Dear Mr. Milton:

This is in response to your letter of May 29, 1964, requesting an Official Opinion on the following question:

"* * * the Board requests an Official Opinion as to whether or not the association known as the Associated Factory Mutual Fire Insurance Companies or the engineering division of such association may qualify as an authorized Inspection Agency in accordance with the provision of Section 9, Paragraph 1, of Chapter 66 of the Acts of the General Assembly of 1953 as amended by Chapter 335 of the Acts of 1959 and Chapter 332 of the Acts of 1963 (Burns' 20.632-664)."

The qualifications for inspection agencies are stated in the Acts of 1953, Ch. 66, Sec. 9, as found in Burns’ (1963 Supp.), Section 20-640, which reads as follows:

"Notwithstanding any contrary provisions in any of the standards hereinbefore prescribed, any inspection required to be made under the provisions of this act shall be deemed to meet the requirements thereof only if made by an inspector qualified and commissioned as hereinafter provided and regularly so employed by one of the following hereinafter referred to as inspection agencies:

“(1) Any insurance company authorized to insure against loss from explosion of boilers or pressure vessels in this state, or

“(2) A regularly established inspection service maintained by the owner or user of the boiler or pressure vessel which is the subject of such inspection, which inspection service includes the inspection of
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boilers or pressure vessels and is under the supervision of one or more Indiana registered professional engineers regularly employed by such owner or user, or

“(3) Any firm or corporation which is regularly engaged in the business of inspection for others of boilers or pressure vessels of the type which is the subject of such inspection, and whose inspection service personnel, equipment and supervision meet the requirements prescribed therefor by the board, or

“(4) The state of Indiana pursuant to the provisions of this act.”

The Acts of 1953, Ch. 66, Sec. 10, as found in Burns’ (1963 Supp.), Section 20-641, further provides:

“No such inspection agency (other than the state of Indiana and authorized insurance companies) shall engage in any required inspection [of] boilers or unfired pressure vessels in this state, unless and until such agency is registered with the administrator. Such registration shall show the name of such agency and its principal address in this state, and the name and address of the person or persons having supervision over inspections made by such agency. Changes in such supervision personnel shall be reported to the administrator within thirty [30] days after any such change. Each such registration shall be accompanied by, and shall continue to be valid during the time that there is in effect and on file in the office of the administrator, a bond in the penal sum of $5,000:

“(1) Upon which the surety is a surety company duly qualified under the laws of this state,

“(2) Upon which such inspection agency shall be the principal obligor and the state of Indiana shall be the obligee; and

“(3) Conditioned that said principal obligor will conduct, with personnel qualified as required by the provisions of this act, all inspections made by it for
purposes of this act in accordance with the standards provided therefore in this act and will execute and deliver to the owner or user a true report of each such inspection made by such agency and will promptly notify the administrator of any boiler or unfired pressure vessel which does not meet the requirements of safe operating condition.

"Each of such registrations shall also be accompanied by a registration fee in the sum of $25.00."

Information forwarded with the request for an Official Opinion establishes that the Associated Factory Mutual Fire Insurance Companies is an association of fire insurance companies. Seven companies, all qualified to do business in the State of Indiana, joined in the creation of this association. The association performs various services for its parent companies, such as serving as a rating bureau, determining underwriting standards and classification of risks, adjusting losses and is now attempting to qualify as an inspection agency. The association is not a corporation or any form of legal entity. It is an association formed to provide its parent companies information and to assist in the servicing of risks assumed by the parent companies.

6 Am. Jur. 2d Associations and Clubs § 1, describes "associations" as follows:

"The word 'association' is one of vague meaning, used to indicate a collection of persons who have joined together for a certain object. At common law, an unincorporated association is not an entity, and has no status distinct from the persons composing it, but is rather a body of individuals acting together for the prosecution of a common enterprise without a corporate charter but upon methods and forms used by corporations. By statute in some jurisdictions, however, unincorporated associations have the status of legal entities and are empowered to contract, to acquire, hold, and transfer property * * *

"It is the nature of an organization, rather than its name, which makes it an association in the eyes of the
law. An organization may be deemed to be an 'association,' as that term is used in the law, although it bears the name of a 'society,' 'league,' 'board,' 'union,' 'foundation, or the like; and a 'syndicate' has been defined as an association of individuals formed for the purpose of conducting and carrying out some particular business transaction, ordinarily of a financial character, in which the members are mutually interested * * * *"

Associations formed in the State of Indiana may register their names with the Secretary of State of Indiana and such names will be protected in the exclusive use thereof by such associations.

Acts of 1935, Ch. 261, Secs. 1 through 4, as found in Burns’ (1951 Repl.), Sections 49-1631 to 49-1634.

But an unincorporated association cannot sue or be sued in its own name. In the case of Karges Furniture Co. v. Amalgamated Woodworkers Local Union No. 131 et al. (1905), 165 Ind. 421, 423, 75 N. E. 877, the court said:

“On the other hand, in the absence of an enabling statute defining the rights and liabilities of the members, societies, associations, partnerships, and other bodies, combined under their own rule, for their own private benefit, and without any express sanction of law, are not, in the collective capacity and name, recognized at common law as having any legal existence distinct from their members; hence no power to sue or be sued in the company name. Such unincorporated associations, so far as their rights and liabilities are concerned, are rated as partnerships, and to enforce a right either for or against them, as in partnerships, the names of all the individual members must be set forth either as plaintiffs or defendants.”

The Associated Factory Mutual Fire Insurance Companies is not a legal entity; it is an association of legal entities.

While the association’s engineering division has the control and supervision of the inspectors it employs, the in-
inspectors are indirectly only employees of the parent insurance companies which compose the association.

You have advised, heretofore, that these inspectors meet the board's qualifications, and thus there is no question that the inspectors employed by the association are fully qualified to expertly perform their duties of inspection as required by the statute.

It remains only to determine whether their immediate employer, the Associated Factory Mutual Fire Insurance Companies, or the engineering division of such association can qualify as an inspection agency. It is my opinion that neither can qualify as an insurance firm under the statutes (Burns' 20-640 and 20-641, supra) for the following reasons:

1. Associated Factory Mutual Fire Insurance Companies, being no legal entity, could not be principal obligor on the bond required by the statutes of an inspection agency with inspectors under its supervision and control.

2. The association is not, of itself, an insurance company authorized to insure against loss from explosion of boilers or pressure vessels, so that its regularly employed inspectors could qualify.

3. To qualify as in inspection agency, the association would have to become such a legal entity, in its own right, so that it could be held legally responsible for the acts of its employees. This is the purpose of the statute in creating standards for qualification of inspection agencies.

Therefore, in answer to your question it is my opinion that neither the association known as the Associated Factory Mutual Fire Insurance Companies nor the engineering division of such association qualify as an authorized inspection agency.