opinion that neither the Indiana Personnel Board nor its Director could properly make any certificate on any pay roll or account for any salary or other compensation payable to a county director of public welfare, and that the absence of such certificate should not prevent the payment of the monthly salary of a county director "in the same manner as the compensation of other county officers as provided by law."

DEPARTMENT OF FINANCIAL INSTITUTIONS: Industrial Loan and Investment Companies; Corporations to which Industrial Loan and Investment Certificates may be issued.

April 26, 1944.

Opinion No. 45

Hon. A. J. Stevenson, Director,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of March 29th, which reads in part as follows:

"The following questions present themselves in connection with certain applications now on file with the Department for authority to lend money under the Industrial Loan and Investment Act.

"1. May the department issue a restricted certificate of authority to corporations authorizing them to operate under the provisions of the Industrial Loan and Investment Act without authority to issue certificates of indebtedness? If so, must the restriction appear in both the application and the certificate of authority?

"2. May such certificate of authority issue to a foreign corporation authorized to do business in Indiana, or is it applicable to domestic corporations only?

"3. Is a capital stock of $50,000.00 prerequisite to the issuance of a certificate of authority?

"4. May a corporation now engaged in business as a financial institution be given a certificate of authority
to operate under the Industrial Loan and Investment Act, or must such certificate issue to a separate legal entity?

"5. If a corporation is authorized to conduct business under the provisions of the Industrial Loan and Investment Act may it operate through branch offices in this state without obtaining a separate certificate for each branch?"

1. The answer to your first question depends upon a construction of the whole Industrial Loan and Investment Company Act in the light of existing legislation concerning banks and financial institutions to determine the legislative intent and purpose behind the Act.

Prior to 1935, the date of passage of the Industrial Loan and Investment Company Act, the Legislature, in addition to the 1869 Savings Bank Act, the 1913 Private Bank Act, the 1913 Guaranty Loan and Savings Act and other miscellaneous acts had enacted the comprehensive Indiana Financial Institutions Act of 1933 designed to regulate the organization, operation and dissolution of financial institutions as therein defined.

In the latter act, provision is made for various types of loans by banks and trust companies, the limitations being in terms of a per cent of the sound capital of the bank rather than any specific sum. See Sections 40 et seq, Chapter 40, Acts 1933, as amended. (18-130 et seq, Burns' 1933 Supplement.) Those loans, of course, are at the legal rate of interest.

By the same act, loans of building and loan associations are regulated. Here too the limitation is in relation to paid up stock of the borrower and percentage of total assets of the association rather than a specific sum. The rate of interest is the legal rate plus premium and loan fees. See Sections 267, 273, 276, Chapter 40, Acts 1933, as amended. (18-2117, 18-2123, 18-2126, Burns' 1933 R. S. and Supplement.)

In 1917 and amended in 1933 (Chapter 125, Acts 1917; Chapter 154, Acts 1932. 18-3001, Burns' 1933 R. S.), legislation was enacted to provide for the licensing of persons, copartnerships and corporations to do a small loan business. A small loan business as identified in that act is well recognized as loaning sums under $300.00 at monthly rates of interest set by regulation of the Department of Financial Institu-
tions. See Small Loan General Order 4, Department of Financial Institutions, 18-3002-1, 18-3002-2, Horack's Adm. Code. A small loan business, it is noted, can be done other than as a corporation.

These statutes have been set forth somewhat at length in order to show comprehensively the Indiana provisions for loaning of money at the time of the 1935 Industrial Loan and Investment Act. It should be noted that there is no provision for the loan of sums larger than $300.00 other than as incidental to a banking, building and loan business or other recognized financial institution. Also, there was no provision for the regulation of the credit device known as a certificate of investment or indebtedness whereby one could purchase by installment payments such an interest bearing certificate and might use the certificate as security.

An industrial loan and investment business, as the name implies, includes both lending and investment functions. The Industrial Loan and Investment Act of 1935 (Chapter 181, Acts 1935, Section 18-3101 et seq, Burns' 1933 Supplement), and particularly Section 4 thereof (18-3104, Burns' 1933 Supplement), authorizes such business as follows:

"When authorized by the department in the manner prescribed by sections 25, 26, 27, 28 and 29 (§§ 18-222 —18-226) of the Indiana Financial Institutions Act and any amendments thereof, any domestic corporation now or hereafter organized under the general corporation laws of the state of Indiana, may engage in business as an industrial loan and investment company subject to the limitations and restrictions hereinafter set forth."

If only Section 4 were to be considered it is arguable that the corporation must be capitalized for and must engage in issuing certificates of indebtedness or investment as well as in lending money. But was that the intent of the Legislature? The whole statute must be considered in order to arrive at legislative intent. As stated in 2 Sutherland Statutory Construction, page 336:

"* * * A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section
should be construed in connection with every other part or section so as to produce a harmonious whole. Thus it is not proper to confine interpretation to the one section to be construed.”

And in C. I. & L. R. R. Co. v. Downey, 103 Ind. App. 672 at 679:

“We feel that it is unnecessary to set out the rules of construction of statutes. The court must ascertain the intent of the legislature to the end that all of the statutes on the same subject may be construed together, so as to produce a harmonious system if possible. In the case of Johnson v. City of Indianapolis (1910), 174 Ind. 691, 93 N. E. 17, the court said (p. 699): ‘In construing a statute, the purpose of the court is to discover the intention of the legislature. For such purpose an examination of the entire statute, as well as parts thereof, may be resorted to in order to discover the legislative intent. Acts of the legislature in pari materia, passed either before or after the enactment of the statute under the interpretation, and whether repealed or unrepealed, may be referred to and considered in order to discern the legislative intent. These are well-settled rules pertaining to the construction or interpretation of statutes.’”

Upon reading the act it is apparent that the investment provisions—those functions of the corporation which involve the acceptance of the money of private investors and in which the State is particularly interested—were considered of prime importance by the Legislature necessitating strict regulation, while the lending aspects of the corporation were considered as of less public interest. That distinction between the two functions of this type of institution is emphasized by Section 20 (a) of the Act (18-3121, Burns’ 1933 Supplement), which provides:

“Companies which do not have any certificates of indebtedness or investment outstanding shall not be subject to the provisions of sections 5, 8, 9, 10, 11, 12, 13, 14 and 18 (§§ 18-3105, 18-3108—18-3114, 18-3118) of this act.”
(All of the sections therein enumerated deal with restrictions upon the operation of such institutions for the protection of investors.) Considered abstractly, other than for the purpose of preventing usury, and the protection of its creditors, there is little reason for detailed police regulation of a corporation as to its capital structure, investments, etc., so long as it is only lending its own money.

In Lee v. Burns, 94 Ind. App. 676 at 679, the Court said:

"Statutes which interfere with legitimate enterprise or limit the right to construct or operate legitimate industries are to be given a strict construction. * * * ."

It is consequently my opinion that based on reason and authority the lending and investment functions permitted such a corporation are severable and that it should be permitted to do a lending business although it has not met all the requirements for issuance of certificates of indebtedness or investment. I am further of the opinion that the act is self-executing in that regard: if the capital required for investment business is not present in the corporate structure or is impaired: whether at the inception of the corporation or later, the corporation automatically becomes subject to the statutory prohibition against doing an investment business. It is the duty of the Department of Financial Institutions to see that such corporation engages in no more business than the state of its capital justifies, and as a matter of administrative policy in the performance of that duty, I see no reason why the department may not incorporate appropriate language in the certificate of authority to show that a corporation which has not met the capital requirements for doing an investment business may not engage in that business.

2. Section 4 (18-3104, Burns' 1933 Supplement) of the Act reads as follows:

"When authorized by the department in the manner prescribed by sections 25, 26, 27, 28 and 29 (§§ 18-222 —18-226) of the Indiana Financial Institutions Act and any amendments thereof, any domestic corporation now or hereafter organized under the general corporation laws of the state of Indiana, may engage in business as an industrial loan and investment company subject to the limitations and restrictions hereinafter set forth."
The intent of the Legislature to exclude foreign corporations is made doubly sure in that section. Not only is the word "domestic" expressly included but "organized under the general corporation laws of the state of Indiana" carries the same import. Thus a certificate of authority may not be issued to a foreign corporation.

3. Section 5 (18-3105, Burns' 1933 Supplement) of the Act reads as follows:

"The capital stock of any company engaged in business under the provisions of this act shall be not less than fifty thousand dollars ($50,000), which said capital stock shall be fully paid to the corporation in cash and shall not at any time thereafter be voluntarily reduced below the amount originally paid in: Provided, however, That any company organized prior to the passage of this act may be exempt for a period not to exceed three (3) years from complying with the capital requirements provided by this section upon the express approval in writing of the department. In the event the capital of any such company should for any reason become impaired, the right to issue certificates of indebtedness or investment as hereinafter provided shall forthwith be suspended until said capital stock has been restored to the amount originally paid in."

That section deals with the organization of corporations to do an Industrial Loan and Investment Company business. By the same reasoning, as set forth in the answer to your first question, I believe that upon reading the act as a whole and in view of the express exception contained in Section 20 (a), supra, the conclusion is compelled that a certificate of authority may issue to such a corporation having no outstanding certificates of investment or indebtedness, although its capital structure may be less than that set forth in Section 5. As stated in the answer to question number 1, if that capital structure is impaired or insufficient, by operation of law restrictions are imposed upon the business of such corporation which restrictions shall be enforced by the department.

4. The answer to your fourth question also requires a search for the legislative intent in enacting the various financial institutions acts. It seems clear that the purpose was
to set up the various types of financial institutions, each doing a different type of business under somewhat different regulations.

For instance, some, such as industrial investment and loan companies, must be incorporated. Section 2, Chapter 181, Acts 1935 (18-3102, Burns' 1933 Supplement). Others such as small loan companies need not be. Section 1, Chapter 125, Acts 1917; Section 1, Chapter 154, Acts 1933 (18-3001, Burns' 1933). Different rates of interest are provided for loans by various institutions and these are different regulations as to the size of loans and security. In fact each type of institution has regulations peculiarly fitted to its needs and purposes.

In that light we should consider Sections 18 and 20 (18-3119 and 18-3120, Burns' 1933 Supplement), which read in part:

"No such company shall engage in the banking or trust business nor operate a savings bank, commercial bank or trust company, nor advertise or hold itself out to the public as a bank, savings bank or trust company, nor use the word 'bank' in connection with its name or business is any of its advertising or literature. No such company shall accept deposits or 'savings accounts' nor advertise or hold itself out to the public as accepting deposits of money or 'savings accounts.'

"It shall be unlawful for any person, firm, corporation or unincorporated association, other than an industrial loan and investment company authorized to transact business under the terms of this act, to engage in business as an industrial loan and investment company. It shall also be unlawful for any industrial loan and investment company as defined in this act to engage in any other business than that herein described except that any such company may act as a broker in writing insurance on the life or lives of any of its borrowers as further security for any loan or loans made by it to any such borrower or borrowers."

My conclusion is that no one corporate entity should be issued a certificate of authority to do an industrial loan and investment business as well as other business organizable as
a financial institution. However, one of the powers of an industrial loan and investment company, as set forth in Section 6 (c) (18-3106 (c), Burns' 1933 Supplement), is:

“To discount, purchase or otherwise acquire notes, bills of exchange, acceptances or other choses in action.”

One chose in action, namely: a retail installment sales contract as defined by Section 1, Chapter 231, Acts 1935 (58-901, Burns’ 1933 Supplement) cannot be purchased without a license as required by Section 11 of the Retail Installment Sales Act (58-911, Burns’ 1933 Supplement). I am of the opinion that a license to deal in retail installment contracts may be issued to an industrial loan and investment company.

5. The certificate of authority to do an industrial loan and investment business is issued under the terms of the Indiana Financial Institutions Act. See Section 4, Chapter 181, Acts 1935 (18-3104, Burns’ 1933 Supplement), supra.

The parts of the Financial Institutions Act applicable are Sections 25, 26, 27, 28 and 29 (Chapter 40, Acts 1933 and Amendments, 18-222 et seq, Burns’ 1933 and Supplement).

Section 25 as amended by Section 1, Chapter 83, Acts 1941 (18-222, Burns’ 1933 Supplement), provides in part:

“* * * No such application shall be approved by the department until a public hearing, after due notice thereof, shall have been had thereon, in the city or town in which the applicant proposes to establish such institution. * * *.”

Section 26 as amended by Section 2 of Chapter 83, Acts 1941 (18-223, Burns’ 1933 Supplement), provides in part:

“Upon receipt of any such application, and except as hereinafter otherwise provided, the department shall give notice thereof, by publication one (1) time in a newspaper having a general circulation in the city or town in which the applicants propose to establish such institution. * * *."

Section 28 (18-225, Burns’ 1933) provides in part:

“Upon the filing of such application, the department shall make, or cause to be made, a careful investigation
and examination relative to the financial standing and character of the incorporators or organizers, the character, qualifications and experience of the officers of the proposed financial institution, and of the public necessity for the financial institution in the community in which such proposed financial institution is to be established, * * * .”

It thus appears that the granting of a certificate depends not only upon factors such as the apparent soundness of the proposed institution but also upon some consideration of local conditions. As a police measure there can be little objection to such a measure as stated in State v. Richcreek, 167 Ind. 217 at 221 and 222:

“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. * * * .”

“The quasi-public nature of the banking business, and the intimate relation which it bears to the fiscal affairs of the people and the revenues of the State, clearly bring it within the domain of the internal police power, and make it a proper subject for legislative control. * * * .”

Consequently, it is my opinion that a separate certificate should be obtained for each branch.