

OPINION 93

4. The fine may be collected in the usual manner as provided for in the payment of all fines and costs and the civil penalties may be collected in a civil action filed by the prosecuting attorney on behalf of the State of Indiana.

5. In answer to your fifth question concerning the statutory provision in regard to the words "action is pending," the intent of the legislature was to designate the particular prosecuting attorney, rather than the time of filing the action to collect the penalty. The statute does not require that the criminal action be pending at the time the civil action is filed.

OFFICIAL OPINION NO. 93

October 19, 1953.

Hon. Crawford Parker,
Secretary of State,
201 State House,
Indianapolis, Indiana.

Dear Mr. Parker:

I have your request for an Official Opinion in which you ask:

"Does Notre Dame have the requisite power and authority under its charter from the Indiana General Assembly to organize a wholly owned profit making subsidiary under the Indiana General Corporation Act of 1929, as amended?"

We assume that your question seeks information as to whether Notre Dame, as a corporation, may act as an incorporator.

A corporation is a legal fiction, an artificial entity, recognized by law and formed by procedure prescribed by law. It is not a natural person.

Tucker v. Binenstock (1933), 310 Pa. 254, 165 A. 247;

Paul v. University Motor Sales Co. (1938), 283 Mich. 587, 287 N. W. 714.

1953 O. A. G.

The General Corporation for Profit Act, Chapter 215, Acts of 1929, the same being Burns' Indiana Statutes Annotated (1948 Repl.), Section 25-213 provides:

"Three (3) or more natural persons of lawful age, at least a majority of whom are citizens of the United States, may form a corporation under this act by complying with the provisions of sections 15 to 17 (Sections 25-214—25-216), inclusive, of this act."

Accordingly, only natural persons can act as incorporators. Notre Dame is not a natural person, but a corporation chartered by the legislature and, therefore, cannot be an incorporator.

It is axiomatic that the laws regulating the organization of a corporation must be complied with in order to create a legal entity.

Porter, Trustee v. The State *ex rel.* Dunkleburg, Jr. (1895), 141 Ind. 488, 40 N. E. 1061;

The Indianapolis Furnace and Mining Company v. Herkimer (1874), 46 Ind. 142.

From the foregoing, it is my opinion that your question should be answered in the negative.

OFFICIAL OPINION NO. 94

October 19, 1953.

Hon. Sam J. Bushemi, Member,
House of Representatives,
3500 Connecticut Avenue,
Gary, Indiana.

Dear Mr. Bushemi:

This is in reply to your letter in which you inquire as to the following:

"Is it legal to issue a transfer for patients studying at Lake County Tuberculosis Hospital when those patients already have a high school diploma?"