advising a client in the preparation and filing of his tax returns.

In none of the four situations presented by your inquiry is the person engaged in the independent business of selling and issuing checks. The Currency Exchange Act appears to be directed toward regulating those persons who hold themselves out to the public as offering the services for selling and issuing checks as a separable business and who are not subject to regulation by the Department of Financial Institutions by some other law. While attorneys, real estate brokers and tax consultants could engage in the separable business of selling and issuing checks, it is my opinion that the normal accommodation services about which you inquire do not constitute "engaging in the business of selling and issuing checks" as intended by the Currency Exchange Act and, therefore, are not subject to the provisions of said act.