FINANCIAL INSTITUTIONS, DEPARTMENT OF: Retail Installment Sales Act, applicability of same to licensed non-resident finance companies.

February 4, 1937.

Mr. F. M. Call,
Supervisor, Division of Installment Finance,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion with respect to the applicability of the Retail Installment Sales Act of 1935 (Chapter 231 of the Acts of 1935) to the situation of a license which is a non-resident corporation but which has applied for and received a license under said Act, and is engaged in the business of buying retail installment contracts as defined in said Act from Indiana retail dealers. It is assumed also that the retail installment contracts which are purchased by the licensee are contracts made in Indiana between Indiana retail dealers and Indiana residents, but that the purchase of the retail installment contracts by the licensee are consummated in a foreign state.

Section 9 of Chapter 231 of the Acts of 1935, the Act under consideration, provides, among other things, that:

> "No retail seller may sell, assign and transfer any retail installment contract to any person other than a licensee under this act."
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> Acts of 1935, page 1213.

Section 11 of the same Act provides, among other things, that:

> "No person shall purchase retail installment contracts from a retail seller doing business in this state or engage in the business of purchasing retail installment contracts from retail sellers doing business in this state * * * unless the department has licensed such person to do such business and has issued to the person a written instrument evidencing the license. * * *"
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> Acts of 1935, page 1214.

The word "person" is defined by the Act to include a corporation.

Acts of 1935, page 1207.

Section 12 of the above Act provides for the form of application to be used in making an application for a license, and also makes provision for the payment of a license fee.

Acts of 1935, page 1215.

Section 13 of the above Act makes provision for the approval or rejection of the application, and Section 14 makes provision for the form of the license to be issued.

Acts of 1935, pages 1216-1217.

Section 15 of the Act provides for the revocation of a license and sets out the causes for which a revocation may be made.

Acts of 1935, page 1217.

I think it is fundamental that the laws of a state do not have extraterritorial effect and to that extent the provisions of section 11 prohibiting persons from purchasing retail installment contracts without having been licensed so to do, would not be effective against a non-resident, as to transactions taking place in a foreign state.

However, Section 9 makes it unlawful for the retail seller, doing business in Indiana, to sell his contracts to anyone other than licensees and it is doubtful, with that in mind, that the licensee in the particular case referred to by you, made application for a license and procured the approval of the application and the issuance of the license for the purpose of qualifying itself to the extent that Indiana retail sellers might lawfully do business with it in the sale of their retail installment contracts.

While, therefore the licensee is engaged in such business it must comply with the terms of the license or else subject itself to the revocation provisions of the statute. It cannot receive the benefits of the license without being subject to its burdens, and the claim of freedom from the obligations imposed upon it by the law on the ground that the Act has no extraterritorial effect would not, in my opinion, be available to it as a licensee. The licensee is in very much the same situation as was referred to in the case of Stein-Hall Manufacturing Company v. Glossbrenner, 84 Ind. App. 306, where the court said on page 311:

> "Appellant was under no compulsion to make its application for a license and to accept the same from the department of food administration. It could accept such license or not as it chose. It is true that if it had refused to so accept, it would have been precluded from engaging in the business of handling rice products. It chose to accept the license and to engage in the business under the rules and regulations of the food administration. It agreed in its application to obey the rules and regulations, included in which was the requirement to use the form of contract prescribed. Such application being its voluntary act, it is not now in position to challenge the legal force of such rules and regulations. Having had the benefit of the license which was granted to it, it should accept the burden which it imposed."

This principle as a general proposition would apply even to the case where the law is unconstitutional. Note the language of the Supreme Court of the United States in the case of Daniels v. Tearney, 102 U. S. 415, page 421, where the court said:

> "It is well settled as a general proposition, subject to certain exceptions not necessary to be here noted, that where a party has availed himself for his benefit of an unconstitutional law, he cannot, in a subsequent litigation with others not in that position, aver its unconstitutionality as a defense, although such unconstitutionality may have been pronounced by a competent judicial tribunal in another suit."

Note also the language of the court in the case of United States v. Smith, 285 Fed. 751, at page 754.

Before quoting from the above case, I perhaps should say that the action grew out of the issuance by the War Industries Board of certain permits in order to control the wool market during the World War. The defendant in the case contended that the War Industries Board had no right to require permits nor to attempt to penalize or discriminate against persons who dealt in wool without permits, and that its assertion of such authority was illegal. With respect to that situation, the court said:

"The defendant was under no compulsion to take a permit. He could do so or not, as he chose. If he had refused, doubtless he would have been discriminated against by the board. Balancing advantages against disadvantages, it was for him to decide whether he would take a permit or stand upon his rights without one. He took one and made the agreement here in suit. It was his voluntary act. * * * The defendant has had the benefit of the agreement, and I think he should be held to the burden of it."

In conclusion, I think the above cases show very clearly the situation of the licensee in the assumed case. We do not have here a case involving the question as to whether a statute has extraterritorial effect. The case we have here is whether a person, or corporation as in this case, may receive a license issued by the State of Indiana to do a certain type of business and may obtain the fruits and benefits of that license without complying with the burdens imposed thereby.

In my opinion, the licensee cannot receive and retain the privileges conferred by the license without the acceptance of the burdens imposed by it. The remedy in the case of violation of the terms of the license would be its revocation.

TAX COMMISSIONERS, STATE BOARD OF: Tax ferret contracts, whether valid or not. Contracts for collection of dropped taxes, whether valid or not.

Hon. Philip Zoercher, February 8, 1937.
Chairman, State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter as follows:

"This board has been asked to secure an official opinion from your department as to whether the county commissioners have authority to contract with unofficial individuals to locate sequestered taxable property and to collect the delinquent taxes thereon; a percentage of such collected delinquent taxes to be retained as compensation. Such individuals being generally designated as tax ferrets."