DEPARTMENT OF FINANCIAL INSTITUTIONS: Savings Banks, whether bonds given by officers thereof under the 1869 Act should be made payable to the State of Indiana.

August 14, 1943.

Mr. Joe McCord, Bank Supervisor,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Mr. McCord:

I have your letter of the 23rd requesting my opinion whether the bonds of officers of savings banks should be made payable to the State of Indiana or to the corporation.

The answer to your question requires an interpretation of the effect of the Indiana Financial Institutions Act upon the Savings Bank Act. Section 14 of Chapter 51 of the Acts of 1869, special session, which chapter was the original Savings Bank Act (18-2614 Burns 1933), provides that the officers and agents of savings banks shall execute a freeholder's bond payable to the State of Indiana. The requirement of freehold surety is, of course, amended to provide for a surety bond by the express provision of Section 1 of Chapter 128 of the Acts of 1907 (25-1401 Burns' 1933). Section 101 of Chapter 40 of the Acts of 1933 (18-513 Burns' 1933), that being the Indiana Financial Institutions Act, provides that bonds executed pursuant to that section shall be made payable to the corporation.

I am of the opinion, however, that the last section does not apply to savings banks for two reasons.

Section 101 of the Indiana Financial Institutions Act is found in Article 2 of Part 3 of that act. Section 89, being the first section in Article 2 of Part 3, provides that the term "corporation" as used in Article 2 of Part 3 shall include "any bank and/or trust company or building and loan association organized or reorganized under the provisions of this act; and any bank of discount and deposit, loan and trust and safe deposit company, trust company, * * * organized or reorganized under the provisions of any law of this state enacted prior to the passage of this act." A review of the various provisions of the Indiana Financial Institutions Act shows that savings banks, although they are financial institutions, are treated as
a separate type of financial institution. For instance, in the
definition of a financial institution found in Section 3 of the
act (18-103 Burns’ 1933) savings bank is separately men-
tioned. In a 1943 amendment to the Savings Bank Act, Sec-
tion 1 of Chapter 6 of the Acts of 1943 (18-2616 Burns’ 1933
Supplement) it is provided that savings banks organized under
the 1869 Act may qualify for public deposits in the same man-
ner as banks of discount and deposit, trust companies, and
other financial institutions.

Consequently, I am of the opinion that, since the words
“savings bank” are omitted from the enumeration of those
financial institutions to which Article 2 of Part 3 applies, the
provisions of that article are not controlling as to bonds of
officers of savings banks organized under the 1869 Act.
Further, even if it were assumed that savings banks come
within the provisions of Article 2 of Part 3 of the Indiana
Financial Institutions Act, I am of the opinion that Section 101
as to bonds, as part of Article 2, does not repeal the provisions
of the 1869 Act with regard to bonds.

By Section 365 of the Indiana Financial Institutions Act a
number of Indiana statutes with regard to banks, etc., are
expressly repealed. The 1869 Act is not. In determining
whether there is a repeal by implication, it is important to
bear in mind that the determination of that question is essen-
tially a question of legislative intent. As stated in Peoples
Trust & Savings Bank v. Hennessey, 106 Ind. App. 257 at
275:

“The intention of the legislature is to govern, and
this is to be gathered from the language used and the
circumstances surrounding and connected with the
passage of the act. A construction which will work an
implied repeal is to be avoided if that can be done on
any reasonable hypothesis.” (Emphasis ours.)

Further, the 1869 Savings Bank Act is of more limited scope
than the 1933 Indiana Financial Institutions Act and is, there-
fore, with respect to the latter act, a special act. It is generally
said that a later general act will not repeal the terms of a prior
special act if such repeal can be avoided by any possible con-
struction which will harmonize the two. As stated in Peoples
Trust & Savings Bank v. Hennessey, supra:
"A later statute, general in its terms, and not expressly repealing an earlier statute, will not ordinarily affect the special provisions of such earlier statute. The reason for the application of this rule is that, in passing a special act, the Legislature has its attention directed to the special case which the act was made to meet, and it will not be considered that in passing a later general act it had the special circumstances in mind which induced the passage of the provisions of the special act."

It is true that the repeal provisions of the Indiana Financial Institutions Act provide that the act repeals "all laws and parts of laws in conflict herewith." It has been said, however, that such a provision in a statute "is in legal contemplation a nullity. * * * A general repealing clause cannot be deemed an express repeal because it fails to identify or designate any act to be repealed. It cannot be determinative of an implied repeal for it does not declare any inconsistency, but conversely, merely predicates a repeal upon the condition that a substantial conflict is found under application of the rules of implied repeals." 1 Sutherland Statutory Construction, page 467. Although the Indiana Courts have not expressed themselves in identical language, it has been held in Million et al. v. Metropolitan, etc., Co., 95 Ind. App. 628 at 637:

"It is held that a general act 'repealing all laws inconsistent therewith,' refers to general laws, and does not change or repeal 'special laws'."

Furthermore, since the Indiana Financial Institutions Act expressly repeals so many other provisions of the banking laws and fails to repeal the savings bank act, it may be properly inferred that there was a legislative intent not to repeal that act by implication. As stated in 1 Sutherland Statutory Construction, 3rd edition, page 471:

"However, the existence of a specific repealer is evidence of an intent that further repeals (by implication) are not intended by the legislature."

I am therefore of the opinion that bonds of savings bank officers under the 1869 Act should be made payable to the State of Indiana.