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loan association could not by any subterfuge circumvent the operation of the statute by engaging in such business under the name of some other licensee.

OFFICIAL OPINION NO. 42

June 8, 1953.

Mr. Harold F. Brigham,
Indiana State Library,
140 N. Senate Avenue,
Indianapolis, Indiana.

Dear Mr. Brigham:

I have your letter of May 4, 1953 requesting an official opinion which reads in part as follows:

“What laws were specifically repealed by Chapter 13 of the Acts of 1953 (House Enrolled Act No. 111) when in Section 7 is stated:

“ ‘All laws in conflict herewith are hereby specifically repealed including but not limited to an act known as Chapter 132 of the Acts of the Sixty-Seventh Regular Session of the General Assembly entitled “An Act providing for the extension of library privileges to townships.” ’

“The Act under which New Harmony proposes to extend service to the township is Chapter 119, Acts of 1895. Is this act in conflict with Chapter 13 of the Acts of 1953, Section 7?

“1.

“Where a library in an incorporated town having endowment funds in the total amount of at least \$5,000 created prior to passage of the Library Law of 1947 (Acts 1947, Ch. 321) and was organized under a special act of the Indiana General Assembly, which authorized no tax levies for its support, and such library has and is authorized by its Charter to serve an entire township and neither said township nor said town is otherwise served by a library nor taxed for the support thereof:

“a. May the Board of Trustees of such library elect to have the powers and rights with respect to the management, control, financing, issuance of bonds and levy of taxes of and for said library as are contained and enumerated in the Library Law of 1947 as amended, and at the same time lawfully reserve to said library and its Board of Trustees the exclusive control, management and direction of such library and its property and assets including the exclusive manner of selection of its Trustees as by its by-laws provided?

“b. May the incorporated town in which such library is situated levy a tax for the support of such library if such library elects to accept the provisions of the Library Law of 1947 as amended with the reservations set forth in question 1 a?

“c. May such library contract with the township trustee on consent of the Township Advisory Board for library services in the township outside the said incorporated town, if such library elects to accept the provisions of the Library Law of 1947 as amended with the reservations set forth in question 1 a?

“d. May such library contract with the township trustee on consent of the Township Advisory Board for library service to the entire township including the incorporated town and the township levy a tax on all property within the limits of such township (including the property in incorporated cities) if such library elects to accept the provisions of the Library Law of 1947 as amended with the reservations set forth in question 1 a?

“2.

“Where there exists in an incorporated town a library of the value of \$25,000 or more, including real estate and buildings used for said library, which has been established by private donations for the use and benefit of all the inhabitants of the township in which said library is situated, and where there is no other library in said incorporated town or said township either supported by taxation or serving said town nor township outside the incorporated limits of a town, nor

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the township as a whole, may the Township Advisory Board of such township levy a tax for township funds upon all the taxable property within the township including the taxable property in the cities and incorporated towns within the boundaries of said township under and pursuant to Acts 1895, Ch. 119, as amended by Acts 1933, Ch. 55 [Burns' 1933, Sec. 41-601 (1952 Repl.)].

“3.

“Where the New Harmony Working Men’s Institute for Mutual Instruction, incorporated by special act of the Indiana General Assembly, approved February 15, 1839, and charter amended February 14, 1905, the objects of which are defined to be:

“OBJECTS TO BE PROMOTED

“Section 2. That the objects to be promoted by “The New Harmony Working Men’s Institute” shall be the mutual instruction of its members, and the promotion of useful knowledge by the aid of books, lectures and apparatus; the establishment of a library, art gallery, park, gymnasium, baths, auditorium, museum, industrial and art schools, and like institutions for the use of the people of the town of New Harmony, Posey County, Indiana, and such inhabitants of said County as the by-laws may from time to time provide.’

and in pursuance thereof a library of the value of \$25,000 or more including real estate and buildings used for said purpose, has been established by private donation in the Town of New Harmony, Indiana, for the use of the people of Harmony Township of the Town of New Harmony, Posey County, Indiana, and for the further use as defined by the by-laws of ‘for all other inhabitants of Harmony Township;’ and where there is no tax supported library in said town of New Harmony or in the entire township, may the Township Advisory Board of Harmony Township levy a tax for township funds upon all the taxable property within the township including the taxable property in the cities and incorporated towns within the boundaries of

said township under and pursuant to Acts 1895, Ch. 119, Sec. 1, p. 240, as amended by Acts 1933, Ch. 55 [Burns 1933, Sec. 41-601 (1952 Repl.)].”

In answer to your first inquiry concerning what acts were specifically repealed by Section 7 of Chapter 13 of the Acts of the General Assembly of Indiana of 1953 we find that Chapter 132 of the Acts of the General Assembly of 1911 as amended, as found in Burns' Indiana Statutes Annotated (1952 Repl.), Sections 41-310 and 41-311, were specifically repealed. By amendment the following sections of the Library Law of 1947, which were enacted by the General Assembly of 1947, Chapter 321, were repealed: Section 3, Section 8, Section 12 and Section 15, same being Burns' Indiana Statutes Annotated (1952 Repl.) Sections 41-903, 41-908, 41-912 and 41-915.

As more fully discussed below, it is my opinion that Chapter 119 of the Acts of the General Assembly of 1895 was not repealed by Chapter 13 of the Acts of the General Assembly of 1953.

Chapter 321 of the Acts of the General Assembly of 1947, commonly known as the Library Law of 1947 as amended by Chapter 13 of the Acts of 1953, as found in Burns' Indiana Statutes Annotated, Sections 41-901 through 41-921, in Section 41-904 provides in part as follows:

“Class II libraries: All libraries administered by boards of school trustees or boards of school commissioners; libraries having endowment funds in the total amount of at least five thousand dollars (\$5,000.00), which endowment funds were created prior to the passage of this act; independent township libraries organized prior to the passage of this act; libraries organized under laws which authorized no tax levies for the support thereof; and libraries in cities having a population of 100,000 or more as shown by the last preceding United States census and operating under chapter 79 of the Acts of 1937 (Secs. 28-2062—28-2079). * * *”

As set out in your request, The New Harmony Library, having an endowment fund in the total amount of at least \$5,000.00 which was created prior to the passage of the Li-

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brary Law of 1947 (Acts 1947, Chapter 321) clearly qualifies as a Class II library.

Burns' Indiana Statutes Annotated, Section 41-904, *supra*, further provides in part:

“* * * Libraries in Class II are exempt from the compulsory provisions of this act and will continue to operate and function pursuant to the laws in effect at the time of and prior to the passage of this act, and shall continue to have the power and right to manage, operate, levy taxes, control the finances, and to perform all necessary acts as they can now do under existing laws, * * *.”

The wording of the statute as set out above is clearly indicative of the legislative intent that libraries such as The New Harmony Library qualifying as a Class II library shall be allowed to continue to function and operate under the laws under which they came into existence, if they so choose. This is self-evident in itself that Chapter 119 of the Acts of the Indiana General Assembly of 1895 under which The New Harmony Library charter was amended is not repealed or is not in conflict with Section 7 of Chapter 13 of the Acts of the General Assembly of 1953.

Burns' Indiana Statutes Annotated, Section 41-904, *supra*, further provides in part:

“* * * although the boards of trustees of such libraries may elect to have the powers and rights with respect to the management, control, financing, issuance of bonds and levy of taxes of and for said libraries as are contained and enumerated in this act.”

The legislature in the above quoted portion of Section 4 of the Acts of 1947 clearly evidenced their intent that the board of trustees of a Class II library should have the authority to elect to have the powers and rights with respect to management, control, financing, issuance of bonds and levy of taxes as contained and enumerated in the Library Law of 1947 (Acts 1947, Chapter 321) and yet not be subjected to the compulsory provisions of the act in other regards. Therefore, it is clear that the board of trustees of a Class II library has

an alternative from which they may choose. They may proceed under the 1895 Acts (Acts of 1895, Chapter 119) as found in Burns' Indiana Statutes Annotated, Sections 41-601 and 41-602 or under the Library Law of 1947, *supra*.

Section 3 of Chapter 13 of the Acts of the General Assembly of 1953 provides as follows:

"SEC. 3. That section 12 of the above entitled act be amended to read as follows: Sec. 12. When a township, or townships, or part of a township, is contracting with a library * * * which is extending service to a county, or part of a county, or which is inaugurating such service to a county, or part of a county, and when such library * * * comes under the provisions of this act, then the separate tax levy of such township or townships for library purposes shall cease to be levied and such township or townships shall become a part of the county library system, and the tax levy for county library purposes shall be levied over such township or townships as part of the county library district as provided for in this act."

Therefore, if The New Harmony Library contracts with the township trustee for library services in the township outside the said incorporated town, any present tax levy shall cease to be levied and such township shall become a part of the county library system and the tax levied for such county library purposes shall be levied in accordance with the Library Law of 1947, as amended, *supra*. It is to be noted however that the above quoted excerpt of the 1953 amendment is applicable only when a library comes under the provisions of the 1953 act.

Therefore it is my opinion that the answers to your questions are as follows:

1.

(a) The board of trustees of a Class II library may elect to have the powers and rights with respect to the management, control, financing, issuance of bonds, levy of taxes as are contained and enumerated in the Library Law of 1947, as amended, and at the same time lawfully reserve said library and its Board of Trustees' exclusive control, management and direc-

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tion of such library and its property and assets including the exclusive manner of selection of its trustees as its by-laws provide.

(b) An incorporated town in which a Class II library is situated may levy a tax for the support of such library after accepting the provisions of the Library Law of 1947 and still reserve the reservations set forth in question 1 (a).

(c) A library may contract with a township trustee on consent of the Township Advisory Board for library services in the township outside the said incorporated town either before or after electing to accept the provisions of the Library Law of 1947, as amended, with the reservations set forth in question 1 (a).

(d) A library may contract with the township trustee on consent of the Township Advisory Board for library services to the entire township and the township may levy a tax on all property within the limits of such township if such library elects to accept the provisions of the Library Law of 1947, as amended. However, if they do not accept the provisions of the Library Law of 1947, then I believe any taxation must be in pursuance to Chapter 119, of the Acts of the General Assembly of 1895, as amended, as found in Burns' Indiana Statutes Annotated, Section 41-601.

2.

Burns' Indiana Statutes Annotated, Sections 41-601 and 41-603, *supra*, provide that township trustees shall annually levy a tax to be applied by them to the purchase of books and the cost of maintenance for a library in a city which library has been established by private donations.

3.

In order to extend the aforesaid services to the people of Harmony Township, it will be necessary to amend the by-laws to conform to Section 2 of the charter which provides in part as follows:

“* * * such inhabitants of said County as the by-laws may from time to time provide.”