

1953 O. A. G.

OFFICIAL OPINION NO. 1

January 5, 1953.

Mr. Paul Cyr,
Deputy Secretary of State,
201 State House,
Indianapolis, Indiana.

Dear Sir:

I have your recent communication of December 24th, requesting an official opinion with respect to the approval or rejection of Articles of Incorporation and have tendered to your office for filing under the General Corporation Act, that part of your communication which partially relates to the matter in question is as follows:

“We have learned the following facts which may be of some assistance at arriving at your conclusion. There seems to be at the present time two individuals in Indiana who lay claim to the title ‘Miss Indiana’ as a result of some form of beauty contest. The organization which submits these Articles is a National organization using the title ‘Miss Universe’ beauty pageant. We understand that this National association has complete control of the rules and regulations of the ‘Miss Universe’ contest. This organization encourages groups in each state to incorporate for the purpose of having exclusive legal control of their particular contest.

“We further understand that there is a second group who promotes and handles a particular contest in Indiana that ultimately results in a National winner in Atlantic City. Each of these two groups at the present time have a person designated as ‘Miss Indiana.’”

We have examined your letter and a copy of the proposed Articles of Incorporation and note the following: The proposed corporation is something new in the State of Indiana and is novel and unique. It is apparent that what the proponents of the corporation have in mind is to incorporate for the purpose of managing and promoting an annual contest of young ladies who desire to be chosen annually as “Miss Indiana.” The plan proposed does not set out the method by which

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the contest is to be handled or who is to participate in the election, or what the basis of the selection shall be, or the requirements of the contestants to participate. We doubt the ability of one particular group of citizens of Indiana who, by incorporating, can obtain a monopoly of such contest.

The laws with respect to the incorporation of companies is pretty general and can be found in Burns' Revised Statutes, 1948 Replacement, in Sec. 25-201, and is in the following language, to wit.

“Corporations may be organized for pecuniary profit under the act for any lawful business purpose or purposes, except rural loan and savings associations, credit unions or corporations for the conduct of a banking, railroad, insurance, surety, trust, safe deposit, mortgage guaranty or building and loan business.”

You will observe that such corporations may be organized for any lawful purpose or purposes excepting rural loan and savings associations, credit unions, conduct of banking business, railroads, insurance, trust companies or safe deposit, mortgage guaranty or building and loan association. The purposes outlined by the Articles tendered to you for filing is not embraced in any of these exceptions. In this connection, however, you should consider Sec. 23 of Art. 1 of the Constitution of Indiana, which provides:

“The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.”

If you should accept these Articles of Incorporation and allow the group named therein to incorporate under the law they would have the sole authority to conduct any contests looking to the selection of a “Miss Indiana,” and no other group of citizens of the State would be entitled to conduct such a contest or do the things outlined in the Articles of Incorporation. The General Assembly of the State of Indiana has adopted the corporation law to which reference is made above, and it is clearly apparent that if the citizens tendering these Articles of Incorporation obtain your approval and a charter

issued to them, they would be obtaining privileges and immunities which, upon the same terms, are not equally available to all the citizens, so that if the incorporation act is to be construed as allowing this sort of a corporation, it becomes questionable if the act permitting it would violate the constitutional inhibition.

The Courts have held that a construction shall not be placed upon any statute that would render the same unconstitutional if any other reasonable construction could be placed upon such statute.

We are of the opinion that a statute giving the exclusive use to one group of citizens to use the name of the State of Indiana as a part of its corporate name would be clearly against public policy. The dignity of the name of the sovereign State of Indiana should not be permitted used for financial gain.

Another matter which should be considered is a question of the taxation of such a corporation. Under the provisions of the tendered Articles of Incorporation, the corporation would operate as interstate and the question of the collection of gross income tax, that a corporation should pay, would be indeed*difficult, if not impossible, to determine as no plan is set out in the Articles by which the source of revenue could be determined.

Therefore, considering the several angles of this unique plan, we are of the opinion that you should reject the tendered Articles and not give them your approval.