

that said Company must subject itself to the regulation of the Indiana Securities Commission.

You will note that the proviso in subsection (b) of Section 4, *supra*, includes public commissions "of any state, territory or insular possession thereof \* \* \*". It is conceivable that the Empire Company, being a Delaware Corporation, may be subject to the control of a regulatory body in Delaware but we are not informed whether such a public commission exists in Delaware or if it exists, what is the extent or scope of its powers. Unless your investigation should reveal that Delaware or any other state or municipality exerts control over the issue of all or any securities by this Company, it is my view that the Indiana Securities Commission may not exempt the Company from its supervisory authority.

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**DEPT. OF FINANCIAL INSTITUTIONS: Name—Whether Industrial Loan and Investment Companies may use the words "bank" or "banking" in their advertisements.**

August 11, 1942.

Mr. Ross H. Wallace,  
 Director, Dept. of Financial Institutions,  
 State House,  
 Indianapolis, Indiana.

Dear Mr. Wallace:

I have before me your letter calling attention to Section 246 of the Indiana Financial Institutions Act as amended in 1935, and Section 19 of the Industrial Loan and Investment Act. These sections in Burns' Indiana Statutes Annotated (1933) Cumulative Pocket Supplement of June, 1942, take the following numbers, to-wit: Section 18-2004 and Section 18-3119.

You request an official opinion on the subject as to whether the use by a financial institution operating under the authority of the Industrial Loan and Investment Act, of certain language in its advertising or in its name would violate either one or both of the above sections. The language to which you refer includes the following terms:

"Industrial Banking"

"Savings and Industrial Banking Institution"

"Each Bank is separate institution"

"Morris Plan Industrial Banking Institution"

"Banking Quarters"

"Banking on Character"

"A safe-depository for savings"

"Banking service."

The applicable part of Section 18-2004, which is Section 246 of the Indiana Financial Institutions Act as amended in 1935, is as follows:

"It shall be unlawful for any person, firm or corporation, other than a bank or trust company organized or reorganized under the provisions of this act or under the laws of the United States, or other than a loan and trust and safe deposit company organized under the provisions of chapter 161 of the Acts of 1893, approved March 4, 1893, as amended, to use the word 'trust' or the word 'bank' as a part or portion of the name or title of such person, firm or corporation, or to advertise or represent himself or itself to the public as a bank or trust company, or as affording the services or performing the duties which by law a bank or trust company only is entitled to afford and perform. \* \* \*"

The applicable part of Section 19 of the Industrial Loan and Investment Act, Section 18-3119 *supra*, provides as follows:

"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 in 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.' \* \* \*"

The particular language, the legality of the use of which you desire me to pass upon, I assume is used in some connection indicating that the advertiser is engaged in that type of business, and upon that assumption, it seems to me that the language referred to, if so used by an Industrial Loan and Investment Company would violate the express terms of both of the above sections. Such type of institution is expressly precluded from using the term "bank" in connection with its name or business or in any of its advertising or literature. Burns' Indiana Statutes Annotated (1933) June, 1942, Cumulative Pocket Supp, Section 18-3119. Such companies are likewise expressly forbidden to advertise or hold themselves out to the public as a bank. It seems to me that the use of the term "Industrial Bank" to describe the business in which such company is engaged does directly indicate that they are at least engaged in a certain type of banking. The same is true with respect to the term "Savings and Industrial Banking Institution." Clearly the term "Banking Institution" or the term "Industrial Banking Institution" is just another way of indicating to the public that such company is operating a particular type of bank. The same would apply to the language "Each bank is separate institution" and also to the language "Morris Plan Industrial Banking Institution." The use of the term "Banking Quarters" clearly indicates that the institution is engaged in a banking business. The language "Banking service" is the same. I am not quite sure that I visualize just how the term "Banking on character" would be used. It probably refers to the loaning power of a bank, and it somehow seems to me that the language seeks to capitalize on the suggestion that such company is engaged in some type of banking business. This type of advertising is forbidden by Section 19 of the Industrial Loan and Investment Act. I think too, that the language "A safe-depository for savings" violates that provision of Section 18-3119 *supra*, as declares that "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'."