

state to inheritance tax becomes fixed at the moment of death, although the value of the taxable interest is determined at a later time.

As noted from the Indiana Inheritance Tax Law and cases construing the same, to which reference has heretofore been made, our statute, likewise, has been interpreted "in keeping with the whole tenor of the inheritance tax law, which keys everything to the date of the decedent's death." In re Skinker's Estate, *supra*.

It is, therefore, my opinion that Senate Enrolled Act 268, being the Acts of 1963, Ch. 265, became effective on August 12, 1963, at 3:50 P. M. (E. S. T.), the time at which the distribution of the Acts of 1963 to all the counties of this state was completed as provided in the Indiana Constitution, Art. 4, Sec. 28, *supra*; and that the amendment in said act is not retroactive as to transfers caused by death occurring prior to said effective date.

OFFICIAL OPINION NO. 41

September 12, 1963

Mr. Harry E. McClain
Insurance Commissioner
Department of Insurance
509 State Office Building
Indianapolis 4, Indiana

Dear Mr. McClain:

Your letter of August 12, 1963, requesting my Official Opinion presented the following questions:

"May a domestic insurance company formed under the 1935 insurance act use the word 'assurance' in its name in place of the word 'insurance' and be in compliance with the act?"

Your second question is stated as follows:

"A. If a foreign or alien insurance company not admitted to do business in this state at the effective

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date of the 1935 insurance law but organized prior to that date now applies for admission to do business, may it be so admitted without the word 'insurance' in its name or the word 'assurance' in its name?

"B. If a foreign or alien insurance company was organized after the effective date of the 1935 insurance law and now applies for admission to do business in this state, may this Department grant it such admission without the word 'insurance' in its name or the word 'assurance' in its name?"

The Acts of 1935, Ch. 162, Sec. 63, as found in Burns' (1952 Repl.), Section 39-3603, reads in part, as follows:

"The name of any company organized under this act shall contain the word 'insurance' and the word 'company,' 'corporation' or 'incorporated,' or shall end with an abbreviation of one of these words, except that the word 'company' or the abbreviation 'Co.' may be used only if that word or abbreviation is not immediately preceded by the word 'and,' or any substitute therefor.

* * *

"Subject to the provisions of this section, any company organized under this act may change its corporate name at any time by amending its articles of incorporation in the manner hereinafter provided. The provisions of this section shall not affect the right of any insurance company which is existing under the laws of this state at the time this act takes effect or of any such company which thereafter reorganizes or reincorporates under this act or of any company authorized to transact business in this state at the time this act takes effect to continue the use of its corporate name."

If said section were to be construed literally, then it would become an absolute mandate that the words "insurance" appear in the name of every insurance company incorporated in Indiana after 1935.

However, such a literal construction of a statute is not necessarily correct nor does it in every case determine the true legislative intent. In the case of *City of Indianapolis v. Evans* (1940), 216 Ind. 555, 24 N. E. (2d) 776, the court states in part, on page 567:

“Courts are not always bound by the strict literal meaning of the words used. It was said in *Steiert v. Coulter* (1913), 54 Ind. App. 643;

“The legislative intent, however, is to be ascertained by an examination of the whole, as well as the separate parts of the act, and when so ascertained, the intention will control the strict letter of the statute or the literal import of particular terms or phrases, where to adhere to the strict letter or literal import of terms would lead to injustice, absurdity, or contradict the evident intention of the legislature. *United States Sav., etc. Co. v. Harris* (1895), 142 Ind. 226, 231, 40 N. E. 1072, 41 N. E. 451; *Greenbush Cemetery Assn. v. Van Natta, supra*, 199.’”

The Acts of 1929, Ch. 57, Sec. 1, as amended and found in Burns' (1960 Repl.), Section 25-203, gives some indication of the intent or purpose of the Legislature in enacting sections similar to the one in question. Said section which concerns corporations for profit reads in part as follows:

“The corporate name of every corporation organized under this act, and of every corporation which, pursuant to article 8, accepts the provisions of this act, shall include the word ‘Corporation’ or ‘Incorporated,’ or one of the abbreviations thereof.

“No corporation organized under this act, or which, pursuant to article 8, accepts the provisions of this act shall:

“(a) Use as a part of its corporate name any word or phrase which indicates or implies any purpose or power not possessed by corporations organized under this act * * *.”

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From said section it is apparent that the legislative intent is to provide that the corporate name shall not be such as to mislead the public as to the nature of the corporation. Conversely, Burns' 39-3603, *supra*, provides that an insurance corporation shall, by its corporate name, inform the public as to the nature of its powers.

The reasonableness of arriving at a liberal construction of the act can best be illustrated by a negative approach to the question.

In the case of *People ex rel. Bankers Co. of New York v. Stratton, Secretary of State* (1929), 335 Ill. 455, 167 N. E. 31, the court stated in part:

"The laws of New York provide that no corporation shall be organized under the General Corporation Law which has as a part of its name the word 'insurance.' A corporation named 'Lloyds, New York, Incorporated,' was refused a certificate by the secretary of state. Mandamus was brought to compel its issuance. A showing was made that the word 'Lloyds' had by business practice become synonymous with 'insurance.' A writ was denied. The court said: 'The object of the statute referred to was to prevent any corporation, except one subject to control of the insurance department, from using in its corporate name the word "insurance" and posing as an insurance company, when it was not in fact * * *. It is true the statute does not expressly prohibit the use of the word "Lloyds" as a part of the name of a corporation; but its use would be none the less an imposition upon the public, and contrary to public policy, as indicated by the statute.' *Barker v. Koenig*, 135 App. Div. 16, 119 N. Y. S. 777."

The word "assure" and "insure" are used interchangeably and the words "assurance company" and "insurance company" would convey the same meaning to the public and could be considered as being synonymous when used in this manner. See: *Utilities Engineering Institute v. Kafad*, 58 N. Y. 2d 743, 745.

In the event it were proposed to use the word "assurance" in the name of a new corporation which did not have the power to issue insurance and would not be under the control of the Department of Insurance, it would be proper for the Secretary of State to deny the use of such name. To also deny the use of the word in the name of an insurance corporation would appear to me to be contradictory.

Therefore, it is my opinion, in answer to your first question that an insurance company using the word "assurance" in its name would substantially comply with the intent of the Legislature and the use thereof should not be questioned.

From a practical standpoint the word "insurance" would be preferable for the reason that many states have requirements similar to that contained in Burns' 39-3603, *supra*, and problems might be encountered in attempting to qualify in such other states.

It is further my opinion that Acts of 1935, Ch. 162, Sec. 228, as found in Burns' (1952 Repl.), Section 39-4703, controls the answer to the remaining two questions. Said section reads as follows:

"No foreign or alien insurance company shall be admitted to do business in this state having *a name which, at the date of such admission, could not be taken by a domestic corporation* under the provisions of section sixty-three of this act, except that the name of a foreign or alien insurance company need not include the 'company,' 'corporation,' 'incorporated' or 'mutual' or one [1] of the abbreviations thereof; and no such foreign or alien insurance company after it has been admitted shall, by amendment to its charter, assume any name which, at the date of the filing of such amendment as hereinafter provided, could not be taken by a domestic corporation under the provisions of said section sixty-three of this act." (Our emphasis)

This section makes the date of admission, rather than the time of formation of the insurance company, determinative of the requirements they must meet. A foreign insurance company cannot acquire any rights under the Indiana Insurance Law until they have been admitted.

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In answer to your last two questions, it is my opinion that any foreign insurance company, now attempting to be admitted, must meet the requirements of Burns' 39-6303, *supra*, regardless of the date the company was organized.

OFFICIAL OPINION NO. 42

September 17, 1963

Hon. William Christy
State Senator
7106 Grand Avenue
Hammond, Indiana

Dear Senator Christy:

This is in reply to your request for an Official Opinion in which you ask if the provisions of the Acts of 1959, Ch. 107, Sec. 6, as found in Burns' (1962 Supp.), Section 48-1233, apply to the "employees of the Judicial Branch of a City Government?"

The section to which you refer added a new section, numbered 20(a), to the Acts of 1933, Ch. 233, as amended. The 1933 Act concerns the classification and government of civil cities. Section 6 of the Acts of 1959, *supra*, has two subsections, the first of which concerns the fixing of salaries for elected city officials. Subsection (b), as found in Burns' (1962 Supp.), Section 48-1233, concerns the salaries of appointive officers, deputies and employees of the city and reads as follows:

"(b) The salaries of each and every appointive officer, employee, deputy, assistant and departmental and institutional head shall be fixed by the mayor subject to the approval of the common council: Provided, That the provisions of this subsection shall not apply to the manner of fixing and the amount of compensation paid by any city to the members of the police and fire departments. The common council may reduce but in no event is the common council authorized to increase any salary so fixed by the mayor. All such