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sult of the legislative process by its action would violate at least five sections of the Indiana Constitution, including, and most importantly, the separation of powers doctrine contained in Article 3, Section 1.

Since the administrators of the Industrial Development Fund cannot accept either transfers of funds or loans of funds from any source, there is no need to consider separately the power of the Board of Finance to effect transfers or loans of funds.

It is my opinion that the lack of authority in the administrators of the Industrial Development Fund to accept loans or transfers of funds negates the possibility of the Board of Finance having any authority to transfer or loan funds from any source to the Industrial Development Fund.

OFFICIAL OPINION NO. 35

October 20, 1967

FINANCIAL INSTITUTIONS—Indiana Consumer Loan Act—Rules and Regulations to Supplement Act.

Opinion Requested by Mr. Donald H. Sauer, Director of Financial Institutions.

I am in receipt of your inquiry concerning Chapter 267 of the Acts of 1967, the same being Burns §§ 18-3601 through 18-3619, known as the Indiana Consumer Loan Act.

Your specific questions are:

“1. To whom may a license be issued under the Indiana Consumer Loan Act?

“2. Does the Act prohibit the conduct of business under a license issued in accordance with the provi-

OPINION 35

sions of the Indiana Consumer Loan Act in any office or place of business wherein business is also being conducted by any one of the persons excluded under Section 3(a) of the Act, including industrial loan authorities and small loan companies?

“3. By reason of the authority and power granted the Department of Financial Institutions in Sections 7 and 11 of the Indiana Consumer Loan Act, can the Department of Financial Institutions make a general rule or regulation prohibiting the conduct of the lending business under the provisions of the Indiana Consumer Loan Act in any office or place of business wherein business is also being conducted by any one of the persons excluded under Section 3(a) of the Act, including industrial loan authorities and small loan companies?”

I

The Indiana Consumer Loan Act is a regulatory measure authorizing the Department of Financial Institutions to license certain lending companies. Section 4 of the Act, Burns § 18-3604, provides:

“No person shall engage in the business of making loans of money to consumers in an amount exceeding one thousand (\$1,000) but not exceeding seven thousand five hundred dollars (\$7,500), and charge, contract for or receive, directly or indirectly, interest or charges which in the aggregate are greater than the interest that the lender would be permitted to charge for a loan of money if he were not a licensee hereunder, without first having obtained a license from the department, unless such interest or charges are authorized under another statute of this state.”

The third section of the Act, Burns § 18-3603, contains this definition of the term “person”:

“(a) The term ‘person’ shall mean an individual, corporation, partnership, copartnership, association or any other entity. This act shall not apply to any person,

copartnership or corporation doing business under any law of this State or of the United States relating to banks, savings banks, trust companies, credit unions, industrial loan authorities, building and loan associations, federally chartered credit associations, or small loan companies.”

The fifth section of the Act, Burns § 18-3605, pertains to the application for, and the issuance of, a license. Subsection (c) of that section requires the applicant to file with his application a verified statement of financial qualification certifying that the applicant has on deposit in a commercial bank the amount of \$25,000, or owns loans free of pledge or encumbrance which, when combined with funds on deposit, will total that amount. Subsection (a) provides for an application in writing, and requires that the application “state the business address where the business is to be conducted, the name and addresses of the individual owners, partners, or if a corporation, the directors of the applicant,” and certain other information.

It therefore appears, speaking in terms of class rather than individual qualification, that any individual, corporation, partnership, copartnership, association or any similar entity that has \$25,000 on deposit in a commercial bank, or on loan and in deposit combined, that is not doing business under any law of Indiana or of the United States relating to banks, savings banks, trust companies, credit unions, industrial loan authorities, building and loan associations, federally chartered credit associations, or small loan companies may be issued a license.

The determination of whether a particular person included in the above class may be issued a license is provided for by subsection (b) of Section 5, Burns § 18-3605, which reads:

“(b) Upon the filing of such application [for a consumer loan license] and the payment by the applicant of fifty dollars (\$50) as an investigation fee and one hundred dollars (\$100) as an annual license fee, the department shall investigate the relevant facts; and, if the department shall find that the financial respon-

OPINION 35

sibility, character and general fitness of the applicant are such as to command the confidence of the general public and to warrant the belief that the applicant's business will be operated honestly and fairly in compliance with and within the purpose of this act, the department shall thereupon issue a license to the applicant.

"If the department shall find otherwise it shall not issue such license and it shall notify the applicant of the denial and return to the applicant the sum paid by the applicant as a license fee. The department shall give every applicant a reasonable opportunity to be heard and shall approve or deny, by written order, every application for license within thirty (30) days after the date of such hearing. Such license if issued shall remain in full force and effect until it is surrendered, revoked, or suspended."

Thus any individual person in the general class described above that submits the proper application, investigation fee and license fee is eligible for a license unless the department of financial institutions determines that that applicant (who may request a hearing on the denial of his application) does not satisfy the fitness requirements set out in Section 5 (b).

II

Your second question (whether financial businesses specifically excluded from the provisions of the Act by Section 3, *supra*, and businesses licensed under this Act can be conducted on the same premises) involves Section 11 of the Act, Burns § 18-3611, which provides:

"No other business shall be conducted in the same office as a licensee if the department finds, after investigation, that such business will conceal or facilitate evasion or violation of this act. The department shall make and enforce such reasonable rules and regulations for the conduct of business under this act in the same office with other business as may be necessary to prevent evasions or violations of this act. The depart-

ment may investigate any business conducted in the licensed office to determine whether any evasion or violation of this act is occurring or has occurred.”

The statute above clearly contemplates the operation of both a business licensed under the Consumer Loan Act and some other business on the same premises. Further, the use of the term “business” is in no way restricted in the statute, and so by necessity must be construed to include persons excluded from the Act by Section 3. Had the Legislature desired to prevent or forbid the operation of those businesses excluded from the Act on the same premises as are located businesses licensed under the Act, they could have readily so stated. An example of such specific prohibition can be found in the Indiana Installment Loan Act. Acts 1951, ch. 159, § 5, the same being Burns § 19-13-105, provides:

“No individual loaning money may engage in business as authorized in this Act if he owns or holds any license or certificate issued to him or to a partnership of which he is a member by the Department of Financial Institutions under another law or laws of this state relating to the licensed or regulated lending of money. No individual loaning money may engage in business as authorized by this Act in the same quarters used or occupied by the owner or holder of any license or certificate issued by the Department of Financial Institutions under another law or laws of this state relating to the licensed or regulated lending of money, nor engage in business as authorized by this Act in either direct or indirect business or economic affiliation with any other owner or holder of any license or certificate issued by the Department of Financial Institutions under another law or laws of this state relating to the licensed or regulated lending of money.”

In *Lee v. Burns*, 94 Ind. App. 676, 679, 182 N.E. 277 (1932), the court said:

“Statutes which interfere with legitimate enterprise or limit the right to construct or operate legitimate

OPINION 35

industries are to be given a strict construction. *Wheelwright v. Commonwealth*, 103 Va. 512, 49 S.E. 647; *Webb v. Baird*, 6 Ind. 13; *Ramsey v. Foy*, 10 Ind. 493."

In view of the contrast between the language used in the Consumer Loan Act and the language used in the Installment Loan Act, and in consideration of the need to construe the language in the Consumer Loan Act strictly, I must conclude that the Consumer Loan Act does not prohibit a business licensed under that Act from being conducted on the same premises as a business specifically excluded from the Act by Section 3 thereof. (This opinion does not consider the question of whether the law applicable to each individual business excluded by Section 3 would prevent that business from operating on the same premises as does a business licensed under the Consumer Loan Act.)

III

Your third question (whether the Department of Financial Institutions can by regulation prohibit the conducting of both a licensed business and a specifically excluded business on the same premises) involves the same section of the Consumer Loan Act as does your second question, and also involves the extent of the department's rule-making authority.

The department is given the authority to adopt rules and regulations in several sections of the Act. Section 7, Burns § 18-3607, provides in part:

"(c) The department is hereby authorized and empowered to make such general rules and regulations and specific rulings and findings not inconsistent with the provision of this act as may be necessary for the proper conduct of such business and the enforcement of this act indicating therein the specific sections of this act to which each is applicable."

In addition to the above general grant of rule-making authority, Section 11 of the Act, Burns § 18-3611 (set out in full above), also provides in part:

“ . . . The department shall make and enforce such reasonable rules and regulations for the conduct of business under this act in the same office with other business as may be necessary to prevent evasions or violations of this act. . . .”

The board thus is given both the general power to adopt rules and regulations as may be necessary to enforce the Act, and the specific power to adopt reasonable rules and regulations in relation to the conduct of a licensed business in the same office as a non-licensed business. Section 8 of the Act, Burns § 18-3608, provides for the revocation or suspension of a license under certain conditions, including:

“(b) The licensee has willfully violated any provision of this act or any rule or regulation lawfully made by the department under and within the authority of this act; . . .”

In *Department of State Revenue v. Colpaert Realty Corp.*, 231 Ind. 463, 479, 109 N.E. 2d 415 (1952), the court said:

“An administrative board has the undoubted right to adopt rules and regulations designed to enable it to perform its duties and to effectuate the purposes of the law under which it operates, when such authority is delegated to it by legislative enactment. *Blue v. Beach* (1900), 155 Ind. 121, 56 N.E. 89; *Albert v. Milk Control Board of Indiana* (1936), 210 Ind. 283, 200 N.E. 688; *McCreery v. Ijams* (1945), 115 Ind. App. 631, 59 N.E. 2d 133. But it may not make rules and regulations inconsistent with the statute which it is administering, it may not by its rules and regulations add to or detract from the law as enacted, nor may it by rule extend its powers beyond those conferred upon it by law. *McCreery v. Ijams, supra*; 73 C.J.S., Public Administrative Bodies and Procedure, §§ 93 and 94.”

The Department of Financial Institutions has the authority to adopt whatever regulations they deem necessary to regu-

OPINION 35

late the conduct of two businesses on the same premises, and they have the authority to suspend or revoke the license of any person who violates those regulations. Conversely, as was concluded in answer to your second question, the Consumer Loan Act does not prohibit the conduct of two businesses on the same premises. A rule adopted by the Department of Financial Institutions that would prohibit what the Act permits would not be "reasonable" nor "not inconsistent with the provision of this act." I must therefore conclude that the power of the Department in this regard is limited to prohibiting the conduct of two businesses on the same premises only in those individual instances when, after investigation, the Department determines that the joint operation of the particular business in a specified office facilitates evasion, or conceals violation, of the Act.

OFFICIAL OPINION NO. 36

October 26, 1967

JUDICIAL OFFICERS—CITIES AND TOWNS—Residence as Condition of Eligibility for Election to Office of City Judge.

Opinion Requested by Hon. John J. Frick, State Representative.

I am in receipt of your recent letter inquiring whether Indiana Acts 1959, ch. 31, § 1, concerning the residence of city judges of certain second class cities, violates Article 6, Section 6, of the Indiana Constitution.

Article 6, Section 6, of the Indiana Constitution provides:

"All county, township, and town officers, shall reside within their respective counties, townships, and