The 1935 General Not For Profit Corporation Act contains, in Section 2 as amended by Section 1 of Chapter 39 of the Acts of 1939 (25-508 Burns' 1933 Supplement), definitions of "not for profit" as applied to corporations organized or reorganized under that Act. "Not for profit," as there defined, means any corporation which "does not engage in any activities for the profit of its members and which is organized and conducts its affairs for purposes other than the pecuniary gain of its members"; also, fraternal organizations which do not engage in activities for the profit of trustees, directors, incorporators, or members are included. A corporation organized under the 1897 Act would come within such a definition of "not for profit".

I am consequently of the opinion that a corporation organized under the 1897 Act may now reorganize under the 1935 General Not For Profit Corporation Act.

SECRETARY OF STATE: Corporations: In re: Authority for the solicitation of pre-organization subscriptions to the proposed "World Agency Corporation."

August 31, 1943.

Mr. Warren Day,
Securities Commissioner,
State House,
Indianapolis, Indiana.

Dear Mr. Day:

I have your letter of August 19, 1943, in which you state that the Commission now has before it an application for authority to solicit pre-organization subscriptions to the proposed World Agency Corporation. One of the major assets of the corporation will be a general agent's contract now in force between the World Life and Accident Association of Union City, Indiana, and an individual. It is proposed that this individual will assign the contract to the corporation, receiving stock in payment. Concerning such a proposal you ask the following questions:

"(a) Will the general agent's contract, to be assigned by an individual to the proposed corporation,
proposing thereupon to make it a contract by and between the World Life and Accident Association and the proposed World Agency Corporation, be a good and binding contract, and further;

“(b) Will the provisions under said contract constitute a legal and valid purpose for the operations of the proposed corporation, in view of the provisions of Section 224 of Chapter 162, an act concerning insurance and the carrying of emergencies approved March 8, 1935, providing as follows:

"'No person shall, within this state, act as an agent for any life insurance company unless and until he shall have complied with the provisions of this article: Provided, That no corporation whether organized under the laws of this state, of the United States or of any state or territory thereof or of a foreign country, shall within this state, act as an agent for any life insurance company.'"

It is my opinion that the contract between the individual by which he attempts to assign his general agency to a corporation would effect a violation of the statute above quoted, (which is also found at Section 39-4608, Burns' 1940 Replacement) and it therefore would be illegal and void.

In 12 A. J., at page 643, it is said:

"* * * It may therefore be said to be a fundamental principle of the law of contracts that a contract must have a lawful purpose and that transactions in violation of law cannot be made the foundation of a valid contract. * * *

"* * *

"The illegality of an agreement may be in the consideration, in a promise, or in its performance. An agreement to do an illegal act is illegal. Usually the element that destroys the validity of the agreement is the purpose of the parties to accomplish or to aid an unlawful object." * * *
As stated in School City of Evansville v. Hickman, 47 Ind. App. 500 at page 503:

"It is a general rule of law that a contract is void which, in its enforcement or execution, involves the doing of an act malum in se, or against public policy, or in violation of a statute. * * *

A case somewhat similar in facts is Collins v. Centlivre Brewing Co., 73 Ind. App. 570. There the provisions of the statute required, in securing a license to sell intoxicating liquors, the applicant should state in his application that it was for his own use and that he was the sole owner of the business. It was held in that case that a lease from the Centlivre Brewing Company which established the applicant in business and provided for the exclusive sale by applicant of the product of the lessor was illegal. The Court said, at page 576:

"* * * The most that can be done to support the contrary view is to argue that the lease is not a technical violation of the statute, and that the duty to keep free from the alliances and influences forbidden by the statute rested on the saloon-keeper and not on the brewer. But it is apparent that there could be no violation of the statute except by the co-operation of the parties. In the case at bar their mutual efforts resulted in the very evil that the statute was designed to prevent. * * *

Concerning your second question, Section 2 of Chapter 215 of the Acts of 1929 (Sec. 25-201, Burns' 1933 Statutes) provides:

"Corporations may be organized for pecuniary profit under this act for any lawful business purpose or purposes * * *

Not only is it expressly provided by Section 224 of Chapter 162 of the Acts of 1935 that no corporation shall act as agent for any life insurance company, but by the following section of that statute, the violation of any provision of that article of the statute is a misdemeanor. Consequently, it cannot be
said that the organization of a corporation for the express purpose of acting as agency for a life insurance company is a lawful business purpose. As stated in 14 C. J., at page 126:

"A corporation cannot lawfully be formed under the general laws where the real purpose or the necessary effect is to carry on an unlawful business or to accomplish an object which is expressly prohibited by law or is otherwise unlawful. If such an incorporation is attempted, a charter or certificate of incorporation will be refused by the court or officer whose duty is to pass on the application; * * * ."

In State ex rel. Harris v. Myers, 191 N. E. 99, 1934, Ohio, the facts were similar to the situation in question except that, under Ohio law, a corporation could not be organized to carry on a profession. There an attempt was made to mandate the Secretary of State to issue a certificate of incorporation to engage in optometry. The Court held that the certificate was properly refused since the purpose of incorporation was unlawful.

I am therefore of the opinion that the answer to your second question is also in the negative and that the incorporation for such a purpose is not a lawful business purpose under Indiana law.

DEPARTMENT OF PUBLIC INSTRUCTION: Teachers' contracts, conditions under which previous contract will be presumed to continue. Also, validity of teacher's contract signed before August 15 with another school corporation; same where contract is signed after August 15.

August 31, 1943.

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

Dear Sir:

Your letter of August 24, 1943, received as follows: