deposited, it is my opinion that the securities should not be accepted for deposit by your department.

I might also point out that if they were deposited, they would be held by your department without authority of statute and entirely at the risk of the department and possibly the department would assume a responsibility which might become a personal responsibility in certain instances with reference to the handling and care of any securities that might be so deposited.

SECRETARY OF STATE: Concerning unfair competition through the use of a name so similar as to confuse products of corporations.

March 16, 1933.

Hon. Joseph O. Hoffman,
Chief Corporation Counsel,
Secretary of State,
Indianapolis, Indiana.

Honorable sir:

I have before me your letter submitting the ruling of your department on the name "Berghoff Brothers Brewery, Inc.," under the provisions of the Indiana Corporation Act of 1929, section 4 (b); it being understood that the name "Berghoff Brewing Corporation" had previously been accepted for filing.

You cite, by reference to the letter of the applicant's attorneys, the decision in Deister Concentrator Company v. Deister Machine Company, 63 Ind. App. 412, and the question is presented, whether or not the case cited should be considered by your department and is pertinent in the matter presently before us.

Please permit me to quote directly from that portion of your letter wherein you discuss this case:

"The case cited in the letter of the applicant's attorneys would seem to have been decided upon grounds rather than in the use of the corporate name. In fact, the whole question in that case seemed to be whether or not the activities of the defendant corporation under its name constituted unfair competition. There was no interpretation of the statute involved such as we have in our Indiana general corporation act of 1929."

Your statement that section 4 (b) of the Indiana General Corporation Act of 1929, was not specifically ruled upon in the
Deister case is accurate; but a further observation of yours is equally true and would seem to make the case presently pertinent. To quote your opinion:

"* * * the whole question in that case seemed to be whether or not the activities of the defendant corporation under its name constituted unfair competition."

Unfair competition through the use of a name "so similar as to confuse" the products of the corporations is the fundamental basis for the enactment of section 4 (b). The provision of that section is merely a statutory safeguard against unfair competition. Since the object of the section, and the intent of the legislature in enacting it, were clearly to eliminate unfair competition through the use of corporate names, the Deister case opinion, in as far as it defines what constitutes such unfair competition, cannot logically be rejected.

The provision of the statute under consideration as set forth at section 4825, Burns Annotated Indiana Statutes, 1929, supplement is:

"4825 Corporate name 4. * * * 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, * * *.*

Decisions of other state courts in which they have defined sections of the statutes similar to the one quoted above are numerous.

In California where statutes provide that new corporations shall not be granted names of any corporation heretofore organized in that state, or a name "so closely resembling the name of such corporation as will tend to deceive," the name Los Angeles Trust and Savings Bank, was allowed against protest of Los Angeles Savings Bank, 158 California 603.

In Michigan, whose statute relating to banks requires persons associating to organize a bank to specify in the articles of association the name assumed, which "shall not be in any material respect similar" to that of any other bank organized under the state law, the following was permitted: Michigan Savings Bank of Detroit, Michigan, doing business as "Michigan Savings Bank," over protest of "The Bank of Michigan," although both banks had business on the same street in the same city. 162 Mich. 297; 127 N. W. 364.
In New York, whose statute provides that "no certificate of incorporation of a proposed corporation having the same name as a corporation organized to do business under the laws of this state, or a name so nearly resembling it as to be calculated to deceive," the following were allowed: Corning Glass Works, over protest of Corning Cut Class Co., 197 N. Y., 173; Buffalo Commercial Bank, over protest of Bank of Commerce in Buffalo; 12 N. Y. Supp. 648; Merchants Banking Company of London, Ltd., over protest of Merchant Joint Stock Bank, Ltd., 9 Ch. Div. 560.

In Illinois, whose statutes provide that no license shall be issued "to companies of same or a similar name" as existing corporation, the following were held not similar: Elgin Creamery Co.—Elgin Butter Co., 155 Ill. 127; 40 N. E. 616; Drummond Tobacco Co.—Drummond-Randle Tobacco Co., 114 Ill. 412.

In Pennsylvania where courts and secretary of state are required to ascertain that the proposed corporation is "lawful and not injurious to commonwealth," these were granted as not being too similar:

The Central Maternity & Hospital for Women, over protest of The Maternity Hospital, 29 Pa. Super. 420;

Standard Quemahoning Coal Co. against Quemahoning Coal Co., 20 Pa. Dist. 1006, 39 Pa. Co. 97;

Pittsburg No. 8 Vein Coal Co. against Pittsburg Coal Co., 16 Pa. Dist. 577, 33 Pa. Co. 449;

Quemahoning Valley Mining Co. against Quemahoning Coal Co., 13 Pa. Dist. 446;

West End Savings & Trust Co. against West End Trust Company of Pittsburgh, and West End Savings Bank, 12 Pa. Dist. 373;

Kidd Bros. & Burgher Steel Wire Co. against Kidd Steel Wire Co., Ltd., 5 Pa. Dist. 56;

York Wall Paper Co. against York Card & Paper Co., 35 Wkly. N. C. 574;


City Trust & Security Co. against City Trust Safe Deposit & Surety Co. of Philadelphia, 9 Pa. Co. 366;

North 5th St. Mutual Land Assn. against North Fifth Street Real Estate Co., 8 Pa. Co. 15;

Crystal Ice Co. of Pittsburgh and Crystal Ice Co. of Pittsburgh and Allegheny, cited, *supra*;


Peoples Savings & Trust Co. v. Peoples Trust Co., 259 Pa. 62.

A personal name cannot be appropriated exclusively as part of a corporate name so as to prevent another person of the same name from using it in the name of a corporation formed by him.

Royal Banking Co. v. Royal, 122 Fed. 337;
Dodge Stationery Co. v. Dodge, 145 Calif. 380;
Drummond Tobacco Co. (above), 114 Ill. 412;
Lamb Knit Goods Co. v. Lamb Glove, etc., 120 Mich. 159;


The law of the State of Indiana regarding this matter is best set forth in the decision of Deister Concentrator Company v. Deister Machine Company.

63 Ind. App. 412, at page 418-419, as follows:

“It may be stated as a general proposition that a man’s name is his own property and he has the right to its use and enjoyment the same as any other property right, and so long as such use be a fair and reasonable exercise of such right, he cannot be held liable for incidental damages to a rival in business using the same name but he must make an honest use of his name, and not injure the good will and reputation of a rival by palming off his goods or business as that of such rival. Nor will he be permitted to use his name fraudulently so as to appropriate the good will of an established business of his competitor. Pemberthy Injector Co. v. Lee (1899), 120 Mich. 174, 78 N. W. 1074; Rogers v. Rogers (1885), 53 Conn. 121, 1 Atl. 807, 5 Atl. 675, 55 Am. Rep. 78; 38 Syc. 809; Brown Chemical Co. v. Meyer (1890), 139 U. S. 540, 11 Sup. Ct. 625, 35 L.Ed. 247; Howe Scale Co. v. Wyckoff, etc. (1905), 198 U. S. 117, 25 Sup. Ct. 609, 49 L. E. 972; International Silver Co. v. Rogers (1907), 72 N. J. Eq. 933, 67 Atl. 105, 129 Am. St. 722; Waterman Co. v. Modern Pen Co. (1914), 235 U. S. 88, 35 Sup. Ct. 91, 59 L. Ed. 142.
"In Howe Scale Co. v. Wyckoff, etc., supra, Chief Justice Fuller, speaking for the court said: 'But it is well settled that a personal name cannot be exclusively appropriated by any one as against others having a right to use it; and as the name "Remington" is an ordinary family surname, it was manifestly incapable of exclusive appropriation, * * *'; and, in concluding the opinion, said: 'We hold that, in the absence of a contract, fraud or estoppel, any man may use his own name, in all legitimate ways, and as a whole or a part of a corporate name.'

"Without extending our view further on this branch of the case, it must be regarded as settled by the authorities that Emil Deister, not parting with the use of his name by contract or otherwise, when he disposed of his stock in appellant corporation was not precluded thereafter from the use thereof in connection with another business; that is, the mere use of the name 'Deister' in the new corporation did not of itself confer any right upon appellant to injunctive relief."

In view of the foregoing, we are of the opinion that the secretary of state will not be abusing the discretion placed in him by the statute in permitting the filing of Articles of Incorporation of "Berghoff Brothers Brewery, Inc."

PUBLIC INSTRUCTION, DEPT. OF: Limitation of term "school city"; legislature cannot invalidate tenure contracts entered into by teachers.

Honorable Grover Van Duyn,
Assistant Superintendent,
Department of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion for your guidance in view of the provisions of chapter 116 of the Acts of 1933, which is Senate Enrolled Act No. 34, entitled: "An act to amend an act entitled 'An act defining teachers and permanent teachers, providing for their employment and release, and defining, and providing for the making and