Dear Sirs and Madam:

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

"Does the Department of Financial Institutions have the power to order discontinuance of collection of payments on shares and payment on loans by a designated member of a credit union whose regular post of duty is in the same city as the treasurer's office, but is in a different building?"

Your letter further discloses that the question is submitted for and on behalf of the State Merit Service Credit Union, whose eligible membership is comprised of employees of the Department of Public Welfare, Employment Security Division, State Personnel Bureau and the State Board of Health, all being state agencies whose administrative offices are located in the City of Indianapolis, Marion County, Indiana.

This credit union was organized on or about February 16, 1944, and from my investigation of the file thereof, in the custody of the Department of Financial Institutions, it appears that the application submitted, as required by law, indicated the mailing address and office of the credit union as being 141 South Meridian Street, Indianapolis, Indiana. Said application further represented to the Department of Financial Institutions that there would be no branch office or sub-station activity carried on by the credit union. From my investigation, it appears that at the time of its incorporation all of the
state agencies, whose employees constituted the eligible membership of the credit union, maintained offices at 141 South Meridian Street, Indianapolis, Indiana, with the exception of the State Board of Health. Due to the growth of said agencies and their need for greater office space, their offices have become scattered so that at present, in addition to the above address, these employees now occupy quarters at different addresses where the state agency for whom they work is located, including the following addresses: 30 East Georgia Street, 11 South Capitol Avenue, 311 West Washington Street and 1330 West Michigan Street, all in the City of Indianapolis, Marion County, Indiana. In order to afford on-the-spot service to the membership of the credit union, your letter states that key personnel of the various state agencies above mentioned, excepting only at the 311 West Washington Street location, were designated to accept funds for and on behalf of the credit union, which are taken to the Treasurer's Office at 141 South Meridian Street, each day or every other day. No books or records are maintained other than at the Treasurer's Office.

Your letter states that on July 6, 1957, the Department of Financial Institutions ordered that all transactions of the credit union take place at 141 South Meridian Street after September 6, 1957, and that thereafter the credit union shall not accept payments on shares or loans by a member of the credit union except at the office of the credit union at 141 South Meridian Street.

It should be noted that pursuant to the provisions of the Acts of 1933, Ch. 40, Sec. 3, as amended, as found in Burns' (1950 Repl.), Section 18-103(a), a credit union is within the definition of the term "financial institution," whether it be organized or reorganized under the provisions of the current "Indiana Financial Institutions Act," or organized under the provisions of any law enacted prior to the passage of said Act—credit unions thus being under the jurisdiction of the Department of Financial Institutions. The Department of Financial Institutions is a state agency whose powers are of a regulatory nature, including the determination as to what is a safe or an unsafe manner and what is a safe or an unsafe condition for conducting and transacting business by any financial institution to which the Act is applicable. See Acts of 1933, Ch. 40, Sec. 10(c), as amended, as found in Burns'
(1950 Repl.), Section 18-207(c). The present personnel of the Department of Financial Institutions are, of course, not bound by the standards of previous boards as to what is or is not a safe manner for conducting business and what is or is not a safe condition for a financial institution. Clearly the Department of Financial Institutions would be remiss in its duty if it were knowingly to allow an unsafe practice to continue, no matter how long such had been allowed by previous boards. Among its clear duties is that of protecting the financial welfare of the persons having interests in the credit union and it is within its right and duty to stop a practice which may endanger the institution’s funds, the ultimate interest of which is in the individual members comprising the credit union. In this respect, the membership of the credit union does not alone have the power to determine what is safe for its members; rather it is the duty of the Department of Financial Institutions, within statutory bounds, to ultimately control this matter.

From the above-cited statutory provisions, there is no doubt but that the Department of Financial Institutions has the power to determine what is a safe or an unsafe condition for the transaction of the business of financial institutions under its jurisdiction and to order the cessation of any practice found in its opinion to be unsound. From the facts stated in your inquiry, it appears that there is justification for such a determination by the Department of Financial Institutions that the practices about which you inquire are not in the best interests of the safe condition of the credit union involved. In addition to the office of the credit union at 141 South Meridian Street in Indianapolis, you state that transactions are carried on at three other locations and that no books or records are maintained at said other locations as to the amount of funds received, the date of receipt, the person from whom received and the purpose for which the payment was made. Further, your letter fails to disclose in what manner the persons designated to accept these payments are legally responsible to the credit union and whether they are bonded. Your letter also fails to disclose the means by which the funds are safeguarded, especially in the event they are held overnight as is implied, since you state that the funds are taken to 141 South Meridian Street each day or every other day.
From the foregoing, it appears that there is justification for the Department's determination that the practices carried on during the past at these locations, other than at 141 South Meridian Street, should be terminated in the interest of establishing a safe condition for the conduct of the business of the credit union.

Another basis upon which to justify the order of the Department of Financial Institutions concerns the question as to whether the operations at the locations other than 141 South Meridian Street may be construed as branch office activity. Reference is made to 1939 O. A. G., page 31, in which, on February 16, 1939, the then Attorney General was of the opinion that credit unions could not establish branch offices. Since that time, there has been no amendment to the Credit Union Law to authorize such branches, and such having been the ruling of this office for the past eighteen years, it must be construed that the Legislature has acquiesced. The ruling of a state agency or state officer acquiesced in for a long period of time, is entitled to great weight in determining legislative intent. [See Indiana Department of State Revenue v. Colpaert Realty Corp. (1952), 231 Ind. 463, 478, 479, 109 N. E. (2d) 415 and cases there cited.]

While credit unions are not, strictly speaking, banks, it may be noted by way of analogy that public policy does not favor the establishment of branches by state banks, and such are not permitted in the absence of express statutory authority—there being a marked distinction between banks and private corporations generally in this regard. [50 A. L. R. 1340.] It is to be noted with respect to state banks that there is express statutory authority for the establishment of branch banks as found in the Acts of 1933, Ch. 40, Sec. 224, as amended, and as found in Burns' (1957 Supp.), Section 18-1707. Likewise, there is specific statutory authority for the establishment of branches of building and loan associations. See Acts of 1955, Ch. 40, as found in Burns' (1957 Supp.), Section 18-2159 et seq. No comparable provision appears in the Credit Union Law. There would appear to be no logic to regulating the establishment of branches of banks and building and loan associations by the Department of Financial Institutions and requiring its approval for the establishment of such and to permit credit unions to maintain branch offices.
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indiscriminately, without statutory authority, and without approval or regulation by the very department charged with providing standards for the safe conduct of their business.

Although there does not appear to be any Indiana statutory definition as to what activity constitutes a branch office, it seems to me that the operations carried on at the locations other than 141 South Meridian Street may reasonably be considered as being branch office operations. Your letter indicates that disbursement functions of the credit union have also been effected at said locations until March 4, 1957, on which date said practice was discontinued by order of the Department of Financial Institutions, in which order the credit union has acquiesced. Even so, the collection of payments on shares of stock and the collection of payments on loans would constitute a major portion of the activity normally carried on by the office of the credit union. I well recognize that the discontinuance of the activity now ordered terminated by the department may work an inconvenience on some members of the credit union, but suggest that such order should be considered as for the protection of all members as a whole. Their rights in the credit union are not abridged by said order nor is the right of the credit union to collect the monies due it on loans prevented and certainly other means of effecting the operations, such as through the mails and making said payments at the office of the credit union are still open to all concerned.

It follows from what has heretofore been said, and it is my opinion that the Department of Financial Institutions does have the power to order the discontinuance of collection of payments on shares and payments of loans at locations other than at the office of the credit union. This opinion is based upon my understanding that the arrangement for collecting said funds at locations other than at the office of the credit union is a practice established by the credit union—in substance representing to its members that the collecting personnel are agents of the credit union and that payment to them is equivalent to payment to the credit union. By contrast, a member could, of course, delegate any person as the member's agent to transmit funds to the office of the credit union. If such a practice be established, the credit union should make it clear that such personnel are not its agents, that the risk of
loss is upon the individual member so paying and that the credit union absolves itself from all responsibility for the funds until received by it at its office at 141 South Meridian Street, Indianapolis.

OFFICIAL OPINION NO. 37

September 6, 1957

The Honorable Crawford Parker
Lieutenant Governor
Room 332, State House
Indianapolis, Indiana

Dear Mr. Parker:

This is in response to your letter in which you request an Official Opinion and which reads as follows:

“A number of incorporated towns, in the process of adopting a zoning ordinance, are uncertain of the statutory requirements pertaining to the form and manner of public notice required for such ordinance bearing a penalty clause.

“The City and Towns Act of 1905 (Ch. 129, Sec. 31) provides an alternative posting of notice if no newspaper is published in the town. Chapter 96, Acts of 1927 (Burns' 49-702-49-704) prescribes publication of ordinances two times in two newspapers. Ch. 41, Acts of 1953 (An Act concerning the preparation and publication of town ordinances) allows towns to adopt a new ordinance without requiring legal notice, if the ordinance is included in a code published in pamphlet form, and further allows plats, diagrams and illustrations to be incorporated into the code by reference.

“Cities are required generally to follow the same procedure except that they have specific authorization (Burns' 48-1417, Acts 1947, Ch. 125) to incorporate maps, diagrams, charts, etc., by reference only in the legal advertisement.

“The problems faced by incorporated towns are these: