for religious, educational, benevolent, fraternal, charitable or reformatory purposes, and not for pecuniary profit, and no part of the net earnings of which authority or corporation inures to the benefit of any private stockholder or individual.”


Without prolonged discussion, it seems to me that the Indiana Mutual Life Insurance Company is not included in any of the above classes. It clearly is not a religious organization, nor is it a corporation organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes. As to the further provision that such organizations must not be for pecuniary profit and no part of the net earnings inures to the benefit of any private stockholder or individual, I desire to point out that these provisions are conjunctive and that it would not be sufficient to show that no part of the net earnings inures to the benefit of any private stockholder or individual or to show simply that the organization is not for pecuniary profit. In addition to these requirements, the organization must be some religious communion or a corporation organized under the laws of this state exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, none of which apply to the Indiana Mutual Life Insurance Company. In my opinion, your question should be answered in the negative.

STATE BOARD OF TAX COMMISSIONERS: Intangibles tax, whether stamps should be attached to securities distributed to creditors or stockholders distributed by the trustee under the National Bankruptcy Act. Whether same instrument is subject to tax.

May 19, 1943.

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of May 17, 1943, in which you request an official opinion in answer to certain questions sub-
mitted and hereinafter set out in detail. As a basis for the questions you state that an Indiana corporation, engaged in the business of operating a street railway system, is being reorganized under the provisions of Chapter 10 of the National Bankruptcy Act. You further state that the plan of reorganization has been approved by the United States District Court for the Northern District of Indiana, and that certain securities will be issued to creditors and stockholders of the corporation in consummation of the reorganization. You further state that the securities referred to would be taxable as intangibles against the owner, who is a resident of Indiana, unless exempted under the terms of Section 667, Title 11, U. S. C. A., which reads as follows:

"The issuance, transfer, or exchange of securities, or the making or delivery of instruments of transfer under any plan confirmed under this chapter," (referring to corporate reorganizations under the National Bankruptcy Act) "shall be exempt from any stamp taxes now or hereafter imposed under the laws of the United States or of any state."

You submit the following questions:

"1. Is it necessary that intangibles tax stamps be attached to the securities distributed to creditors or stockholders by the trustee or other person authorized under the approved plan to make distribution thereof?

"2. In the event the attachment of such stamps is not necessary before distribution, and the person to whom the same is distributed is a resident of the State of Indiana, would such person be required to pay intangibles tax upon the particular security within ten days after the execution thereof, despite the provisions of Section 667, supra?"

Under the above section, the incident which gives rise to the exemption is that the issuance, transfer, or exchange of securities, or the making or delivery of instruments of transfer is under a "plan confirmed under this chapter," as referred to above. Under the statement of facts herein, and upon the basis of the literal interpretation of the exempting statute, I think that the answer to your question numbered 1 is in
the negative. As I construe it, however, this exempting statute does not seek to affect the taxability of the instrument after the same has been issued under a plan confirmed by the Court under the provisions of Chapter 10 of the National Bankruptcy Act, nor does it purport to affect any excise tax which otherwise may be legally assessed using such instrument for a measure when the same is owned and in the possession of an Indiana resident to whom it has been issued under the plan approved by the United States District Court. It should be noted further that the stamp tax, known as the Intangibles Tax Law of Indiana, does not purport to tax any activity which is exempted under the above section. See Zoercher v. Indiana Associated Telephone Corporation, 211 Ind. 447. In my opinion, your second question should be answered in the affirmative.

PUBLIC INSTRUCTION: School Book selection, whether local corporations may select more than one book from the state-approved list.

May 21, 1943.

Hon. Clement T. Malan,
State Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Dr. Malan:

I am in receipt of your letter dated May 13th, 1943, requesting my opinion as to the proper interpretation to be placed upon Section 6 of Chapter 249 of the Acts of 1943. Your specific question is as follows:

“In applying this section to local needs, may more than one book be adopted from the State approved list in the various fields, e.g., may First Year Algebra, Schorling-Clark-Smith, World Book Company; Essentials of Algebra, First Course, Hart, D. C. Heath Company; Elementary Algebra, Freilich-Shanholt-Georges, Silver Burdett Company all be adopted for use in any given school corporation?”