

Acts of 1951 would legalize all payments made before March 1, 1951, but as to the period subsequent to that date, it would require remedial legislation, as well as a validating provision in the amending statute, to cause said act to be applicable to said officials' salaries.

OFFICIAL OPINION NO. 95

October 29, 1951.

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

Dear Sir:

I have your request for an official opinion which reads as follows:

"I have been instructed by the Members of the Department of Financial Institutions to ask for your official opinion relative to a question raised in connection with the provisions of Section 200 (18-1306) of the Indiana Financial Institutions Act as amended.

"Section 200 provides, among other things, that any bank or trust company may make loans, 'to any employee of such bank or trust company in any amount not exceeding in the aggregate, five hundred dollars (\$500.00).'

"In a few instances banks and trust companies have employed individuals who, at the time of employment, have been liable for loans, both directly and indirectly, in these institutions, in amounts in excess of five hundred dollars (\$500.00).

"It has been contended that since these individuals were not employees of the lending bank or trust company at the time credit was extended, the provisions of Section 200 of the Act do not apply in these cases.

"We would appreciate your opinion covering this matter."

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The pertinent portions of section 200 as last amended are as follows:

“Except as otherwise provided in this section, no loan shall be made, directly or indirectly, by any bank or trust company, to any active executive officer, agent or employee thereof. The board of directors may, by resolution, duly entered in the records of proceedings of the board, authorize loans to or extend lines of credit of (a) any employee of such bank or trust company in any amount not exceeding, in the aggregate, five hundred dollars (\$500): * * *

“Any officer or director of any bank or trust company who shall knowingly violate any of the provisions of this section shall be deemed guilty of a felony and on conviction shall be imprisoned in the state prison not less than two (2) years nor more than fourteen (14) years and be fined in any sum not exceeding five thousand dollars (\$5,000).”

It is to be noted that the above quoted portions of section 200 make it a serious criminal offense to lend funds to employees other than as provided in that section.: It is a well established rule of construction that penal statutes are to be construed strictly against the state. They are not to be extended by intendment, and in order for a crime to be committed, the act must fall within the letter as well as the spirit of the law.

Caudill v. State (1946), 224 Ind. 531, 69 N. E. 2d 549;

Loftus v. State (1944), 222 Ind. 139, 52 N. E. 2d 488;

Hindman v. State (1943), 221 Ind. 611, 50 N. E. 2d 913;

Dowd v. Sullivan (1940), 217 Ind. 196, 27 N. E. 2d 82.

Inasmuch as section 200 by its terms applies to the *making* of loans and in view of the rule of construction just stated, it is my opinion that it is not in violation of the statute for a bank to continue loans made to a person not an employee at the time of making the loan but who is subsequently employed by it.