

## OPINION 33

It is, therefore, my opinion, taking into consideration the above quoted excerpts of statutes, cases and authorities that the writing of Dependency Coverage in Group Life Insurance was and is now prohibited by the statute authorizing the writing of Group Life Insurance coverage.

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### OFFICIAL OPINION NO. 33

May 8, 1953.

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

Dear Sir:

Your letter of March 20, 1953 has been received and reads as follows:

"I have been requested by the Members of the Department of Financial Institutions to ask for your official opinion covering the following questions in connection with the establishment of branch banks under the provisions of Section 224 (18-1701) of the Indiana Financial Institutions Act:

"1. Does the Department of Financial Institutions have the authority or legal right to approve an application for the establishment of a branch bank to be located in an unincorporated community just outside the city limits of the city in which the applying bank is located and in the same county?

"2. Does the Department of Financial Institutions have the legal right to approve an application for the establishment of a branch bank in an unincorporated town located in the same county in which the applying bank is located?"

The applicable statute is Section 224, Chapter 40, Acts 1933, as amended by Section 30, Chapter 33, Acts 1937, the same being Section 18-1707, Burns' Indiana Statutes Annotated (1950 Repl.) which reads as follows:

“Except as hereinafter otherwise provided, any bank or trust company may open or establish a branch bank in any city or town within the limits of the county in which the principal office of such bank or trust company is located, if there is no bank or trust company located in such city or town. Any bank or trust company which is located in a city the population of which exceeds fifty thousand (50,000) inhabitants according to the last preceding United States census, may open within the corporate limits of such city, one (1) branch bank for each two hundred and twenty-five thousand dollars (\$225,000) of the capital and surplus of such bank or trust company actually paid in and unimpaired; or any bank or trust company which is located in a city the population of which exceeds twenty thousand (20,000) but does not exceed fifty thousand (50,000) inhabitants, according to the last preceding United States census, may open within the corporate limits of such city not nearer than one (1) mile to any existing bank or trust company, one (1) branch bank for each two hundred thousand dollars (\$200,000) of the capital and surplus of such bank or trust company actually paid in and unimpaired. No branch bank shall be opened or established without first having obtained the written approval of the department. Any bank or trust company desiring to establish one (1) or more branches shall file a written application therefor, in such form, and containing such information as may be prescribed by the department. The department is hereby authorized, in its discretion, to approve or disapprove such application. Before the department shall approve or disapprove any application for the establishment of a branch bank, as herein authorized, it shall ascertain and determine to its satisfaction that the public convenience and advantage will be subserved and promoted by the opening or establishment of a branch bank in the community in which it is proposed to establish such branch bank; that there is no bank or trust company located in the city or town in which it is proposed to establish such branch bank, if the application is for a permit to open or establish a branch bank in a city or town other than that within which the applicant bank

## OPINION 33

or trust company is located; that the applicant bank or trust company has satisfied the capital and surplus requirements, as hereinabove provided, if application is made by a bank or trust company located in a city the population of which exceeds fifty thousand (50,000) inhabitants, according to the last preceding United States census, for a permit to open or establish a branch bank in such city; and that the welfare of any other bank already established in such city will not be jeopardized."

Under the provisions of Section 18-1708, Burns' Indiana Statutes Annotated (1950 Repl.), same being Section 225 of the above 1933 Statute, it is made a misdemeanor for any person to violate the provisions of the above quoted section of the statute with a penal provision of from three hundred dollars (\$300.00) to one thousand dollars (\$1,000) and imprisonment of not less than thirty (30) days nor more than one (1) year.

Since the above provisions make a violation of the establishment of a branch bank a criminal offense, and the statute in itself being restrictive in nature, any construction thereof must be strictly made and against the statute, and in favor of the individual in cases of any ambiguity.

Subject to the approval of the Department of Financial Institutions, the first sentence in the above quoted statute permits the establishment of a branch bank in any "city" or "town" within the limits of the county in which the principal office of such bank or trust company is located, if there is no bank or trust company located in such city or town. This provision is the one peculiarly applicable to your question.

Section 1-201, Burns' Indiana Statutes Annotated (1946 Repl.) makes the following provisions regarding the construction of statutes:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words

and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

An examination of the definition in both the considered decisions of the Supreme Court of this state and of the other states seem to unanimously define a "city" as a large town and when an attempt is made to define the word "town" there seems to be somewhat of a lack of uniformity in such definitions. However the weight of authorities seem to be in line with the following decisions:

An unincorporated community, having three retail liquor saloons, a church, school, fire department, stores, boarding houses, about five hundred residences, various streets and alleys, and population of fifteen hundred to eighteen hundred is a "town" within the statute fixing amount of liquor license fees in towns of less than 2,000.

Pollard v. Montana Liquor Control Board (1942),  
114 Mont. 44, 131 P. (2d) 974 to 976.

The word "town" as employed in a state in relation to fixing and operating railroads, means a collection of houses, larger than a village and smaller than a city, and has no reference to territory incorporated as a town under the township organization.

Cleveland C. C. & St. L. Ry. Co. v. Green (1896), 65  
Ill. App. 414, 417.

To like effect see the following authorities:

Bow v. Allentown (1857), 34 N. H. 351, 374, 69 Am.  
Dec. 489;

City of Denver v. Caulehon (1894), 20 Colo. 471, 39  
P. 425;

Russell v. Dyer (1860), 40 N. H. 173, 184, 185.

It has also been held that the word "town" implies the idea of a considerable number of people living in close proximity as distinguished from a rural settlement, but does not necessarily imply incorporation.

OPINION 34

Guadalupe County v. Poth (1914), — Tex. —, 163  
S. W. 1050, 1051.

Also see definitions of the word "town" found in Words and Phrases, Volume 42, pp. 164 to 186.

Therefore it is my opinion that the term "town" used in the statute in question includes an unincorporated as well as an incorporated town. Any community which can be brought within the meaning of the word "town" as herein defined would meet the statutory requirement as to the place where a branch bank may be established. The right to establish a branch bank is purely statutory and, of course, all other statutory requirements would have to be met.

I believe this answers both of your questions.

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OFFICIAL OPINION NO. 34

May 11, 1953.

Mr. R. R. Wickersham, Examiner,  
State Board of Accounts,  
302 State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter of April 30, 1953 has been received requesting an official opinion on the following question:

"Would membership on the School Board of a city and on the Board of Trustees of a county hospital operating under the provisions of Chapter 144, Acts 1917 (22-3215 to 22-3242, Burns' R. S.) be considered lucrative offices within the meaning of the constitution (Art. 2, Sec. 9)?"

Article II, Section 9 of the Constitution of Indiana reads in part as follows:

"No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same