

1881 (Special Session), same being Burns' 3-1918), and under the procedure outlined in Chapter 238 of the Acts of 1951, there would be no court process involved.

The commitment procedure anticipated by Chapter 238 is the same procedure outlined in Official Opinion No. 5 and discussed in the case of *In re Mast, supra*. Thus, after commitment, *habeas corpus* would be available by virtue of statutory authority.

It is a well-established rule of statutory construction that, if there is any doubt as to the constitutionality of the statute, the statute must be so construed as to resolve all doubts in favor of the constitutionality. Thus, section 4 must be deemed to be a legislative aid to the inherent authority of police and health officers to restrain dangerously insane persons pending appropriate actions to commit.

On the basis of the foregoing authorities and discussion, it is my opinion that section 4 of chapter 238 of the Acts of 1951 is valid and that persons acting in good faith under its authority do not incur personal liability.

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OFFICIAL OPINION NO. 18

February 18, 1952.

Mr. Joseph McCord, Director,  
Department of Financial Institutions,  
Indianapolis, Ind.

Dear Sir:

I have your request for an Official Opinion which reads as follows:

"This Department is in receipt of an application for the establishment of a trust company in which the proposed incorporators show that, in the event the charter is granted, the institution will engage in trust functions in connection with real estate transactions, involving titles, escrow accounts, etc., only. The institution does not propose to engage in the banking business or handle general trust accounts, such as estate accounts, guardianships or other ordinary trust business.

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“The proposed incorporators in this case have stated that they are desirous of limiting the powers of the institution so as to prohibit the acceptance of deposits from the public and the performance of any other functions pertaining to a general banking business or a general trust business. These limitations, or restrictions would be stated as provisions in the Articles of Incorporation. The Articles of Incorporation would also include a prohibition against amendment of these particular provisions at any time in the future.

“The Members of the Department have requested me to ask for your official opinion as to the position of the Department in this matter. The Members wish to be advised as to whether they have the authority to grant a charter where the applicant wishes to restrict or limit operations to the extent indicated above. They also wish to be advised as to whether the proposed restrictions and limitations would be legal and if future officers and stockholders would be prohibited from changing, or eliminating, such provisions.”

Section 90 of the Financial Institutions Act (1933) as subsequently amended, same being Burns' 18-502, provides in part as follows:

“(a) Every corporation shall have the capacity to act which is possessed by natural persons, but shall have the authority to perform such acts only as are necessary, convenient or expedient to accomplish the purposes for which it is formed and such as are not repugnant to law.

“(b) Subject to any limitations or restrictions imposed by law or by the articles of incorporation, each corporation shall have the following general rights, powers, privileges: \* \* \*”

Section 170 of the Financial Institutions Act, same being Burns' 18-1101, concerning more specific provisions, provides in part as follows:

“In addition to the general rights, privileges and powers conferred by Part 3 (chapters 4 to 10 herein)

of this act, and subject to the limitations and restrictions contained in this act, and in the articles of incorporation, every bank or trust company shall possess and may exercise the rights, privileges and powers hereinafter enumerated in this article."

Sections 171 through 182, found in Burns' 18-1102 through 18-1113, would seem to be governed by this last quoted provision and provides, generally, banking, trusts and other fiduciary powers.

From the basis of these authorities, it is my opinion that any bank or trust company may limit its powers by its Articles of Incorporation to any particular function which it wishes to exercise. Thus, the proposed trust company would have authority to limit its scope of operation as it desires. However, Section 103 of the Financial Institutions Act, as subsequently amended, same being Burns' 18-601, provides as follows:

"Any corporation may, at any time, amend its articles of incorporation, without limitation, if any article so amended is authorized by the provisions of this act or by any amendment thereto as an original article, by complying with the provisions of sections 104 to 113, inclusive of this act."

I find no other provisions of the law which would seem to limit the effect of this Section.

Therefore, it is my opinion that no limitation on the power to amend could validly be included in the Articles of Incorporation and there could be no bar to subsequent amendments extending the power of the proposed trust company. Neither do I find any authority for a conditional or partial approval by the Department.

To summarize, in my opinion the proposed bank or trust company may limit its powers initially, but there is no way to prevent its later extension of powers.