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2. When the General Assembly has passed an independent enactment providing that it shall be applicable "in all actions," such a repeal or amendment by implication is not so far in disfavor as to authorize the Court to hold that the Legislature did not mean what its words imply.

Pittsburgh, Cincinnati, Chicago & St. Louis R. Co.  
v. Lighthiser (1904), 163 Ind. 247, 260, 261, 71  
N. E. 218;

Watson v. Strohl (1942), 220 Ind. 672, 681, 46 N. E.  
(2d) 204.

Although heretofore we have had statutes and ordinances concerning time and standards of time and certain problems related to such provisions of law, the present question is one of first impression in this state and I am not so presumptuous as to assert that the courts of this state will necessarily reach the same conclusion as my own. It is neither my duty to write the laws nor administratively enforce the Alcoholic Beverage Act, but in view of the provisions of the 1957 Act, above set forth, I am of the opinion that the acts to be performed by the persons subject to the jurisdiction of your agency of the State of Indiana, whether they relate to the opening and closing hours for the sale of alcoholic beverages or the performance of any other acts for which the time is provided by statutes, orders, decrees, rules and regulations, must be performed, as to time, in accordance with the standard of time prescribed in the Acts of 1957 of the General Assembly of the State of Indiana, Chapter 172.

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## OFFICIAL OPINION NO. 10

April 29, 1957

Mr. Joe McCord  
Director, Department of Financial Institutions  
410 State House  
Indianapolis 4, Indiana

Dear Mr. McCord:

This is in reply to your request for my Official Opinion in answer to the following questions:

"1. May a corporation engaged in business as an industrial loan and investment company under a certificate of authority issued by this department, either the investment or non-investment type, establish and operate branch offices?

"In the event you feel that branches may be established by either type of industrial loan and investment companies, or both, we will need to be advised on the following questions:

"2. What limitations or restrictions would the department have authority to impose as to location of such branch or branches, such as within city limits, county or state limits?

"3. Would the corporation proposing to establish a branch be required to apply for a certificate of authority to engage in business at the location of the proposed branch? (See 1944 Opinions of Attorney General, page 182.)

"4. Would the department be required to hold public hearings on these applications to determine whether public necessity exists for such branch?

"5. Would the department be governed by the population limits as set forth in Chapter 79, Acts of 1951, p. 204, in issuing such certificates?"

1. This office has heretofore issued two Official Opinions which have a material bearing upon the questions which you ask; see 1944 O. A. G., page 182, No. 45 and 1945 O. A. G., page 329, No. 82.

The first of these Opinions, 1944 O. A. G., page 182, No. 45, *supra*, considered the whole Industrial Loan and Investment Company Act, Acts of 1935, Ch. 181, as amended, Burns' (1950 Repl.), Section 18-3101 *et seq.*, in the light of the then existing legislation concerning banks and financial institutions, and concluded as follows:

- (1) That the lending and investment functions permitted a corporation under the Industrial Loan and Investment Company Act were severable.

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- (2) That a corporation could be authorized and permitted to do a lending business under said Act even though it did not meet the requirements of the Act relating to the issuance of certificates of indebtedness or investment.
- (3) That the provisions of the Act were self-executing in that regard but that, as a matter of administrative policy, restrictive language could be incorporated in the certificate of authority of a corporation which did not meet the capital requirements for doing an investment business to show that said corporation could not engage in such business.
- (4) That an Industrial Loan and Investment Company should obtain a separate certificate of authority for each branch office.

The second Opinion, 1945 O. A. G., page 329, No. 82, *supra*, was supplementary to the first Opinion. It reached the following conclusions:

- (1) That the elements to be considered by the Department of Financial Institutions in passing upon the application of a corporation to engage in business as an Industrial Loan and Investment Company are:
  - (a) The financial standing and character of the incorporators or organizers,
  - (b) The character, qualifications and experience of the officers of the proposed financial institution, and
  - (c) The public necessity for the financial institution in the community in which the proposed financial institution is to be established.
- (2) That a company which because of its capital structure could only operate as a "lending" or "non-investment" company could, by increase of its capital stock and compliance with investment requirements, become an "issuer" or an "investment" type company without the advice or consent of the Department. Therefore, in passing upon an appli-

cation for a certificate of authority the Department should take into consideration the fact that each company incorporated for the purpose of doing an Industrial Loan and Investment Company business is either actually or potentially an "issuer" or "investment" type company.

The Industrial Loan and Investment Company Act has been amended by almost every session of the General Assembly since the foregoing Opinions were issued; see:

Acts of 1947, Ch. 135; Burns' (1950 Repl.), Sections 18-3109, 18-3111, 18-3113;

Acts of 1949, Ch. 229; Burns' (1950 Repl.), Sections 18-3108, 18-3117;

Acts of 1951, Ch. 79; Burns' (1955 Supp.), Sections 18-3104, 18-3121;

Acts of 1955, Ch. 20; Burns' (1955 Supp.), Sections 18-3103, 18-3106, 18-3108, 18-3109, 18-3111, 18-3113.

In 1953 the General Assembly enacted two independent statutes supplementary in nature to the Industrial Loan and Investment Company Act; see:

Acts of 1953, Ch. 46; Burns' (1955 Supp.), Sections 18-3126 to 18-3128;

Acts of 1953, Ch. 61; Burns' (1955 Supp.), Sections 18-3129 to 18-3131.

While an opinion of the Attorney General placing a given construction upon a statute and the so-called "practical construction" of a statute by a State Administrative Agency charged with the execution thereof is not binding upon a Court, nevertheless such a construction is entitled to respect and even great weight when the same has been acquiesced in by the Legislature for a number of its sessions.

Gross Income Tax Div., v. Colpaert Realty Corp. (1952), 231 Ind. 463, 479, 109 N. E. (2d) 415;

Zoercher v. Indiana Associated Telephone Corp. (1937), 211 Ind. 447, 456, 7 N. E. (2d) 282;

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County Department of Public Welfare *et al.* v. Scotts' Estate (1944), 115 Ind. App. 28, 31, 55 N. E. (2d) 337;

Groher, Treasurer *et al.* v. Colgate-Palmolive-Peet Co. (1931), 94 Ind. App. 234, 244, 178 N. E. 242.

I have carefully examined the various amendments to the Industrial Loan and Investment Company Act which have been enacted since the issuance of the 1944 and 1945 Attorney General's Opinions, *supra*, and find that the only amendment affecting the matters considered in said opinions is the Acts of 1951, Ch. 79, Burns' (1955 Supp.), Sections 18-3104 and 18-3121, which read as follows:

*"When authorized by the department in the manner prescribed by sections 25, 26, 27, 28 and 29 of the Indiana Financial Institutions Act and any amendments thereof, any domestic corporation now or hereafter organized under the general corporation laws of the state of Indiana may engage in business as an industrial loan and investment company subject to the limitations and restrictions hereinafter set forth. The department may issue a certificate to any such corporation when authorized by said department to engage in business under this act if the department determines after a hearing that a public necessity exists in the particular city for the type of industrial loan and investment company for which application is made: provided, however, that no such certificate may be issued to engage in business under this act in a city having a population of less than 30,000 inhabitants according to the last preceding United States census, and with respect to cities having a population of 30,000 or more inhabitants, not more than one (1) certificate shall be issued for each 30,000 inhabitants of such city. Such certificates shall state whether such corporation is empowered and authorized to issue, negotiate and sell certificates of investment or indebtedness, or whether it shall not be so empowered and authorized and, if not, shall provide that such corporation shall do business under this act only as limited and restricted by section 20A hereof. No corporation holding any such certifi-*

*cate shall engage in business or exercise any powers, rights or privileges as an industrial loan and investment company in any manner other than that provided in said certificate."* (Our emphasis) Burns' (1955 Supp.), Section 18-3104.

*"Companies which do not have any certificates of indebtedness or investment outstanding shall not be subject to the provisions of sections 5, 8, 9, 10, 11, 12, 13, 14 and 18 of this act. After this amendatory act becomes effective (February 27, 1951), no company now engaged in business under this act as permitted by this section, and no company hereafter authorized so to engage in business under this act, shall at any time thereafter be empowered and authorized to issue, negotiate or sell, or shall issue, negotiate or sell certificates of investment or indebtedness. These restrictions shall not limit the power of such corporations otherwise to borrow money commercially or to issue and sell their capital stock."* (Our emphasis) Burns' (1955 Supp.), Section 18-3121.

The language which I have emphasized above is new matter, added by said amendment; otherwise said sections are unchanged from the original 1935 Industrial Loan and Investment Company Act.

In my opinion the foregoing amendment adopts the construction placed upon the Act by the 1944 and 1945 Attorney General's Opinions insofar as it expressly recognizes the distinction between "non-investment" and "investment" type companies and provides for the issuance of restrictive certificates of authority which must state whether the applicant corporation is authorized to issue and sell certificates of investment or indebtedness or whether it shall not be so empowered and authorized.

The amendment also recognizes the Attorney General's Opinion to the effect that "non-investment" type companies were potentially "investment" type companies and modifies the same by providing that no company engaged in business solely as a lending type company at the time the amendment became effective and no company thereafter authorized to engage in business solely as a lending type company should

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thereafter be authorized to issue or sell certificates of investment or indebtedness, Burns' 18-3121, *supra*, and by further providing that thereafter the Department (in addition to population and other requisites) need determine only whether “\* \* \* a public necessity exists in the particular city for the type of industrial loan and investment company for which application is made \* \* \*.” Burns' 18-3104, *supra*.

In view of this legislative history it appears to me that the Legislature was fully aware of the construction heretofore placed upon the Act by this office and was satisfied with and intended the same to remain unchanged except as expressly provided in the amendment.

Therefore, it is my opinion that Industrial Loan and Investment Companies of either the “non-investment” or “investment” type may establish branch offices but that a separate certificate of authority is required for each branch office.

It has been suggested that no certificate of authority is required for the opening of a branch office since Acts of 1935, Ch. 181, Sec. 6, as amended, Burns' (1955 Supp.), Section 18-3106, provides in part that every industrial loan and investment company :

“\* \* \* shall possess and may exercise all of the powers conferred upon domestic corporations by the general corporation laws of the State of Indiana but only to the extent that the same may be necessary, convenient, or expedient to accomplish the purposes for which it is organized \* \* \*.”

An analogous contention was considered by the Court in Daugherty v. Superior Court of Imperial County (1943), 56 Cal. App. (2d) 851, 133 P. (2d) 827. In that case a corporation formed under the California Industrial Loan Act commenced voluntary dissolution proceedings under the supervision of the county court and as authority for such action, cited the State Industrial Loan Act which in addition to the powers therein enumerated, granted corporations operating under said Act the general powers conferred upon corporations by the State Civil Code, which included provisions for voluntary dissolution.

The Commissioner of Corporations then sought to prohibit said proceedings and contended that dissolution proceedings were under his jurisdiction, supervision and control. The Court held that the Corporation Commissioner's general power of supervision of corporations organized under the Industrial Loan Act was not inconsistent with the Court's power of supervision over voluntary dissolution of such a corporation where the corporation was solvent and had fully complied with all the provisions of the Industrial Loan Act, and, in speaking of the general powers of such a corporation, said:

"These general powers include many which materially affect the manner in which the business of such a corporation may be lawfully conducted. The purpose of the loan act, undoubtedly, was to protect the interests of shareholders, creditors, and all others interested in or affected by the business of the corporation. In view of that purpose it is hardly reasonable to believe that the Legislature intended to limit the prescribed supervision and control to matters arising from the special powers given, and to exclude therefrom all control over the many general powers which would also affect the conduct of the business which the act was designed to regulate. Such a limitation might well interfere with or entirely defeat the end sought to be accomplished. We, therefore, hold that the grant of general powers under the last paragraph of section 4 is governed by the first clause of that section, and that such corporations are given those general powers, 'Subject to the supervision and control of the Corporation Commissioner.'"

The above cited decision was approved in *In re Peoples Finance & Thrift Co. of San Diego* (1943), 61 Cal. App. (2d) 11, 141 P. (2d) 742, and the court further held that the State Corporation Commissioner had jurisdiction under the Industrial Loan Act to take charge of and liquidate a corporation organized thereunder which had failed to make good its capital impairment within 60 days pursuant to the Commissioner's order and commencement of voluntary dissolution proceedings under court supervision could not deprive the Commissioner of such jurisdiction.

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The Indiana statutes relating to Industrial Loan and Investment Companies are similar in wording, intent and purposes to the California statutes and I am, therefore, of the opinion that power of an Industrial Loan and Investment Company to open a branch office, as any other domestic corporation can do, must, nevertheless, be exercised under the supervision and control of the Department of Financial Institutions and that a separate certificate should be obtained for each branch office.

It has also been suggested that Industrial Loan and Investment Companies may not have branch offices at all as there is no statute expressly authorizing Industrial Loan and Investment Companies to operate through branches and that they are governed by the same legal principles as are banks which may not open branches in the absence of express statutory authority; 50 A. L. R. 1340; 136 A. L. R. 471.

It is true that for some purposes, such as taxation, an Industrial Loan and Investment Company may be treated as a Bank, see:

Acts of 1935, Ch. 181, Sec. 21A; Burns' (1950 Repl.),  
Section 18-3123;

Staunton Industrial Loan Corp. v. Commissioner of  
Internal Revenue (1941), 120 F. (2d) 930;

Morris Plan Bank of New Haven v. Thomas S. Smith  
(1942), 125 F. (2d) 440, 139 A. L. R. 1071.

This is not always true however, Community Savings & Loan Co. of Clarksburg v. James, State Tax Comr. (1939), 121 W. Va. 5, 1 S. E. (2d) 617, and would appear to depend upon the wording of the particular statute involved, Board of Commissioners v. Remedial Finance Corp. (1940), 186 Okla. 648, 100 P. (2d) 240; Modern Industrial Bank v. Graves *et al.* (1940), 260 App. Div. 349, 21 N. Y. S. (2d) 329.

Furthermore, an Industrial Loan and Investment Company is not a bank and cannot engage in the banking business or hold itself out as a bank.

Acts of 1929, Ch. 215, Sec. 2; Burns' (1948 Repl.),  
Section 25-201;

Acts of 1935, Ch. 181, Sec. 19; Burns' (1950 Repl.),  
Section 18-3119;

Community Savings & Loan Co. v. James, State Tax Comr., *supra*.

Therefore, I think the rule that banks cannot open branches without express statutory authority is not applicable to Industrial Loan and Investment Companies.

2. As stated above, an Industrial Loan and Investment Company possesses all the powers conferred upon domestic corporations, Burns' 18-3106, *supra*, which would, *unless otherwise limited*, include the power:

"\* \* \* to conduct business in this state and elsewhere; to have one or more offices out of this state \* \* \*."

Acts of 1929, Ch. 215, Sec. 3; Burns' (1948 Repl.), Section 25-202 (b).

Under Acts of 1933, Ch. 40, Sec. 25, as amended, Burns' (1950 Repl.), Section 18-222, the Department of Financial Institutions must, "\* \* \* approve the organization and establishment of such institution in the *city or town* in which the incorporators proposed to establish such institution." Industrial Loan and Investment Companies are subject to said provision by reason of the Acts of 1935, Ch. 181, Sec. 15, Burns' (1950 Repl.), Section 18-3115.

Under Acts of 1935, Ch. 181, Sec. 4, as amended, Burns' 18-3104, *supra*, the Department is required to determine whether "\* \* \* a public necessity exists in the *particular city* for the type of Industrial Loan and Investment Company \* \* \*."

In my opinion the foregoing language is restrictive of the general powers granted corporations under Burns' 25-202, *supra*. The Legislature has twice referred to the establishment of such a corporation *in a city*. Such corporations may only be established in cities of 30,000 inhabitants or more, Burns' 18-3104, *supra*.

In view of the foregoing it appears that the Legislature has considered the location of an Industrial Loan and Investment Company as being on a city-wide basis and, therefore, I think an Industrial Loan and Investment Company may only establish branches in the city in which its principal office is located.

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3. As previously indicated, a corporation proposing to establish a separate branch should obtain a separate certificate for the location of the proposed branch.

4. I assume that the Department of Financial Institutions has followed the conclusions stated in 1944 O. A. G., page 182, No. 45 and 1945 O. A. G., page 329, No. 82, and has conducted its hearings as to public necessity for the issuance of a certificate of authority while under the impression that an additional certificate would be necessary before a branch could be authorized. Therefore, the Department probably would not have taken into consideration the public necessity for an Industrial Loan and Investment Company *with a branch or branches* and I believe a public hearing should be held on each application for a branch office under Burns' 18-3104, *supra*. In any event, local conditions are involved as to the public necessity for a certificate, 1944 O. A. G., pages 189, 190, No. 45, and as these matters are subject to change from time to time, a separate hearing should be held on applications for branches of companies granted certificates of authority for principal offices only. If a new company were to apply for a certificate for a principal office and a certificate for a branch office, I think both matters could be disposed of at a single hearing.

5. As stated above, I believe the 1951 amendment to the Industrial Loan and Investment Company Act (Acts of 1951, Ch. 79, Burns' (1955 Supp.), Sections 18-1304 and 18-3121) was made by a General Assembly which was fully aware of the construction heretofore placed upon said Act by this office; namely, that a separate certificate should be obtained for each branch. Said amendment states positively that no certificate may be issued to engage in business in cities of less than 30,000 inhabitants, and that with respect to cities of more than 30,000 population, not more than one (1) certificate may be issued for each 30,000 inhabitants. Accordingly, I think the Department is governed by the population limits as set forth in said amendment in issuing certificates for branches; see 1951 O. A. G., page 261, No. 86.

In view of the foregoing, my answers to your questions are as follows:

1. A corporation engaged in business as an industrial loan and investment company under a certificate of authority issued

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by your Department, either the investment or non-investment type, may establish and operate branch offices.

2. The branches of an industrial loan and investment company may be established only within the city in which the principal office of such company is located.

3. An industrial loan and investment company proposing to establish a branch is required to apply for a certificate of authority to engage in business at the location of the proposed branch.

4. Your Department is required to hold public hearings on these applications to determine whether public necessity exists for such a branch subject to the exceptions noted in subheading 4, *supra*.

5. The Department of Financial Institutions is governed by the population limits as set forth in Acts of 1951, Ch. 79, Burns' (1955 Supp.), Section 18-3104, *supra*, in issuing such certificates.

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OFFICIAL OPINION NO. 11

May 1, 1957

Honorable Frank A. Lenning  
Secretary of State  
201 State House  
Indianapolis 4, Indiana

Dear Mr. Lenning:

This is in reply to your request for an Official Opinion in which you state that your office has rejected articles of incorporation of a proposed corporation submitted for filing and approval under and pursuant to "The Indiana General Not For Profit Corporation Act," being the Acts of 1935, Ch. 157, as amended, Burns' (1948 Repl.), Section 25-507 *et seq.* The purpose of the proposed corporation, as stated in numerical paragraph 2 of its proposed Articles of Incorporation, is as follows:

"2. The purpose or purposes for which it is formed are as follows: