OPINION 3

This interpretation is further borne out by the fact that both of the pertinent suspension provisions are part of the same act as passed in 1947.

"Judgment" was defined by Acts of 1947, Ch. 159, as amended in 1951, as found in Burns' Indiana Statutes (1952 Repl.), Section 47-1045 as follows:

"Any judgment, except a judgment rendered against this state or any political subdivision thereof or any municipality therein, which shall have become final by expiration without appeal of the time within which appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States."

It is therefore my opinion that the Commissioner of the Bureau of Motor Vehicles has the authority to suspend the driving privileges of a person in whose behalf an SR-21 has been filed if a final judgment remains unsatisfied against him for a period existing thirty (30) days. An SR-21 is sufficient proof of compliance with the Safety Responsibility Law in so far as Section 4, as found in Burns' Indiana Statutes (1952 Repl.), Section 47-1047, supra, is concerned, but it is not sufficient compliance within the meaning of the provisions of Section 6, as found in Burns' Indiana Statutes (1952 Repl.), Section 47-1049, supra.

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OFFICIAL OPINION NO. 3

February 4, 1954

Mr. C. V. Ogborn, Administrator
Licensed Employment Agencies
Indiana Department of State Revenue
141 South Meridian Street
Indianapolis, Indiana

Dear Mr. Ogborn:

This is in reply to your letter requesting an Official Opinion which is as follows:

"Within the past few months Agencies have been doing business in the State of Indiana who employ
workers on their payroll and furnish these workers to employers at an agreed rate per hour, supposedly to fill extra jobs on a temporary basis. These Agencies claim they are not employment agencies under their interpretation of the Indiana Employment Agency Law of 1927 as amended in 1951. Established Licensed Employment Agencies in the State claim they should be licensed as many of their placements stay with the employer on a permanent basis.

"Please give this office your opinion on whether this type of Agency is a service or an Employment Agency doing business for hire or with a view to profit as defined in the law."

The Employment Agency Licensing Act, same being Acts of 1927, Ch. 25, as found in Burns' Indiana Statutes (1952 Repl.), Section 40-701 et seq., provides for the licensing of persons, firms or corporations who shall open, operate or maintain an employment agency in this state. The apparent purpose of said act is to provide protection to persons seeking employment through an employment agency, acting as a broker, said act contemplating employment of an applicant by a person or firm other than the employment agency. For instance, among the protections afforded applicants for employment, is the provision of Chapter 25, Section 6, supra, as found in Burns' Indiana Statutes (1952 Repl.), Section 40-706 that the employment agency must file a schedule of fees with the state, and notify all applicants for employment of the employment agency's schedule of fees, charges and commissions.

The act itself contains its own definition of the term "employment agency," which, in part, is as follows:

"The term 'employment agency' as used in this act (§§ 40-701—40-718) is defined and interpreted to mean any person, firm or corporation, who for hire or with a view to profit, shall undertake or offer to secure employment or help through the medium of card, circular, pamphlet or any medium whatsoever, or through the display of a sign or bulletin, offer to secure employment or help, or give information as to where employment or
help may be secured. * * " Acts of 1927, Ch. 25, Sec. 11, as amended in 1951, as found in Burns' Indiana Statutes (1952 Repl.), Section 40-711.

It appears from the facts furnished me, that said agencies do not have as their purpose the procurement of employment for their applicants, although in a broad sense, these agencies do provide help for other persons or firms. These agencies appear to place their applicants upon their own payrolls, said applicants being the employees of the agency, rather than the employees of persons or firms using their services. Said agencies have listed a wide variety of classifications of their employees, and the services of such employees may be furnished for a few hours on any given date, or for a matter of weeks, or even months. The persons or firms using the services of said employees do not appear to have any contract of employment with the individual persons furnishing the services, the contract involved being between such persons or firms, and the agency. Payment for such services are made direct to the agency by the persons or firms using the services of the agency’s employee, which, in turn, pays the individual person rendering the service, after deducting the agency’s commission. Said employees of the agency, such as secretaries, stenographers and bookkeepers, appear to be under the direct control of the agency, rather than under the control of the person or firm using their services. The individual stenographer, secretary or bookkeeper is not under any contract of employment with the person or firm using such service.

It is the contention of these agencies that they are not employment agencies, but rather service agencies. They furnish their own employees' services to other persons or firms operating similarly to a public accounting firm.

Based upon the facts supplied me I do not believe these agencies are employment agencies for the following reasons: Among the provisions of the Employment Agency Licensing Act, supra, is Section 14, as found in Burns' Indiana Statutes (1952 Repl.), Section 40-714, which makes it unlawful for an employment agency to do anything to cause the discharge of any person employed in any legitimate service. This section of the act is intended to apply to situations in which there is a prospective contract of employment between an employer and
the applicant for employment, and once employment is secured, the agency cannot control the actions of the employer or those of the employee. The operating facts of the agencies concerned indicate that there is no contract of employment with an independent concern and establish that these agencies themselves have the control of and right to terminate the services of their employees at the agency’s will, or transfer such persons to other places of service. For this reason, it is my opinion that the applicants of the agencies involved, when accepted by the agency, become the agency’s employees, under the control, management and supervision of the agency. These agencies do not act as procurer in securing employment for the applicant, but rather maintain a staff of their own employees, classified to furnish services to other persons or firms, for and on behalf of the agency.

See Mid-Continent Petroleum Corp. v. Vicars et al. (1943), 221 Ind. 387, 47 N. E. (2d) 972; In re Moore (1933), 97 Ind. App. 492, 187 N. E. 219; and 1927 O. A. G., page 340.

From the foregoing it is, therefore, my opinion that this type of agency is not an employment agency doing business for hire or with a view to profit as defined in the Employment Agency Licensing Act, supra.

OFFICIAL OPINION NO. 4

February 9, 1954

General H. A. Doherty
Adjutant General, State of Indiana
212 State House
Indianapolis, Indiana

Dear General Doherty:

This is in reply to your letter of 5 January, 1954, in which you inquire as to the following:

For what purposes may funds derived from the sale of armories or real estate be expended?