sion or an expenditure therefrom only on a request initiated by the Commission which is approved by the State Budget Committee and the Governor. As long as the money remains in the Indiana Port Fund, you have the only authority to issue warrants upon which the Treasurer of State will pay.

OFFICIAL OPINION NO. 3

March 31, 1966

SECRETARY OF STATE — 1955 COLLECTION AGENCY LAW — Exempted Person Advertising as a Collection Agency. Exempted Persons Soliciting Accounts for Collection. All Exempted Persons Governed by Other Statutes or Rules.

Opinion Requested by Hon. John D. Bottorff, Secretary of State.

The following is to answer your request for my Official Opinion interpreting the local laws which regulate collection agencies. Your request is written as follows:

> "Are all persons and agencies listed in Chapter 304, Acts of 1955, Section 2, of the Collection Agency Law exempt from being licensed as a Collection Agency if they advertise as a collection agency and solicit accounts for collection?"

To answer your question I must ascertain the intention of the Legislature in enacting laws regulating collection agencies and give effect thereto. To ascertain the legislative intent I shall look to the prior law on the subject, to other statutes upon related subjects and to the conduct that the statute was designed to deter. *Hunt v. Lake Shore & MS Railway Co.,*

112 Ind. 69, 13 N.E. 263 (1887); *Smith v. State ex rel. Ross*, 202 Ind. 185, 172 N.E. 911 (1930).

The Legislative intent that persons and legal entities engaging in the activity of collecting money for others, first procure a license is manifested in an historical examination of Collection Agency Laws of Indiana. The title to ch. 92 of the Acts of Indiana 1937 is an indication that the legislative intent was to require all persons who engaged in the business of collecting money for others first be licensed:

> "AN ACT to require the licensing and bonding of persons, firms and corporations engaged in the business of soliciting accounts for collection or in the collection of accounts and to provide a penalty for the violation thereof."

The construction to be given the term "accounts," Acts 1937, ch. 92, § 4, reads:

> "The term 'accounts' shall be construed to mean any claim or demand, written or unwritten, expressed or implied, growing out of the sale of goods, wares and merchandise, *or the performance of any work, labor or service for another.*" (Emphasis added.)

Section 1, Acts 1937, ch. 92, quoted below, specifically states that it is unlawful to solicit accounts for collection or to collect the accounts of others without first procuring a license:

> "That it shall be unlawful for any person, firm or corporation who is engaged in the business of *soliciting accounts for collectors* or in the *collection of accounts for others,* to engage in such business without first procuring a license so to do, as hereinafter provided, . . ." (Emphasis added.)

Section 2, Acts 1937, ch. 92, required each licensed collection agency to renew the license and surety bond each year, or in the alternative, forfeit the right to serve as a collection agency. The applicable segment of section 2 reads as follows:

> ". . . All licenses shall be so issued as to expire on the thirty-first day of December of the year in which they

> are issued. On or before the first day of January of the year any licensee who desires to continue in the business of soliciting accounts for collectors or in the collection of accounts for others shall file a new bond and secure a new license for the ensuing year. Any license which is not renewed on or prior to the thirty-first day of January of any year shall be null and void. . . ."

Sections 3 and 5½, Acts 1937, *supra,* excepted lawyers, justices of the peace and banks and trust companies, and fiduciaries in certain instances, from the obligations of the Act.

Section 4 of chapter 92, *supra,* excused banks, trust companies and all fiduciaries from the prohibitions of the Act when collecting in the regular course of their respective business; that section reads:

> "Nothing in this act shall in any way be construed to prohibit any banks or trust companies of this state to engage in the collection of checks, drafts or other evidences of indebtedness. All fiduciaries in this state in the liquidation of estates shall be permitted to collect accounts and do such necessary acts in such liquidation notwithstanding any other provision of this act."

Prior to 1937, a 1935 Act regulated the collection agency business; the title to ch. 127 of that Act read as follows:

> "AN ACT to require the licensing and bonding of persons, firms and corporations engaged in the business *of soliciting accounts for collection or in the collection of accounts.* . . . (Emphasis added.)

Section 1 of that Act made it unlawful for any persons, firms or corporations to engage in the business *of collecting accounts for others without first posting a bond.* That section read, in part, as follows:

> "That it shall be unlawful for any person, firm or corporation who is engaged in the business of soliciting accounts for collectors or in the collection of accounts for others, to engage in such business without first giving a bond, payable to the State of Indiana, . . ."

Section 2, Acts 1935, ch. 127, exempted lawyers, justices of the peace, banks and trust companies and fiduciaries from the operation of the act; that section read as follows:

> "This act shall not apply to any person admitted to the practice of law in this state or to any justice of the peace or to any corporation, person of [sic] persons established as and doing a banking or trust business or to person acting in a fiduciary capacity, or to any credit association or association organized and maintained to collect accounts which is not organized or operated for profit."

The term "account" was defined by the 1935 Act, *supra,* as follows in Section 3 thereof:

> "The term 'accounts' shall be construed to mean any claim or demand, written or unwritten, expressed or implied, growing out of the sale of goods, wares and merchandise, or the performance of any work, labor or *service for another.*" (Emphasis added.)

The Act of 1935, *supra,* as does the Act of 1937, *supra,* clearly indicated a legislative intent to require all persons, firms or corporations who engage in the business of collecting money for others first satisfy the statutory requirements to so act.

In 1955 the Legislature rewrote the Collection Agency Law, Acts 1955, ch. 304, §§ 1-12, as found in Burns IND. STAT. ANN., §§ 42-1801—1812.

The requirements to qualify as a Collection Agency are more rigorous under the 1955 Act than were the requirements of the 1935 and 1937 Acts. However, the legislative intent of each Act is the same, that is to protect citizens whose monies are collected by a third party from loss through dishonesty, neglect, misappropriation of funds, and the other frailties with which humans are burdened. See 1965 O.A.G. No. 6, which considered the 1955 Collection Agency Law:

> "It is clear both from the language of this Act and the nature of the subject legislated that the intent of the General Assembly in passing this statute was to

require all applicants for a license to conduct a collection agency in this state to file a statement concerning their financial responsibility in the office of the Secretary of State, to post a surety bond to protect residents of the State of Indiana against financial loss. . . ."

That legislative intent is further manifested through the definitions of certain terms in the 1955 Act, as found in Burns IND. STAT. ANN., § 42-1801, *supra*, which provides, in part, as follows:

"As used in this act, unless the context otherwise requires:

"(a) The term 'person' means any individual, firm, partnership or corporation;

"(b) The term 'collection agency' means and includes all persons engaging directly or indirectly and as a primary or secondary object, business or pursuit, *in soliciting claims for collection, or in the collection of claims owed or due or asserted to be owed or due to another;* the term 'collection agency' also means and includes, but shall not be limited to, *any person who sells, furnishes or maintains a letter or written demand service, including stickers or coupon books, designed for the purpose of making demand on any debtor on behalf of any creditor for the payment of any claim wherein the person furnishing or maintaining such letter or written demand service, including stickers or coupon books, shall sell such services for a stated amount or for a percentage of money collected whether paid to the creditor or to the collection agency,* or where such services may be rendered as a part of a membership in such collection agency regardless of whether or not a separate fee or percentage is charged. The term 'collection agency' shall also include but not be limited to, *any individual, firm, partnership or corporation who uses a fictitious name, or any name other than his or its name, in the collection of accounts receivable with the intention of conveying to the debtor that a third person has been employed.*

> "(c) The term 'claim' means any obligation for the payment of money or its equivalent and any sum or sums owed or due or asserted to be owed or due to another, for which any person may be employed to demand payment and to collect or enforce payment thereof; and the term 'claim' also includes obligations for the payment of money in the form of conditional sales agreements, notwithstanding that the personal property sold thereunder, for which payment is claimed, may be or is repossessed in lieu of payment." (Emphasis added.)

A comparison of the 1955 and 1937 Acts shows that the Legislature strengthened the safeguards provided to protect the public against loss.

A license applicant under the Collection Agency Law of 1937 was required to post a bond to be approved by the circuit judge of his county of residence to qualify to be issued a Collection Agency's license by the Secretary of State, Acts 1937, ch. 92, § 1.

The 1955 Collection Agency Law requires an applicant for a license to file a sworn application before the Secretary of State, which shows, among other things, his business or businesses during the preceding five years, his experience in the collection business and the Secretary of State may require other verified information which relates to the applicant's qualifications to engage in the collection business. The applicant must file a financial statement which shows his net worth in cash or its equivalent and the availability of his net worth for use in his proposed business, and the applicant must furnish the names of three individuals who are acquainted with his reputation for honesty and moral integrity and the manner in which he conducts his business. Acts 1937, ch. 92, § 3, as amended; Acts 1955, ch. 304, § 3, as found in Burns IND. STAT. ANN., § 42-1803. Also, the applicant must be a citizen of the United States, of good moral character and not less than twenty-one years of age; he must not have been convicted of any crime involving moral turpitude; the applicant must not have had a record as a defaulter in the payment of money collected or received for another; and he shall not be

a former licensee under the 1955 Act whose licenses have been suspended or revoked and never reinstated or restored, Acts 1937, ch. 92, § 4, as amended; Acts 1955, ch. 304, § 4, as found in Burns IND. STAT. ANN., § 42-1804.

The above requirements indicate a clear legislative intent to require Collection Agency licensees to be financially responsible and to have had a reputation for honesty. See 1965 O.A.G. No. 6. The penalty upon conviction for violation of the Collection Agency Act was increased from a maximum fine of One Hundred Dollars ($100.00) and imprisonment in the county jail for ninety (90) days, in the 1937 Act, *supra,* to a maximum fine of Five Hundred Dollars ($500.00) and imprisonment of six (6) months in the 1955 Act, as a deterrent to misconduct and misappropriation of money on the part of licensees. The provisions set out above were clearly designed to provide the maximum protection against loss of money by persons who entrust their claims for collection to a third party.

Certain classes of persons and businesses are exempt from the licensing requirements of the 1955 law, Burns IND. STAT. ANN. However, all exempted classes are regulated by other statutes and rules. Lawyers are excepted, the collection business is within their legitimate professional pursuit, but lawyers are subject to the strict discipline and regulation of the Supreme Court of the State of Indiana through its disciplinary committee, Supreme Court Rules 3-21—24. Persons who practice law in this state are examined as to their character and fitness, Rule 3-12, Rules of the Supreme Court of Indiana, and attorneys are subject to the watchful eye of the state and local bar associations. The exemptions stated in the Collection Agency Act of 1955, Burns, § 42-1802, *supra,* were not granted to permit those persons or firms to engage in the business of collecting the accounts of others outside of the regular course of their respective businesses. Subsection (b) of § 42-1802, *supra,* exempts persons regularly employed on a wage or salary in the capacity of credit men or in other capacities except, however, as independent contractors. That class of persons is apparently exempted from the operation of the Collection Agency Act because they are subject to the direction and con-

trol of the licensee. Subsection (c) of § 42-1802, *supra,* exempts banks, including trust departments thereof, fiduciaries and financial institutions, including licensees under the Indiana Small Loan Act, the same being Burns IND. STAT. ANN., §§ 18-1301—3005, licensees under the Indiana Industrial Loan and Investment Act, the same being Burns IND. STAT. ANN., §§ 18-3101—3125, and the licensees under the Indiana Retail Installment Sales Act, the same being Burns IND. STAT. ANN., §§ 58-901—934. Banks and their trust departments collect money for others in the regular course of business and banks and trust companies and trust departments in other financial institutions are subject to the control, scrutiny and regulation of the Department of Financial Institutions in the State of Indiana, which department licenses said institutions. Also, licensees under the Indiana Retail Installment Sales Act are subject to the indefatigable scrutiny of the Department of Financial Institutions, Burns IND. STAT. ANN., § 15-901.

Licensed real estate brokers are exempted from the requirements of the Collection Agency Law of 1955, Burns IND. STAT. ANN., § 42-1802 (d), that class of persons is licensed and supervised by the Indiana Real Estate Board, and the collection of money of others relating thereto is within the regular course and usual functions of a real estate broker, Burns IND. STAT. ANN., §§ 63-2401—2423.

Subsection (e) of Burns § 42-1802, exempts employees of licensees under the Collection Agency Act of 1955 for the obvious reason that such employees are subject to the supervision of the person licensed and any misconduct on the part of the employee may well jeopardize the business of the licensee. Subsection (f) of said section apparently permits persons, firms, partnerships and corporations to collect debts and money so long as it is done in the regular course of their business and not as a primary object of such business:

> "Any person, firm, partnership or corporation engaged in any business enterprise in the State of Indiana whose primary object, business or pursuit is not the collection of claims, as said term is defined by the provisions of this act; . . ."

Subsection (g) of § 42-1802 exempts electric, gas, water and telephone public utilities, their respective employees, agents, representatives, and individual contractors from the requirements of the 1955 law. Those public utilities are licensed by and they are subject to the regulations of the Public Service Commission. Any persons whose monies are collected by those public utilities have ample protection from suffering loss because of conversion. There is, therefore, no reason to require that such utilities be licensed under the 1955 Collection Agency Law. See Burns IND. STAT. ANN., § 54-102 *et seq.* And the express companies which are exempted from the operation of the 1955 Collection Agency Law, subsection (2) Burns § 42-1802, are subject to the control and supervision of the Indiana Public Service Commission.

It is, therefore, my opinion that persons and agencies exempted from the operation of the Collection Agency Law of 1955 by section 2 thereof may collect the monies and accounts of others in the regular course of their businesses, but may not advertise as a collection agency as that term is defined by Burns § 42-1801 (b).

OFFICIAL OPINION NO. 4

April 1, 1966

DEPENDENT CHILDREN, PUBLIC WARDS, OR CHILDREN OTHERWISE RECEIVING FOSTER CARE—School Transfer Charges. Transfer of Tuition Charges. Moving from One School Corporation to Another.

Opinion Requested by Mr. Richard L. Worley, State Examiner, State Board of Accounts.

This is in response to your recent letter requesting an Official Opinion with respect to school transfer laws as they relate