

ance is had with the provisions of Section 64-312. In this discussion, it is assumed that any obligation issued will not exceed the debt limitation contained in Section 1 of Article 13 of the Constitution of Indiana.

I am, therefore, of the opinion that an emergency loan made under Section 64-313 for operating or other expenses must be issued under the provisions of Section 64-313, except where such loan may be repaid within the limits set forth in Section 64-309 and except where such loan is made to meet an emergency growing out of a flood, fire, pestilence, war or other major disaster, as set forth in Section 64-312 and as herein discussed.

OFFICIAL OPINION NO. 50

August 22, 1947.

Mr. Kenneth A. Weddle,
Securities Commissioner,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter in which you state the following facts:

“A” is a Kentucky Corporation and as such is defined as a Public Utility by the statutes of the Commonwealth of Kentucky. As such Public Utility, it is subject to the jurisdiction of the Public Service Commission of the Commonwealth of Kentucky as to the regulation and supervision, of the issuance of the securities of said corporation.

“At the present time the corporation has issued and outstanding within the State of Indiana — shares of its 6%, \$100.00 par value preferred stock and — shares of 7% Junior cumulative preferred stock of \$50.00 par value per share.

“The corporation is now in the process of making a readjustment of its finances and capital structure. As a part of said readjustment of finances, the corporation proposed to exchange all of its presently

issued and outstanding 6% \$100.00 par value preferred stock, and 7% Junior cumulative preferred stock, for a new issue of —% \$100.00 par value preferred stock based upon the ratio of exchange: one new share of —% \$100.00 preferred stock for each share of outstanding 6%, \$100.00 par value preferred stock and one new share of —% preferred stock for each 2 shares of 7% Junior cumulative preferred stock. This proposed plan of exchange will be applied and extended to the shareholders in Indiana.”

Upon these facts you ask the following question:

“Where a foreign corporation meeting all of the requirements of Section 4 (b) hereinabove quoted seeks to make a rearrangement of capitalization of any plan or proposal for a readjustment of finances wherein and whereas as a part of said plan for readjustment of its capital structure, the corporation seeks to exchange new stock for presently issued and outstanding stock held within the State of Indiana, will it be necessary for said corporation to qualify its securities before the exchange is offered pursuant to Section 7 and 8 of the Indiana Securities Act or will the provisions of Section 4 (b) of that Act control as hereinabove quoted, thus making qualification of the Securities sought to be exchanged unnecessary?”

Section 4 (b) referred to in your question is Section 4 of Chapter 120 of the Acts of 1937, Burns' 1933, Section 25-832, Pamphlet Part, the pertinent part of which is as follows:

“Except as hereinafter otherwise expressly provided, the provisions of this act shall not apply to any of the following classes of securities:

“* * *

“(b) Any security issued or guaranteed either as to principal, interest or dividend by a corporation owning or operating a railroad or any other public service utility: Provided, That such corporation is

subject to regulation or supervision as to the issue of its own securities by a public commission, board or officer of the government of the United States or of any state, territory or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada or any province thereof.”

Section 6 (Section 25-834 Burns' 1933, Pocket Supplement) provides in part as follows:

“No securities, except such securities as are exempt under the provisions of Section 4 (§ 25-832) of this act, or unless sold in any transaction exempt under the provisions of Section 5 (§ 25-833) of this act, shall be sold within this state, unless and until such securities shall have been registered by qualification as hereinafter provided: * * *.”

In your statement of facts you state that said corporation is subject to regulation as to the issue of its own securities by the Public Service Commission of the Commonwealth of Kentucky. In your question you assume that all of the facts necessary to bring said corporation within the provisions of clause (b) of said Section 4 are present. If this is true, then none of the other provisions of said Chapter 120 of the Acts of 1937, or as amended, would apply to said securities unless such section expressly provided that it so apply.

In 50 American Jurisprudence, Statutes, Section 431 at page 451 it is said:

“In the interpretation of statutes, the relative position of an exception is unimportant, since the act must be construed as a whole. It may appear in a section by itself, and when that is done it has precisely the same meaning that it would have if the exception were appropriately incorporated in the other sections. * * *.”

As Section 7 which relates to securities issued as a part of a rearrangement of capitalization, reorganization etc. is a part of the provisions of the act, the exemptions in Section 4 would apply to it. Section 8 expressly refers and relates

only to the securities required by the act to be registered.

It is, therefore, my opinion that the securities in question need not be qualified under said act and that this is true whether said securities be regarded as being issued as a re-arrangement of capitalization or as a new issue.

OFFICIAL OPINION NO. 51

September 3, 1947.

Mr. C. E. Ruston, State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 30, 1947, in which you quoted a part of Section 3, Chapter 74, Acts 1931, which is Section 65-304, Volume II, Burns' 1933, and ask our opinion on the following questions:

"1. Does the administration and management of such park or playground lie jointly in the township trustee and the township advisory board?

"2. Does the phrase 'administration and management' include the creation of new positions such as assistant superintendent in the operation of such park or playground.

"3. If your answers to the first and second questions are in the affirmative, can the township advisory board appoint the individual who is to fill the newly created post or does such appointment lie solely within the authority of the township trustee."

Said section reads as follows:

"If there be in such township a public park or playground under the jurisdiction and authority of the township, it shall be the duty of the trustee and advisory board having charge of such public park or playground, to transact the business of the administration and management thereof only in open meet-