

OPINION 8

2. Such lists, not being public records, it is my opinion that it is discretionary with the Commissioner as to what should be done with such lists as to posting.

OFFICIAL OPINION NO. 8

March 1, 1954

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

Dear Sir:

Your letter addressed to the Attorney General has been received in which you request an Official Opinion on the following questions:

“1. May an industrial loan and investment company transfer its Certificate of Authority to another corporation?”

“2. May the Certificate of Authority be transferred to a foreign corporation by virtue of a merger?”

The Industrial Loan and Investment Act of 1935, Acts of 1935, Ch. 181, Sec. 4, as found in Burns' Indiana Statutes (1950 Repl.), Section 18-3104 *et seq.*, by Section 4, authorizes such business as follows:

“When authorized by the department in the manner prescribed by sections 25, 26, 27, 28, and 29 [§§ 18-222—18-226] 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.”

It is to be noted that the intent of the Legislature to exclude foreign corporations is made doubly sure in that section. Not only is the word “domestic” expressly included, but “organ-

ized under the general corporation laws of the state of Indiana" carries the same import. Thus, a Certificate of Authority may not be issued to a foreign corporation, and in my opinion, may not be held by a foreign corporation.

A similar result was reached by the then Attorney General, James A. Emmert, in an Official Opinion of this office in 1944 O. A. G., page 182 at 187, No. 45.

The Acts of 1933, Ch. 40, Sec. 28, as found in Burns' Indiana Statutes (1950 Repl.), Section 18-225 provides:

"Upon the filing of such application, the department shall make, or cause to be made, a careful investigation and examination relative to the financial standing and character of the incorporators or organizers, the character, and qualifications and experience of the officers of the proposed financial institution, of the public necessity for the financial institution in the community in which such proposed financial institution is to be established, and, if the institution is to be a bank or trust company, of the adequacy of the proposed capital thereof; and if the members of the department, after the hearing, as hereinbefore provided, shall determine either of such questions unfavorably to such applicants, the application shall not be approved, and if all such questions be determined favorably, the application shall be approved."

We see by Section 28 that there are numerous factors that the department may take into consideration in the determination of whether an application for a Certificate of Authority should be approved. There are no provisions for the transfer by one company to another. The Certificate of Authority so issued is, therefore, comparable to a license, and as such, is not transferable.

It has been held that licenses are not contractual in nature and are continuously subject to legislative control.

Stone, Superintendent v. Fritts (1907), 169 Ind. 361, 82 N. E. 792.

It is clearly the law that public officers may exercise only such powers as are expressly authorized by statute.

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State ex rel. Workman v. Goldthait (1909), 172 Ind. 210, 216, 217, 87 N. E. 133;

State ex rel. Bingham v. Home Brewing Co. (1914), 182 Ind. 75, 91, 105 N. E. 909;

Department of Insurance v. Church Members Relief Assn. (1940), 217 Ind. 58, 60, 26 N. E. (2d) 51.

An exception applies to the above general rule only where certain incidental powers are implied for the purpose of carrying out the express powers given a public officer.

43 Am. Jur., Public Officers, Sec. 250, p. 69;
State ex rel. Workman v. Goldthait, *supra*.

No such inferred powers for such transfer are granted by the express provisions of the Act.

Some suggestion has been made that the Department of Financial Institutions necessarily has implied powers to approve transfers of Certificates of Authority from one corporate entity to another, under the provisions of Sections 117 and 125 of The Indiana Financial Institutions Act, as found in Burns' Indiana Statutes (1950 Repl.), Sections 18-704 and 18-712, respectively, and have to do with mergers and consolidations. However, an examination of said Sections of the statute show that they refer to the mergers and consolidations authorized by Section 114 of said Act, same being Burns' Indiana Statutes (1950 Repl.), Section 18-701. Under this latter Section, industrial loan and investment companies are not among the type of financial institutions there specifically enumerated. Due to such fact that the Legislature has seen fit to enumerate the particular classes or types of financial institutions to which those sections of the statute are applicable, it would not, in my opinion, include industrial loan and investment companies as they are not the subject of that particular legislation.

It is therefore my opinion :

1. An industrial loan and investment company may not transfer its Certificate of Authority to another company.
2. It is my further opinion that a foreign corporation being expressly unauthorized to be issued a Certificate of Authority may not hold a Certificate of Authority.