Mr. Charles F. Fleming,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

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

"Chapter 194, Section 5 of the Acts of 1949 at page 635. Provision is made for the filing of articles of amendment by setting forth the requirements of subsections a, b, c, d and e. This section then further provides at Page 636 that

'a corporation may file amended articles in the office of the secretary of state in lieu of the aforesaid articles of amendment. The amended articles, ***, shall contain a statement that they supersede and take the place of the theretofore existing articles of the corporation, and shall also contain all the statements required by this act to be included in original articles.'

"If amended articles, as distinguished from articles of amendment, are offered for filing in the office of the secretary of state, containing the required statements set forth in the 1949 amendment, must such amended articles comply with the requirements for original articles inasmuch as all prior articles are thereby superseded?"

I understand that the fact situation which motivates your request is substantially as follows:

A corporation organized before 1929 accepted the provisions of the 1929 Corporations for Profit Act in 1940. It did not at that time include either the word "corporation" or "incorporated," or any of the abbreviations for said words in its name. It now wishes to file amended articles and you wish to know whether it must include use of the word "corporation" or "incorporated" in its name pursuant to the amended ar-
articles. To understand this problem it is necessary to examine past opinions concerning inclusion of the words "corporation" or "incorporated," etc., in the names of corporations. On July 16, 1929, the then Attorney General, after examining provisions in the Indiana General Corporation Act of 1929, held that a corporation accepting the provisions of said act need not amend its name to meet the requirement that the words "corporation" or "incorporated" be included in its name. In 1941 the then Attorney General was called upon to re-examine this question. In that regard he said as follows:

"The Attorney General's opinion of 1929 holding that such corporations were not required to include said terms in and as a part of their corporate names was based upon the language in the last and concluding clause of Section 4 of the Act of 1929, reading as follows:

'The provisions of this section shall not affect the right of any corporation which is existing under the laws of this state or authorized to transact business in this state at the time this act takes effect to continue the use of its corporate name.'

"Question—Does the language in the sentence above quoted exempt corporations organized under corporation laws prior to said corporation act of 1929 and which elect to accept its provisions from complying with the mandatory part of Section 4, supra, which requires corporations to use as a part of their corporate name the words 'corporation' or 'incorporated' or the abbreviation of either of said terms?

"The foregoing seems to me to be the real question presented by your letter.

"I entertain the opinion that the last above-stated question should be answered in the negative. I have been unable to bring myself to the view entertained by my predecessor in office. Notwithstanding the adherence of the office of the Secretary of State to the former opinion rendered by this office and the practice of attorneys in that office in reorganizing numerous
corporations without the addition of the words 'corporation' or 'incorporated' or the abbreviations of those terms I still find myself unable to believe otherwise than that it was the intention of the legislature that all corporations incorporating under general laws henceforth should use as a part of their corporate names the words or abbreviations above referred to.

"The last concluding sentence of Section 4, above quoted, to my mind very clearly refers to corporations organized under prior acts and existing at the time the said 1929 act became effective and which do not elect to accept the provisions of said Act of 1929. There is an obvious reason for this. To hold that Section 4 was applicable to corporations formed under prior corporation acts and which did not require such corporations to use the words here in question as a part of their corporate names would be to find invalid the 1929 act in respect to such corporations in this particular matter, as you would then have the situation of a law impairing the obligation of an existing contract which, as we all know, is unconstitutional.

"But a wholly different situation is presented where one of such corporations elects to come in under the Act of 1929. Its action in so doing is purely voluntary and without stint of obligation. For this reason, when it does voluntarily decide to come in under said act it must of necessity bind itself to accept all of the terms and provisions of said act. There is no invasion of constitutional rights in this latter situation, but there would be in the instance first cited. Consequently, there is a sound reason for the construction of the sentence first above given as there would be a very unsound reason to make it applicable to corporations which accept the provisions of the Act of 1929.

"Moreover, I am inclined to question the language used in the opening paragraph of Section 4 of said Act of 1929, towit: ‘The corporate name shall include the word “corporation” or “incorporated,” or one of the abbreviations thereof.’ It is my thought that the legislature did not intend that these words or abbreviations should be a part of the corporate name, but only that
they be used in juxtaposition to it to disclose to the public that they deal with a body corporate.

"However, the legislature did use the language above quoted, whatever its intention, but in view of the opinion hereinabove expressed, I do not consider it necessary to pass upon that question.

"As to the practice long indulged by the office of the Secretary of State in allowing corporations to reorganize under and accept the provisions of the Act of 1929, *supra*, I can only suggest that it be discontinued and that from this time on, corporations accepting the Act of 1929, be required to add the word 'Corporation' or 'incorporated,' or either of the abbreviations thereof, if, at the time of acceptance, either of these words or their abbreviations have not been added to their names.

"Nor should this opinion be construed in any way to affect the status of or prejudice those corporations which, in the past, relying on the former opinion of this office and acting in good faith, have reorganized under said Act of 1929, without complying with Section 4, thereof in this respect."

Thus it becomes apparent that in 1940 it was a long accepted administrative interpretation and practice that a corporation accepting the provisions of the 1929 Act need not include the words "corporation" in its name. However, the practice since 1941 has been to require compliance with the provisions as to the names of corporations. It is further to be noted that, as quoted above, the Attorney General in 1941 felt that the status of a corporation which had failed to include these words in its name pursuant to this administrative construction was in no way prejudiced by having so acted in good faith. It is a well established rule of law that administrative interpretations of long standing are entitled to great weight where a court is construing a statute.

Board of Commissioners v. Botting, (1887), 111 Ind. 143, 12 N. E. 151;
Pittsburgh etc. R. Co. v. Hoffman (1928), 200 Ind. 178, 193, 162 N. E. 403;
Zoercher v. Indiana Associated Telephone Corporations (1936), 211 Ind. 447, 456.
It is also interesting to note that in 1947 Section 4 of Chapter 215 of the Acts of 1929, same being Burns 25-203, was amended to make it clear that corporations accepting the provisions of the 1929 Act must meet the requirements of that act as to corporate name. Keeping this in mind it becomes apparent that there is no question as to the status of a corporation such as the one we are considering. There also seems to be no doubt as to its right to adopt amendments to its articles of corporation. The only question is whether Section 5, Chapter 194, of the Acts of 1949, same being Burns 25-225, in providing for amending articles, is so written as to require correction of past deficiencies while adopting amended articles. The pertinent portion of that section is as follows:

"Upon the adoption of any amendment, a corporation may file amended articles in the office of the secretary of state in lieu of the aforesaid articles of amendment. The amended articles, which may differ from the therefofore existing articles in the respects authorized by the resolution of amendment, shall contain a statement that they supersede and take the place of the therefofore existing articles of the corporation, and shall also contain all the statements required by this act to be included in original articles. In lieu of stating the amount of capital with which the corporation will begin business, the amended articles shall state the amount of its capital at the time of filing the amended articles."

(Our emphasis.)

The words used in that requirement are "all statements required by this act * * *." In this regard it is interesting to note the wording of the corporate name provision of the 1929 Act as amended, which is as follows:

"The corporate name of every corporation organized under this act, and of every corporation which, pursuant to article 8, accepts the provisions of this act, shall include the word 'Corporation' or 'Incorporated,' or one of the abbreviations thereof."

The corporation in question is neither organized under the Acts of 1929 nor is it now accepting the provisions of said Act. In using the words "statements required" it would seem
to refer to Section 17 of the original act, same being Burns 25-216, which provides certain matters which must be set out in articles of incorporation.

It is, therefore, my opinion that a corporation filing amended articles must meet all the requirements of Section 17 of the 1929 Act, but as provided in Burns 25-225 may only "* * * differ from the existing articles in the respects authorized by the resolution of amendment, * * *" and inasmuch as the corporation in question has already properly adopted the provisions of the 1929 Act, there is nothing in the provision for adopting amended articles which in any way authorizes or requires a change in the name under which the corporation must operate.

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OFFICIAL OPINION NO. 49

August 28, 1950.

Hon. Hugh W. Abbett, Chairman,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

You have requested my opinion relative to the exemption provision of the Indiana Motor Carrier Act to the Extent that it applies to non-profit, cooperative associations. Your letter lays the ground work for your request by stating that the Indiana Farm Bureau Cooperative Association, Inc. is incorporated under the Indiana Agricultural Cooperative Act and is principally engaged in marketing the products of those member associations and furnishing such associations agricultural supplies and equipment. The member associations consist of approximately eighty-six County Farm Bureau Cooperative Associations located throughout the State, which are likewise organized and incorporated under the Indiana Agricultural Act. Your letter further states that "the County Associations send their trucks to the State Associations' warehouses in Indianapolis to pick up supplies and equipment and it is the desire of the Indiana Farm Bureau Cooperative Association, Inc., to make use of the County Associations' trucking equipment for the transportation of incoming merchandise for