SECRETARY OF STATE: Corporations—meaning of “withdraw from transacting business” as applied to use of name by successor corporations.

May 5, 1933.

Hon. Frank Mayr, Jr.,
Secretary of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in part as follows:

“There have been tentatively submitted to this office articles of incorporation for the Indianapolis Blue Print and Supply Company, Inc.

“The difficulty with the articles as submitted lies in the fact that the name selected by the corporation is identical with that of an existing corporation, to-wit: ‘Indianapolis Blue Print and Supply Company.’

“It is reliably represented to the office, however, that the Indianapolis Blue Print and Supply Company, the incumbent corporation, is in the hands of a receiver and is in process of liquidation and that the incorporators of the corporation for which articles of incorporation have been so tentatively submitted are the purchasers of the business and assets of the incumbent corporation.”

Reference is made by you to Section 4 (b) of The Indiana General Corporation Act of 1929, which reads as follows:

“No corporation shall: * * *

“(b) Take or assume a corporate name the same as, or confusingly similar to, the name of any other corporation then existing under the laws of this state or authorized to transact business in this state, unless at the same time (1) such other corporation shall change its corporate name or withdraw from transacting business in this state, and (2) the written consent of such corporation, signed and verified under oath by its president or a vice-president and its secretary or an assistant secretary, shall be filed with the secretary of state.”

You submit the following questions:

“1. Does the language employed in the above section of the statute ‘withdraw from transacting business in this state’ cover the contemplated transaction by which the assets and business of the existing corporation shall be sold by the receiver thereof?

“2. If your answer to question one is in the affirmative, will that authorize this department to approve the name substituted, ‘Indianapolis Blue Print and Supply Company, Inc.’?

“3. Would the approval of the department of the name so submitted be in conflict with section 4 (c) of the act above referred to, wherein it is provided that ‘The holders of a majority of the shares of a corporation which has been dissolved or has otherwise terminated its corporate existence shall have the exclusive right at any time within thirty days after the termination of its corporate existence to become incorporated under its former corporate name’?”

I think it is clear that the language “withdraw from transacting business in this state” refers only to foreign corporations, which withdrawal may be effected voluntarily by compliance with Section 65 of the act or involuntarily by revocation of certificate of admission by the Secretary of State under the provisions of Section 66 of the act. You do not definitely so state, but I assume that the now existing Indianapolis Blue Print and Supply Company is an Indiana corporation and upon that assumption, your first question is answered in the negative.

The first question being answered in the negative, your second question requires no answer.

The answer to your third question is in the affirmative unless the organizers of the new corporation are the holders of a majority of the shares of the old corporation. This question, however, seems to have no bearing on the case submitted because it is not yet made to appear that the old corporation has been dissolved or otherwise has terminated its corporate existence.