the above cases the Indiana Alcoholic Beverage Commission does have the power to issue retail permits under Chapter 357 of the Acts of 1945 and prior laws on the regulation of alcoholic beverages, but I cannot advise your Commission to disregard the decision of our Appellate and Supreme Courts any more than I would advise the Public Service Commission or any other board, commission or officer to disregard the latest precedents of our courts.

If as a matter of policy your Commission should issue retail permits for this area, the permit would not be any defense to other actions similar to the Sorrentino case. If your policy should be to refuse such permits, any applicant would still be in a position to bring an action for declaratory judgment in a court of competent jurisdiction to have the restrictive covenant declared invalid (16 Am. Jur. Sec. 32, p. 307, Sec. 2-220 Burns’ 1933, Bd. of Comrs. of Vanderburgh Co. v. Sanders (1940), 218 Ind. 43), which action, if successful, would supersede the precedent established by the Sorrentino case.

OFFICIAL OPINION NO. 79
August 9, 1946.
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Gentlemen:

I have your letter in which you ask for my official opinion upon the following questions:

“1. May a foreign banking corporation not admitted to do business in Indiana as a foreign corporation, be licensed under the Retail Installment Sales Act?

“2. May a foreign banking corporation, which has been admitted to do business in Indiana be licensed under the Retail Installment Sales Act?

“3. Would a foreign banking corporation, if licensed to engage in business in Indiana under the Retail In-
stallment Sales Act, be required to maintain a branch office?

"4. If it may be licensed in either event, what fee shall apply, i.e., the annual $10.00 license fee for banks, trust companies and industrial loan and investment companies issuing certificates of investment, or the $100.00 fee as applied to all other financial institutions engaging in this type of business?"

Since all of the questions are inter-related, I would prefer to discuss briefly the general principles applicable and then answer each question specifically.

In order to determine whether a foreign banking corporation not admitted to do business in Indiana may be licensed under the Retail Installment Sales Act, two inquiries are pertinent: First, may the State of Indiana constitutionally license a non-resident who maintains no office in Indiana; and two, did the Legislature intend that such license be granted.

In the Retail Installment Sales Act of 1935 (Chapter 231, page 1206, Acts of 1935—59-901 Burns' 1933 R. S.), there are two provisions with respect to licensing which seem applicable to your inquiry. The first one is in Section 11 (58-911 Burns' 1933 R. S.) and reads in part as follows:

"No person shall purchase retail installment contracts from a retail seller doing business in this state or engage in the business of purchasing retail installment contracts from retail sellers doing business in this state * * * unless the Department has licensed such person to do such business and has issued to the person a written instrument evidencing the license as in this act provided. * * *"

If the person purchasing retail installment contracts from retail sellers in the State of Indiana is not doing business in Indiana nor is a resident thereof, it would seem clear that the State of Indiana has no power or jurisdiction to give extra-territorial effect to its laws so as to subject non-residents who are not engaged in business in the State to the license requirements. See:

Baldwin v. G.A.F. Seelig (1935), 294 U. S. 511, where the United States Supreme Court said at page 521:
“New York has no power to project its legislation into Vermont by regulating the price to be paid in that state for milk acquired there. * * *

The same result was reached in an opinion of the Attorney General to the Department of Financial Institutions in an opinion found in 1939 O.A.G. at page 105. It should be added parenthetically that no attempt is made in this opinion to define what constitutes doing business in Indiana since that is largely a question of fact dependent upon the relevant circumstances of each case.

The second applicable provision of the Act is Section 9 (58-909 Burns' 1933 R. S.) which provides in part:

"* * * No retail seller may sell, assign and transfer any retail installment control to any person other than a licensee under this act. * * *

As a matter of fundamental law, and disregarding the legislative intent as expressed in the Act, it seems to me that a non-resident even though he was not doing business in the State of Indiana might if he so desired be licensed by the State and voluntarily subject himself to the provisions of the Act in order that he might purchase retail sales contracts from Indiana Retail Sellers under the provisions of the Act.

Since by the express provisions of the Act the matter of licensing is a police regulation conferring a privilege upon the licensee which he might not otherwise enjoy, there is no constitutional prohibition against voluntary compliance with the law in return for the privilege granted. In the recent United States Supreme Court case of State Farm Mutual Automobile Insurance Co. v. Duel, 65 S. Ct., 573 (1945), the court points out that in so far as the Fourteenth Amendment to the Federal Constitution is concerned, a valid police regulation may necessarily have some extraterritorial effect upon a corporation which desired to do business within that state, and the same principle would be applicable in the case of a corporation voluntarily requesting a privilege conferred by the regulating state. There the court quotes with approval from Osborn v. Ozlin, 310 U. S. at page 62:

"The mere fact that state action may have repercussions beyond state lines is of no judicial significance
so long as the action is not within that domain which
the Constitution forbids.'”

In Stone v. General Electric Contract Corporation, (1942), 7 So. (2d) 811 (Miss.), a foreign corporation which was en-
gaging in the business of purchasing such contracts from
dealers in Mississippi had not qualified to do business in
Mississippi nor was it doing business in Mississippi in that
it maintained no office in Mississippi nor an agent with
authority to purchase notes and contracts. There was one
agent to make delinquent collections and to solicit business.
Mississippi levied a privilege tax upon those engaged in the
business of purchasing notes, etc., secured by a lien on motor
vehicles, furniture, refrigerators, etc. It was there held that
the tax was a privilege tax and that although the corporation
was not admitted to do business in the state, it was exercising
some privileges conferred by the State and therefore taxable.

See also Stone v. General Contract Purchasing Corp.
(1942), 7 So. (2d) 806 (Miss.) 140 A.L.R. 1029 and annota-
tions.

Upon the second question of legislative intent, I find noth-
ing in the Act which would conclusively prevent licensing
non-residents who maintain no branch office in the State. In
fact one Section of the Act indicates that the legislature con-
templated licensing applicants irrespective of residence. That
Section is Section 12 (58-912 Burns' 1933 R. S.), paragraph
(b) and reads:

“If applicant has one or more branches operating
in this state, the place of business of each such branch
at the date of the application.”

That language seems to indicate that license might be
granted where the principal office of the applicant was out
of State and where no branch was maintained in the State.

Obviously, the criminal aspects of the Act and those other
provisions which are entirely dependent upon the exercise of
the State by its jurisdiction, such as issuing subpoenas and
citations for contempt could not apply to a licensee over whom
the State had no physical jurisdiction. However, there are
ample provisions in the Act for revocation of licenses where
the licensee fails to comply with the requirements of the Act and with the rules and regulations of the Department.

Applying the principles enunciated herein specifically to foreign banking corporation, we are confronted with the definition of bank or trust company as contained in Section 1 (58-901 Burns 1933 R. S.) of the Act. The definition reads:

"The term 'bank or trust company' means any national banking association formed under the laws of the United States with its principal office located in this state and doing business herein and any bank or trust company, any bank of discount and deposit, loan and trust and safe deposit company or trust company organized and doing business under the provisions of any law of this state."

If that definition were literally accepted, a foreign banking corporation admitted to do business in Indiana would not be entitled to a Retail Installment Sales license. Thus construed, a classification is made which permits foreign corporations for profit to engage in that business in Indiana if they have been admitted, but deprives the same right to a foreign banking corporation which has been admitted.

I can conceive of no reasonable basis for this classification, and if accepted it violates the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution, as an arbitrary discrimination against foreign banking corporations.

In Fountain Park Co. v. Hensler (1927), 199 Ind. 95, the court said at page 102:

"* * * The characteristics which can serve as a basis of a valid classification must be such as to show an inherent difference in situation and subject-matter of the subjects placed in different classes which peculiarly requires and necessitates different or exclusive legislation with respect to them. * * *"

That definition as applied in these particular circumstances is therefore unconstitutional, but the unconstitutionality of the definition would not affect the remaining valid provisions of the Act. It merely means that we have no specific definition
of a bank or trust company as applied to this set of circumstances.

A bank or trust company would then be treated as any other foreign corporation.

1. In answer to your first question, I am therefore of the opinion that a foreign banking corporation not admitted to do business in Indiana may be licensed under the Retail Installment Sales Act.

2. The answer to that question, of course, answers your second question that a foreign banking corporation which has been admitted to do business in Indiana may be licensed under the Act.

3. In answer to your third question, since I have already said that a foreign banking corporation not admitted to do business in Indiana may be licensed, it therefore follows that under the Retail Installment Sales Act there is no requirement that a branch office be maintained in Indiana. As previously stated, whether it is in law and in fact, doing business in Indiana, under corporation laws, is another question.

4. Section 12 of the Act (58-912 Burns' 1933 R. S.) sets the fees for applicants other than national banks and trust companies and industrial loan and investment companies incorporated under the laws of the State of Indiana at $100.00. A license fee for banks is $10.00. The explanation for that difference in fee may be found in Section 20 wherein it is provided that the costs of an examination of a licensee shall be assessed according to a schedule of fees, but that the licensee shall not pay any fee for examination unless the costs to the Department shall exceed the license fee paid. The question remains whether a foreign banking corporation either admitted or non-admitted shall pay the $10.00 or $100.00 fee, and in resolving that question it is necessary to advert again to the definition of a bank or trust company as found in Section 1, supra. As previously pointed out, that definition would not include a banking corporation organized in another state. For the purpose of differentiating between the method of paying fees and examination, it seems to me that a valid classification may be made by the Legislature between domestic and foreign corporations. In other words, so far as the Retail Sales Act is concerned, since a banking corporation organized under the laws of another state is not defined as
a bank or trust company which is entitled to the $10.00 fee, then it must necessarily fall within the other classification of licensees who pay a license fee of $100.00 but upon examination of the foreign banking corporation it would be entitled to the credit given to all others who pay the $100.00 license fee.

OFFICIAL OPINION NO. 80
August 12, 1946.

Indiana Department of Conservation,
140 North Senate Avenue,
Indianapolis 9, Indiana.

Gentlemen:

I have your letter of August 6, in which you make the following statement of facts:

“A non-resident of the state owns a 200 acre farm upon which by building dams he has constructed an artificial lake or pond of about 5 acres. The source of water supply of the pond is the natural watershed of the farm and the lake or pond is not connected with any river, creek or natural watercourse lying outside the farm in such manner that fish can pass from the lake or pond to such watercourse. The owner has stocked the lake with fish at his own expense.”

Based upon this statement of facts, you ask the following questions:

(1) Is the non-resident owner required to buy a non-resident fishing license under B. R. S. 1942 Repl. 11-4101, 1405?

(2) Are bona fide non paying guests of such owner required to buy resident or non-resident licenses as the case may be?

(3) Are paying guests invited by the owner required to buy such licenses?

(4) Are the penal statutes (B. R. S. 1942 Repl. 11-1601 and 1651) regulating closed seasons and bag