between April 6, 1917, and July 2, 1921," such sons and daughters fulfilling the requirements as to domicile and academic qualifications.

In other words, such children come within the scope of the act if their fathers died between the dates named while serving in the armed forces of the United States.

SECURITIES COMMISSION, INDIANA: Indiana Securities Commission has authority to approve or disapprove corporate reorganization plans.

May 21, 1940.

Mr. Joseph O. Hoffman, Commissioner,
Indiana Securities Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of May 15, following a discussion of certain sections of the Indiana Securities Law of 1937, and the Federal Securities and Exchange Law of 1933, as amended, having relation to the reorganization of corporations and the approval or disapproval of securities issued in connection therewith, asks for an opinion upon the following questions:

"Question 1. Does the decision of our Supreme Court in Poston v. Taylor, et al., Cause No. 27246, decided December 18, 1939, have the effect of nullifying section 5 (i) of the Indiana Securities Act of 1937, Chapter 120 of the Acts of 1937?"

"Question 2. If your answer to question one is in the affirmative, will that have the effect of leaving the State of Indiana without any agency officially vested with the power to approve or disapprove securities to be issued in connection with the reorganization of a corporation?"

"Question 3. In view of the provisions of the Indiana Securities Act of 1937 hereinabove cited, is it your opinion that the Securities Commission of Indiana is legally vested with the power to approve or disapprove security issues involved in reorganization plans
of corporations and, indirectly to approve or disapprove plans of reorganization or corporations?

"Question 4. Is the Indiana Securities Commission a governmental authority expressly authorized by law to grant approval of the terms and conditions of the issuance and exchange of securities, in connection with any reorganization, readjustment or other issuance of securities in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear?

"Question 5. If your answer to question No. 3 is in the affirmative, would the action of this Commission in approving a securities issue involved in a plan of reorganization of a corporation, bring such security within the exemption of the Federal Securities and Exchange Act of 1933 as amended, being the exemption specified in section 3 (a) 10 of that Act?"

In answer to your first question I believe it is to be conceded that the Indiana Supreme Court decision, Poston v. Taylor, et al., 24 N. E. (2d) 31, has the effect of rendering inoperative the provision of Section 5 (i) of the Securities Law of 1937 (Section 25-833 (i), Burns' Statutes, 1933, Pocket Supplement) insofar as the provisions of the section may relate to Indiana courts. The court said in that case, "We know of no authority under which courts in this state have jurisdiction to judicially supervise or approve plans for the reorganization of corporations."

Your second question is answered by saying that the effect of the above decision is to leave full power in the Indiana Securities Commission to approve or disapprove securities to be issued in connection with the reorganization of corporations. That is, the effect of the decision is to render fully operative the provisions of Section 7 of the Securities Law (Section 25-835, Burns' Statutes, 1933, Pocket Supplement). Such Section 7 quite definitely fixes the powers, and provides the procedure, for the approval or disapproval by the Indiana
Securities Commission of securities involved in corporate reorganizations.

Reference is made in the preceding paragraph to Section 7 only. It is to be recognized that in the actual process of registration of a reorganization issue the next following section, Section 8, is in large measure to govern. It is to be noted that the last clause in the first paragraph of Section 7, reads, "shall be registered by qualification as provided in this act, which of course has reference chiefly to Section 8;" also attention is called to the direct reference to Section 8 found in the third paragraph of Section 7. Obviously, insofar as the registration of reorganization securities is concerned, Sections 7 and 8 each supplements the other.

Answer to your second question substantially answers your third. Power resting in the Commission to approve or disapprove securities involved in corporate reorganizations is tantamount to power to approve or disapprove plans of reorganization, since approval or disapproval of the reorganization securities is so related to and contingent upon approval of the reorganization plan that the two operations are practically impossible of separation. In any event, it is my opinion that Section 7, together with Section 8, expressly authorizes the Commission to approve or disapprove the plan of reorganization in connection with the process of approving or disapproving the registration of the securities involved. Your third question, therefore, is answered in the affirmative.

Your fourth and fifth questions involve much the same question stated in different forms. To answer them satisfactorily will require certain discussion, and at the same time I will make reference to a Securities and Exchange ruling which bears upon the subject.

The question presented appears on its face to call for construction of a federal statute, Section 3 (a) (10), of the Securities and Exchange Law of 1933, as amended, and it is not within the province of this office to construe statutes of other states or of the United States. Examined carefully, however, the question more strictly involves an interpretation of the Indiana Securities Law than of Section 3 (a) (10). This is made clear in connection with a ruling in a similar case by the Securities and Exchange Commission, being Release 312 (Class C) by the General Counsel of the Commission of March 15, 1935. The last paragraph of the release says:
"You will appreciate that the General Counsel's office cannot attempt to interpret the relevant statutes of each state to find whether they grant state authorities the powers necessary to satisfy the requirements of Section 3 (a) (10). Obviously, these are questions of local law and must be for the determination of local attorneys. For these reasons, I am not in a position to render any opinion as to whether specific legislation grants to a state authority the powers necessary for an exemption under Section 3 (a) (10)."

It is suggested that you examine this entire release. It carefully considers several phases of much the same question as is presented by your questions four and five. The release, with respect to construction of Section 3 (a) (10), and with which I fully agree, points out that the state "governmental authority" must be "expressly authorized by law to grant such approval," and also that the "hearing" of the approving authority must likewise be "expressly authorized by law;" that this must be granted clearly and explicitly by the state statute in question, although not necessarily by any particular language.

My opinion is that the Indiana Securities Commission is such a "governmental authority" as to bring it within the terms of Section 3 (a) (10).

The Indiana Securities Law, however, does not in specific terms provide for a hearing as a prerequisite to approval of an application for the registration of an issue; nor is a hearing, at the option of the Commission, specifically provided for. The only provision for hearing is found in the last sentence of Section 8 of the Indiana Securities Law (Section 25-836, Burns' Statutes, 1933, Pocket Supplement), which reads:

"Before any final order is entered refusing the registration of any issue of securities the applicant for the registration thereof shall upon request be entitled to a hearing."

It would seem clear that securities involved in a plan of corporate reorganization, which had been approved by the Indiana Commission, where no hearing was had, could not expect exemption under Section 3 (a) (10).
On the other hand, in any case arising under the provision of Section 8, above quoted, where a hearing becomes necessary, and where all persons to whom it is proposed to issue securities in connection with a reorganization plan, are given proper or adequate notice of such hearing, it is my opinion that such hearing would undoubtedly satisfy the terms of such Section 3 (a) (10); and the securities issue, if approved for registration as a result of such hearing, would be exempt under Section 3 (a) (10).

With reference to hearing, the above quoted provision of Section 8 states that the “applicant” for registration shall upon request be entitled to a hearing. But this provision, as pertaining to reorganization securities, must be read in connection with Section 7, where “the protection of the interests of the investors” is emphasized as the chief concern of the Commission in determining approval or disapproval of the plan, and of the securities, involved in the reorganization of corporations. To satisfy the requirements of Section 7, it is my opinion that not only the applicant, but also the interested investors, which naturally includes “all persons to whom it is proposed to issue securities”, would be entitled to a hearing, and should “have the right to appear.”

Although no notice to either the applicant, or investors, is provided for in the quoted provision of Section 8, it is my opinion that the requirement of notice is implied, the same as notice of hearing is undoubtedly implied in Section 3 (a) (10).

It perhaps should be added that any such hearing would necessarily, under the provisions of the Indiana Securities Law, involve among other considerations the “fairness” of the “terms and conditions of the issuance and exchange of securities.”

It is apparent from the foregoing consideration of your fourth and fifth questions that in my opinion the provisions of the Indiana Securities Law meet all the requirements of the provisions of Section 3 (a) (10) of the Securities and Exchange Act, in those cases where a hearing is required under Section 8 of the Indiana Securities Law relative to an application for the registration of securities involved in a corporate reorganization plan, and in the event of approval of such securities by the Indiana Securities Commission as a
result of such hearing. Any such action of approval of reorganization securities by the Indiana Commission would undoubtedly exempt, under Section 3 (a) (10), the securities thus approved.

To specify, by using the language of your fourth question, my opinion is, under the circumstances stated in the preceding paragraph, that the Indiana Securities Commission is a governmental authority expressly authorized by law to grant approval of the terms and conditions of the issuance and exchange of securities, in connection with any reorganization, readjustment or other issuance of securities in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear.

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INSURANCE, DEPARTMENT OF: Power of Farmers Mutual Company to insure urban property.

May 29, 1940.

Mr. Frank J. Viehmann,
Commissioner, Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of May 18 which reads in principal part, as follows:

"Many inquiries have reached this Department as to the interpretation of a statute known as Section 6, page 673, Chapter 145 of the Acts of 1919, amended 1927, relative to the risks upon which insurance could be written and policies issued by farmers mutual fire insurance companies. That portion of the statute in which we are particularly interested reads as follows:

"Property on Which Policies May Be Issued.—Such company may issue policies upon farm dwellings and other farm buildings, including silos, and the contents of such buildings; farm machinery, vehicles,