

pany having capital debentures outstanding, to retire any or all of such debentures from reserves or accumulated earnings without regard to the ration (ratio) or capital to deposit liability, provided that such bank or trust company holds cash and/or securities issued or fully guaranteed by the United States Government unpledged in an aggregate amount equal to at least fifty (50) per cent of its total deposit liability."

I am of the opinion this section gives the Department of Financial Institutions authority to require sufficient unimpaired capital and surplus in a private bank for the adequate protection of the depositors.

One of the leading Indiana cases in affirming the right of the legislature to regulate private banking holds:

"The right of banking in all its departments, at common law belonged to the individual citizen, to be exercised at pleasure. It is conceded by counsel, and it is unquestionably settled, that the sovereign authority of the State may regulate and restrain the exercise of such right."

State v. Richcreek (1906), 167 Ind. 217; 77 N. E. 1085.

OFFICIAL OPINION NO. 35

July 2, 1947.

Hon. Thomas E. Bath,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of June 10, 1947 has been received as follows:

"I hereby request an official opinion as to whether the Secretary of State has authority to issue corporate

charters to proposed corporations whose purpose is to engage in the business of funeral directing, embalmers and conducting funerals.”

Section 63-722 Burns' R. S. 1943 Replacement, same being Section 6, Chapter 165, Acts of 1939, provides in part as follows:

“It shall be unlawful for any person to act, directly or indirectly, as an embalmer or funeral director, or to engage in the embalming or funeral directing profession and business, or to hold himself out as so acting or being so engaged, unless and until such person has been licensed by the state board of embalmers and funeral directors, pursuant to the provisions of this act, to so act or to be so engaged. * * *

“On or after the passage date of this act, no funeral home, establishment, or any other place pertaining to funeral directing or the conducting of funerals, shall be established and operated in the state of Indiana under any name other than that of the holder of an Indiana funeral director's license or the holders of Indiana funeral directors' licenses under whose direction and management such establishment is operated and for which such license has been issued. *Natural persons only shall be eligible to apply for a funeral director's license and no person shall hereafter be granted an initial funeral director's license to operate as the full-time funeral director of more than one (1) establishment at one (1) time.* When more than one (1) person propose(s) to engage in the funeral directing business, either as partners or in some other noncorporate association, it shall be necessary for all persons in such partnership or other noncorporate association, regardless of the degree of financial participation, except those who are members of a nonprofit or cooperative association, such as described in subsection (g) of section 4 (§ 63-720) hereof to secure a license to operate as a funeral director from the state board of embalmers and funeral directors: Provided, however, That the owners of any funeral home, mortuary or establishment

which has been licensed prior to the effective date of this act to operate under a firm, trade or corporate name, shall be permitted the continued use of such name and be authorized to transfer and retransfer, sell and resell such funeral home, mortuary or establishment to any Indiana licensed funeral directors and to include as part of the consideration for such transfer or retransfer, sale or resale the continued uses of such firm, trade or corporate name, or any portion thereof which the purchaser or transferee may so desire to use. (Our emphasis).

“* * *

“From and after the effective date of this act, any person desiring to become a licensed embalmer shall submit to the state board of embalmers and funeral directors satisfactory evidence that such person:

“(a) Has attained the age of twenty-one (21) years;

“(b) Has been graduated by an accredited high school;

“(c) Has successfully completed a one (1) year’s course in a recognized college of embalming which is acceptable to and accredited by the board;

“(d) Has filed an application with the board for an examination as to his fitness, on a form prescribed by the board, at a time not later than fifteen (15) days prior to the date set by the board for such examinations and has successfully passed said examination as required by the board in its rules and regulations. Such application shall be accompanied by the fee hereinafter prescribed in this act.

“Embalmers’ licenses heretofore issued by the state board of embalmers and by the state board of embalmers and funeral directors, and which are in effect on the effective date of this act, are hereby continued in full force and effect.”

Section 63-723 Burns' R. S. 1943 Replacement, same being Section 7, Chapter 165, Acts of 1939, provides in part as follows:

"Funeral directors' licenses heretofore issued by the state board of embalmers and funeral directors are hereby canceled and annulled. * * *"

Section 63-720 Burns' R. S. 1943 Replacement, clauses (e) and (f), same being Section 4, Chapter 165, Acts of 1939, read as follows:

"(e) The term 'funeral director's license' shall mean the license issued by the Indiana state board of embalmers and funeral directors to an individual, being a resident of Indiana, for the purpose of licensing him to engage in the profession and business of a funeral director or funeral directing at a designated place and in compliance with the requirements defined, set out and authorized in this act.

"A 'funeral director's license' as used in this act shall be construed to mean a *business-professional license, issued to individuals* for the purposes set forth in this act, and because of the business and health features of such license, the issuance thereof shall be subject to the requirements of this act and whatever requirement or requirements deemed necessary by the board in its rules and regulations to limit the operation thereunder to a designated place within the state of Indiana. Any individual who holds himself out to the public as a funeral director, or who manages, supervises and has a financial interest in the operation of a mortuary, funeral home or funeral business, is required to obtain a funeral director's license according to the provisions of this act.

"(f) The term 'individual' or 'person' shall mean *natural persons only*. The singular shall include the plural and the masculine gender include the feminine." (Our emphasis).

It is a familiar rule of statutory construction that courts will look to the general purpose and scope of the statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567;
 State *ex rel.* Bailey v. Webb (1939), 215 Ind. 609, 612.

When the foregoing sections of the statute are construed in *pari materia* with each other, it is clear that the 1939 Funeral Directors' Act cancelled and annulled all licenses for funeral directors theretofore issued. It permitted those previously licensed, including corporations, to qualify for a new license without examination and to carry on the business in the same manner as previously carried on under the old license. Such corporations, therefore, continued to be licensed under what is known as the "grandfather clause" of said act.

It is equally clear that after the effective date of the 1939 Embalmers and Funeral Directors Statute, the Legislature intended funeral directors' licenses to thereafter be issued only to individuals and partnerships, and to reissue licenses only to those corporations in existence and duly licensed at the time said act became effective, under the grandfather provision of said act.

It has been held in this state that the Legislature may lawfully restrict the practice of medicine and of dentistry to individuals and may deny corporations such privileges.

State *ex rel.* Indiana State Board of Dental Examiners v. Boston System Dentists (1938), 215 Ind. 485, 488.

From the requirements of the statute as to qualifications of embalmers who were to be issued licenses after said act became effective, the conclusion is inevitable that the qualifications are personal and a corporation could not comply with such requirements.

I am, therefore, of the opinion that the Secretary of State of the State of Indiana does not have authority to issue corporate charters to new corporations whose purpose is to engage in the business of funeral directing, embalming or the conducting of funerals.