Indiana, cannot legally resign from said office and become Mayor of the City of Indianapolis, prior to the expiration of his term of office as prosecuting attorney to which he has been elected. This position is consistent with prior Official Opinions of this office.


OFFICIAL OPINION NO. 57
August 9, 1962

Mr. Joe McCord, Director
Department of Financial Institutions
1024 State Office Building
Indianapolis, Indiana

Dear Mr. McCord:

This is in response to your request for my Official Opinion concerning the authority of state-chartered building and loan associations to conduct all or part of their business at a fixed location, other than that of their principal office. Your letter indicates that examiners of your department have discovered several factual situations giving rise to the three questions presented by your request, the first two of which will be considered together and read as follows:

“1. Is the provision contained within the Acts of 1933, Ch. 40, Sec. 90 (7), as amended, as found in Burns’ (1950 Repl.), Section 18-502 (7), alone sufficient to authorize a state-chartered building and loan association to conduct regularly all or part of its business at a fixed location other than that of its principal office, when no authority for a branch office at that location has been granted?

“2. The Acts of 1955, Ch. 40, as found in Burns’ (1959 Supp.), Section 18-2159 to 18-2165 provides for the procedure whereby the establishment and operation of branch offices of state-chartered building and loan associations may be authorized. If such an association regularly conducts all or part of its business at a fixed
location other than that of its principal office when such location has not been authorized as a branch pursuant to the requirements of said statute, is such operation in violation of the law?"

In 1960 O. A. G., pages 142, 147, No. 25, it is stated, in part:

"Inasmuch as building and loan associations are entirely creatures of law, and as corporations have neither rights nor capacity, except as conferred by statute, if a power is claimed by them they must find their authority within the statutes under which they operate.

Indiana Law Encyclopedia, Vol. 4, Building and Loan Associations, § 1, p. 289;

1949 O. A. G., pages 131, 132, No. 33."

The Acts of 1933, Ch. 40, as amended, known as "The Indiana Financial Institutions Act," as found in Burns' (1950 Repl.), Section 18-101 et seq., applies to every financial institution enumerated in subsection (a) of Section 3 of that Act, Burns' 18-103(a), supra, which defines the term "financial institution" to include any building and loan association organized or reorganized under the provisions of that act, and any building and loan association organized under the provisions of any laws enacted prior to the passage of that act. Thus, all state-chartered building and loan associations are subject to the applicable provisions of "The Indiana Financial Institutions Act," supra. As a background to the consideration of the problems presented by your request, it is deemed helpful to note, by outline, the organization of that act, it being of considerable length and having application to most, if not all, financial institutions chartered by the State of Indiana.

When this statute was enacted, it is noteworthy that the Legislature, itself, divided the statute into eight basic "parts," each of which is subdivided into several "articles," each of which, in turn, is further subdivided into many "sections" and "subsections." To aid in an understanding of the reasoning to follow, these basic parts, and their titles as enacted by the Legislature, are as follows:
Referring to your first question, Section 90, in its present form as last amended by the Acts of 1937, Ch. 33, Sec. 10, is contained within "Part III. Banks, Trust Companies and Building and Loan Associations," and subsection (7) thereof, as found in Burns' 18-502 (7), supra, in its present form, is precisely identical to the corresponding subsection in the original act, which provides that each "corporation," as defined in Burns' 18-501, supra, which term is therein defined to include both banks and building and loan associations, shall have the following general rights, powers and privileges:

"(7) To appoint such officers and agents as the business of the corporation may require, and to define their duties and fix their compensation;"

This is the provision to which your question makes reference, and it is my understanding that some associations are claiming that this, alone, is sufficient to authorize a state-chartered building and loan association to conduct, regularly, all or part of its business at a fixed location other than that of its principal office, when no authority for a branch office at that location has been granted. Their contention appears to be based upon the inclusion therein of the term "agents," and that the conduct, regularly, of all or part of the association's business, at a fixed location other than that of its principal office, is merely the conduct of the association's business by an agent at an agency location.
From my study of this problem, I find no indication in "The Indiana Financial Institutions Act," supra, that the term "agents" has reference to a location or business site, but rather, every indication in the act tends to support the idea that the Legislature, by the term "agents" as therein used, meant natural persons. The verb used in the subsection is "appoint," rather than "establish," and the object is "agents," rather than "agencies." Thus, the power granted is to appoint agents and not to establish agencies.

The subsection further refers not only to defining the duties of such officers and agents, but also to fixing "their" compensation, which definitely contemplates the fixing of the compensation, not only of the officers, but also of the "agents" appointed pursuant to the authority of this subsection, which would have no meaning if the word "agents" were intended to have meant "agencies," business sites or branch offices.

It is noticeable that a considerable part of Article II of Part III, within which article subsection (7) is contained, deals with the rights, duties and powers of natural persons, such as the shareholders, the directors, the officers, agents and employees of all such corporations to which this article applies. In fact, the term "officers and agents" is found again in Burns' 18-512(b), supra, which is a part of the same article, and the following section, Burns' 18-513, supra, contains bonding requirements applicable to officers and employees having control of, or access to, moneys or securities of such corporations.

Further, under the doctrine of ejusdem generis, in construing a series of nouns in a statute, and particularly a general word following a specific word, it has been stated that general words will not be deemed to include any objects of a class unlike or superior to that designated by specific words.


From this doctrine, applied to the interpretation of subsection (7) of Section 90 of "The Indiana Financial Institutions Act," it would seem that the term "agents" would be of an entirely different class, and of a class superior to "officers," if we were to construe "agents" as referring to a branch office, business location or site; rather, the application of the doctrine
would tend to establish the construction that "agents," as therein used, refer to all natural persons other than "officers" who may be appointed to "perform such duties in the management of the property, business and affairs of the corporation as may be provided in the by-laws, or in the absence of such provision, as may be determined by resolution of the board of directors," as provided by Burns' 18-512 (b), supra. Thus, this term would include the substantial number of natural persons, other than officers, who must derive authority to conduct many phases of the business of the corporation which are not ordinarily conducted by officers, such as, the business conducted by tellers and clerks.

In Section 76 of the Act, Burns' 18-405, supra, concerning the requisites of the Articles of Incorporation of both banks and building and loan associations, one such requirement is that such articles state the postoffice address of the principal office; that the Department of Financial Institutions was intended to have regulatory power over the place at which the business of banks and building and loan associations is conducted is seen by references to Section 91 of the Act, Burns' 18-503, supra, requiring every corporation to maintain an office or place of business in the state, to be known as the "principal office," the location of which may not be changed except upon the approval of the department.

Of special significance to your problem is the following: Whereas, subsection (7) of Section 90 of the Act, Burns' 18-502, supra, is a section within Part III ("Banks, Trust Companies and Building and Loan Associations"), and Section 90 is specifically entitled by the Legislature as "General Powers," the fact that authority is granted, and reference made, elsewhere in the act with respect to the principal office of financial institutions and branch offices of certain financial institutions, is indicative that the general powers' section was not intended to operate as the authority for the establishment of any particular offices. Reference to the following Section 91, Burns' 18-503, supra, concerns the requirement of a "principal office" of every such corporation.

Most persuasive of the proposition that Burns' 18-502, supra, in providing general powers was not intended to authorize branch office operation, is the fact that provision is ex-
pressly made elsewhere for the establishment and operation of branches of banks. Section 224 of the Act, although last amended by the Acts of 1959, Ch. 39, Sec. 2, as found in Burns' (1962 Supp.), Section 18-1707, nevertheless, in its original form, authorized the establishment by "any bank or trust company" of "a branch bank in any city or town within the limits of the county in which the principal office of such bank or trust company is located, if there is no bank or trust company located in such city or town." However, this Section 224, supra, is contained within Part IV entitled, and pertaining only to "Banks and Trust Companies," and from the express language of such section, it is plain that the authority there provided is granted only to banks or trust companies.

Turning to the corresponding part of "The Indiana Financial Institutions Act" pertaining solely to building and loan associations, being Part V, as enacted in the original 1933 version of this act, it will be seen that there is no provision in such part for the establishment and operation of branch offices of building and loan associations comparable to that specific authority provided by Section 224, supra, which was and is applicable only to banks and trust companies. While Part V contains many precise provisions respecting building and loan associations only, and Section 252 thereof contained "General Powers" in addition to the general rights, privileges and powers provided by Part III of the act, there was absolutely nothing in the 1933 version of the law which could be construed as authorizing the establishment of a branch office of a building and loan association. The fact that branch offices are not mentioned in Burns' 18-502, supra, which contains the general powers enjoyed by corporations generally controlled by that section, and that special provision was made elsewhere for branch offices of banks and trust companies, but not in the corresponding part concerning, solely, the additional powers of building and loan associations, is indicative not only that Burns' 18-502, supra, was not intended to authorize any branch office operation, but also that banks and trust companies were authorized to have such branch offices, but that building and loan associations were not.

An authority to do a thing at one place (the principal office), is no authority for doing it at another and different place. It would be of little consequence for the department to authorize
the location of a building and loan association at a specified, fixed place, known as its "principal office," and to have the authority to grant or deny the right of movement of that office, as provided by Burns' 18-503, supra, if such an association could so easily circumvent such regulatory power by employing agents to conduct the business of the association at fixed locations, other than the principal office thereof, without any authority from the department. In fact, such an operation, without any regulation, would, undoubtedly, result in establishing agencies whenever and wherever such an association might desire for its own particular interests. If one association were to be permitted such ambulatory rights of operation, then there is no reason why every association in the state could not do the same thing, as all of them have precisely the same powers and privileges. If an association may establish one such operation without grant by the department, there is no reason why it may not establish two or many such operations. Once the power is conceded, then there would be no limitation upon the number of such operations, and the welfare of other associations and financial institutions already properly established could thereby be seriously jeopardized.

As indicating the prior absence of authority for the operation of branches of building and loan associations, and as indicating the legislative intent that such branch operation should be only with the consent of the department, the Acts of 1955, Ch. 40, supra, was enacted as a separate statute, the title of which reads: "An act concerning the establishing of branch offices by building and loan associations and other loan associations," approved March 3, 1955. This act is found in Burns' (1962 Supp.), Sections 18-2159 to 18-2165. Section 2 of that Act, as found in Burns' (1962 Supp.), Section 18-2160, provides, as follows:

"Except as hereinafter otherwise provided, any association may open or establish one [1] or more branch offices within the limits of the county in which the principal office of the association is located, at which any lawful business of the association may be transacted to the same extent as if transacted at the principal office. No association shall be authorized to establish any such branch or branches unless it shall have for each branch office established a total of not less than
two hundred fifty thousand dollars [$250,000] in its contingent fund, or in otherwise designated loss reserve accounts, and in its undivided profits account. *No such branch office shall be opened or established without first having obtained the written approval of the department.*” (Our emphasis)

The foregoing section enumerates the requisites for the establishment of a branch office of a building and loan association, restricting such to the limits of the county in which the principal office of the association is located, and requiring that such association have, for each branch office established, a total of not less than $250,000 in its contingent fund, or in otherwise designated loss reserve accounts and in its undivided profits account. Subsequent sections of the 1955 Act provide the procedure for applying for such a branch office, the requirement of hearing and notice of hearing, the requirement of a report of such hearing, and the requirement that the department either approve or disapprove such application. This act is apparently the only authority for the establishment of branches of building and loan associations.

Therefore, for answer to your first and second questions, it is my opinion:

1. That the Acts of 1933, Ch. 40, Sec. 90 (7), as amended, as found in Burns’ (1950 Repl.), Section 18-502 (7), does not authorize a state-chartered building and loan association to conduct, regularly, all or any part of its business at a fixed location other than that of its principal office.

2. The operation of a branch office of a building and loan association, and the conduct, regularly, of all or part of its business at a fixed location other than that of its principal office, is without authority unless compliance has been made with the Acts of 1955, Ch. 40, *supra*, and approval of the department secured pursuant to that act.

However, I wish to note at this point that the answers above given to questions Nos. 1 and 2 are further dependent upon the answer to question No. 3, which question reads as follows:

“3. If, prior to the effective date of the Acts of 1955, Ch. 40, *supra*, a state-chartered building and loan asso-
ciation has regularly conducted all or part of its business at a fixed location other than that of its principal office, and such operation has been continued after the effective date of said statute and to date, is such operation in violation of the law when no authority for a branch office at that location has ever been granted?"

It seems to me that a definite answer cannot be given to this question because there are other factors upon which the answer thereto would depend. The principle of equitable estoppel would definitely play a major part in the determination of this question, based upon the particular facts in each instance, which do not appear in the question as framed. All that appears from the question is the fact that prior to the effective date of the Acts of 1955, Ch. 40, supra, which was June 30, 1955, and continuously to date, some such business operation of a state-chartered building and loan association has been conducted at a fixed location, other than that of its principal office, without express authority therefor having been granted by the department. However, the question does not state whether or how long the department has had knowledge of this operation, whether the department has ordered such operation discontinued, or whether it has acquiesced in the continuance of such branch operation at such business site. However, the general principles concerning equitable estoppel were discussed in 1961 O. A. G., page 310, No. 50, in which, on pages 315, 316 and 317, the following pertinent statements are made with respect thereto:

"While the doctrine of equitable estoppel has been said to not be applicable against the government in its governmental or public capacity, there are certain circumstances in which that doctrine has been applied. On the one hand, those dealing with public officers of limited authority are bound to determine the scope of such officers' authority and cannot claim an estoppel with respect to acts done in excess of the officers' authority.

Indiana Law Encyclopedia, Vol. 12, Estoppel, Sec. 27, pp. 359, 360.

"However, in the case of State of Indiana v. Milk (1882), 11 Fed. 389 at page 397 it was said:
Resolute good faith should characterize the conduct of states in their dealings with individuals, and there is no reason, in morals or law, that will exempt them from the doctrine of estoppel. Com. v. Andre, 3 Pick. 224; Com. v. Pejepscot Proprietors, 10 Mass. 155; People v. Soc. for Prop. of Gosp., 2 Paine 545; State v. Bailey, 19 Ind. 452; People v. Maynard, 15 Mich. 463; Cahn v. Barnes, 5 Fed. Rep. 326.'

The doctrine of estoppel has, in the absence of fraud and misrepresentation, been applied to the grantor of a license or franchise, as for instance when a municipal corporation issues a franchise, again depending upon the circumstances involved. For instance, in 38 Am. Jur., Municipal Corporations, Estoppel as to Franchises, § 556, pp. 241, 242, it is said:

'* * * Every person dealing with a municipal corporation is bound to know the extent of its authority, and the principle of estoppel will not be applied to permit the doing indirectly of what cannot be done directly. On the other hand, it is well settled that a municipal corporation may be estopped, as to matters within its power, to deny that consent or authorization was given for a franchise claimed by a public service company or other asserted grantee.'

See also, Hagerstown v. Hagerstown Railway Co. (1914), 123 Md. 183, 91 Atl. 170, 7 A. L. R. 1239. Also in Dillon, Municipal Corporations, 5th Ed., § 1242 it is said:

'And if the municipality has the power to grant such right or franchise, and a corporation, believing and assuming that it has the consent or grant of the municipality, has, with the knowledge of the proper municipal authorities, proceeded to exercise the right or franchise, and has constructed, maintained, and operated its works and appliances in the city streets, the municipality will, in a proper case, be estopped by the acts and conduct of its officers and representa-
tives in knowingly permitting and acquiescing in the use and occupation of the streets, from asserting the invalidity of the grant of the franchise, so far, at least, as concerns its own failure to pass an ordinance or take steps necessary to effectuate the grant.

“Therefore, with respect to the general rule forbidding the doctrine of estoppel as applied to the government, it may be said that one of the exceptions concerns the granting of franchises or licenses which are within the power of the governmental agency to grant. Such is the situation in the instant case.” (Our emphasis)

Thus, although express written approval of the department may not have been first obtained, as provided by Burns’ 18-2160, supra, nevertheless, it is possible for a state of facts to exist whereby the acquiescence of the department in branch office operation may constitute implied consent and be tantamount to the approval provided by the statute. Thus, although prior to the Acts of 1955, Ch. 40, supra, there was no statute which could authorize branch office operation by a building and loan association, it is possible for there to be a legally recognized branch office operation in cases wherein the doctrine of estoppel applies, so that the department could not, now, question the validity of such operation, providing the branch office complies with the requirements of branch offices now provided by Burns’ 18-2160, supra. Thus, there could be no such branch office operation located outside of the limits of the county in which the principal office of the association is located. There could be no branch office operation unless, for each such branch, the association had established a total of not less than $250,000 in its contingent fund or in otherwise designated loss reserve accounts and in its undivided profits account. If all of these requirements do not exist, the department would be obligated to order such operation discontinued or to order a compliance with the statute.

However, if all requirements of such an operation do exist, so that such a branch office could be authorized if application were made therefor at this time, then I believe that such operation could not be ordered discontinued at this time, on the basis that it was jeopardizing the sound financial structure of asso-
ciations already established in the community, if the depart-
ment had failed to order such operation discontinued when the
fact of operation was first brought to its attention. Thus, for
answer to your third question, it is my belief that the operation
therein described, of more than seven years’ standing to date,
would not be in violation of the law if the department had
knowledge of such operation and had acquiesced therein by
failure to have ordered a discontinuance of the operation, and
further if such fixed business location complies with the require-
ments of Burns’ 18-2160, supra, with respect to location and
capital requirements.

OFFICIAL OPINION NO. 58

August 28, 1962

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

Dear Mr. McClain:

Your request of August 2, 1962, for an Official Opinion pre-
sents the following questions:

“1. Once an assessment company incorporated under
the 1897 Assessment Company Act becomes dormant
because of non-use of its charter rights, may it again be
reactivated?

“2. May an assessment company incorporated under
the 1897 Assessment Company Act once it becomes dor-
mant through non-use or mis-use of its charter rights
sell these charter rights in any manner, either directly
or indirectly?”

In answering your question it is necessary that certain facts
contained both in your letter requesting this Official Opinion
and in other correspondence attached to said letter, be set forth
herein for the purpose of clarity.

The assessment company in question was incorporated under
Chapter 195 of the Acts of 1897 and continued in business
until 1954, at which time a reinsurance treaty was executed and