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Of course, life insurance is personalty and the preparation of an assignment of the same would, if it was to be recorded, need to contain the name of the person preparing the same. But Ch. 110 of the Acts of 1959, applying only to those instruments which "shall be received for record," would not apply to the assignment set out in your question.

In conclusion I would like to point out that it is not my intention by this Opinion to preclude inclusion on the instruments within the purview of Ch. 110 of the Acts of 1959 of the name of the lending institution, whether it be a corporation or not, any partnership, or trade name, inasmuch as the Act is primarily concerned with the disclosure of the individual responsible for the preparation of the instrument and the inclusion of the former names would further assist this objective.

OFFICIAL OPINION NO. 27

June 30, 1959

Honorable John R. Walsh
Secretary of State
State House
Indianapolis 4, Indiana

Dear Mr. Walsh:

This is in response to your request for an Official Opinion to answer a series of questions concerning the Acts of 1959, Ch. 224, an amendatory act, which inserts into the Indiana Securities Law (Acts of 1937, Ch. 120, Sec. 11, as amended, and as found in Burns' (1957 Supp.), Section 25-839), the following:

"Every application made by a dealer shall be accompanied by the following:

"(1) A financial statement of the applicant showing assets and liabilities of the applicant, which statement shall accurately reflect the net worth of the applicant. The financial statement shall be attested to by the applicant if the applicant is an individual, or by a partner, director, manager or treasurer if the applicant is a
partnership or a corporation. The information contained in the financial statement shall be on file at all times in the office of the Secretary of State.

“(2) A corporate surety bond in the sum of twenty-five thousand dollars. All such bonds shall run to the people of the State of Indiana and shall be furnished by a surety company authorized to do business in this state. All bonds shall be conditioned upon the faithful accounting of all securities entrusted to such registrant and shall be continuous in form and shall remain in full force and effect and run continuously with the registration period and any renewal thereof. All bonds shall be filed in the office of the secretary of state and shall be approved by the secretary of state before being filed. All bonds filed and approved shall be for the use and benefit of all persons damaged by the wrongful conversion of any securities by the registrant, and any individual so injured or aggrieved may bring an action upon such bond: Provided, however, That the aggregate liability of the surety to all such persons shall, in no event, exceed the sum of such bond. The surety company must notify the secretary of state and principal of its desire to terminate its liability under any bond furnished. The secretary of state shall thereupon require the registrant to file a new bond before expiration of said registrant’s existing bond or discontinue all operations. When the new bond is filed all liability under any previous bond shall cease and terminate except as to liability incurred during the existence of such old bond. If a new bond shall not be filed within the thirty day period herein specified the secretary of state shall, after expiration of the period, revoke the registration of the registrant, provided, however, that all brokers or dealers who are either members of an exchange which said exchange is registered with the Securities and Exchange Commission or are members of the National Association of Securities Dealers, Inc., shall be exempt from furnishing the bond required in this subsection.

“(3) Within sixty days after the effective date of this amendatory act, all registrants heretofore regis-
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...tered under the provisions of this act shall be required to furnish a bond as in this act provided; and if the registrant fails, neglects or refuses to file such bond, the secretary of state shall revoke the registration of the registrant."

Your letter reads in part as follows:

"So as to emphasize the various questions prompted by the 1959 amendment of Section 11, let us use for example the premise of Dealer X.

"Pursuant to the provisions of Section 11, Dealer X, as is annually required, applied for renewal of his registration as a Dealer for the calendar year 1959 (application not more than sixty (60), nor less than twenty (20) days, prior to January 1, 1959). Having complied with all the provisions of the Indiana Securities Law, as then existing, the application of Dealer X was approved.

"By reason of the approval of Dealer X’s application, he was registered as a dealer for the entire year of 1959, subject only to revocation for causes set forth in Section 12 of the Indiana Securities Law.

"Subsequent to the approval of the application of Dealer X, the Indiana General Assembly passed the above referred to Act, effective as of May 1, 1959, requiring Dealer X to file a $25,000.00 conversion-type bond within sixty (60) days of the effective date thereof. Upon the failure of Dealer X to furnish such bond, the Secretary of State is required by the Act to revoke the registration of Dealer X, even though he fully complied with all the provisions of the law at the time of the approval of his application, and has continued to comply save for the additional requirement retroactively placed upon him by the amendment of Section 11. Upon the basis of these premises, I request your official opinion on the following questions:

"1. Does this Act apply to Dealer X prior to the time that he is required to apply for renewal of his registration for the calendar year 1960?"
“2. Should your answer be in the affirmative, can I revoke the current registration of Dealer X, solely on the ground that he has failed to furnish a bond as required by said Act?

“3. Should your answer to question 1 be in the affirmative, can I revoke Dealer X’s registration for 1959 without according him the right of a hearing as provided in Section 12 of the Indiana Securities Law?

“4. Should your answer to question 2 be in the affirmative, is Dealer X entitled to a pro rata return of his filing fee ($75.00) for registration as a dealer, or renewal thereof?

“5. Should Dealer X’s registration be cancelled, as of July 1, 1959, for failure to furnish the bond as required by the Act, is said Dealer X entitled to have his dealer’s registration reinstated at any time prior to January 1, 1960, by merely furnishing the necessary bond; or, must Dealer X present a new application and submit the usual $75.00 filing fee for registration as a dealer?

“6. What would the liability of the Secretary of State, under his bond, should he revoke the registration of Dealer X thereby abrogating a contractual relationship existing between Dealer X and an Issuer, relative to the sale of Issuer’s securities, which contract was entered into subsequent to his 1959 registration but prior to the 1959 Act in question.

“In view of the many inquiries and letters received by the Securities Commission questioning the constitutionality of the exemptions provided by the Act (dealers who are either members of an exchange which said exchange is registered with the Securities and Exchange Commission or are members of the National Association of Securities Dealers, Inc.), your opinion as to the constitutionality thereof will be very helpful.”

You have asked my opinion of the constitutionality of the exemptions provided by the act for dealers who are either
members of an exchange which is registered with the Securities and Exchange Commission or are members of the National Association of Securities Dealers, Inc. This Amendatory Act, Ch. 224 of the Acts of the General Assembly of Indiana, 1959, was duly authenticated by the presiding officers of both houses of the General Assembly and subsequently by the Governor of Indiana, and thereafter filed with yourself as Secretary of State. It thus became a part of the laws of the State of Indiana, and as Attorney General of Indiana I will be required by law to defend its constitutionality and also to defend your actions taken thereunder. It would not therefore be proper at this time for me to give an opinion on the constitutionality of this law. Having become a part of the laws of this State, it is presumed constitutional until such time as the Supreme Court of Indiana should determine otherwise. Therefore, in the absence of a judicial determination to the contrary, it is my advice that you carry out the provisions and duties as prescribed in this Act as they now exist in the exercise of your duties as Secretary of State.

In answer to your first question, Dealer X is covered by the Acts of 1959, Ch. 224, Sec. 1, subparagraph (3) which specifically applies to "all registrants heretofore registered under the provisions of this act," who are thereby required to furnish bond within sixty days after the effective date of the act—May 1, 1959—so that Dealer X is required to furnish bond by June 30, 1959.

The answer to your second question is found in the same subparagraph (3) which reads in part:

"* * * and if the registrant fails, neglects or refuses to file such bond, the secretary of state shall revoke the registration of the registrant." (Our emphasis)

Since "shall" is a word of mandate, the Secretary of State is required to revoke the registration of Dealer X if he fails to furnish bond as required by the Acts of 1959, Ch. 224.

Your third question calls for construction of the Acts of 1937, Ch. 120, Sec. 12, as amended and as found in Burns’ (1948 Repl.), Section 25-840 with Section 11 of the same Act as finally amended by the Acts of 1959, Ch. 224.
An amendment to an act takes the place of the portion of the Act amended, and it is generally to be considered as having been part of the original, as originally adopted. (See: Hamilton County Council et al. v. State ex rel. Groff [1949], 227 Ind. 608, 87 N. E. [2d] 810.)

Burns' 25-840, supra, reads in part as follows:

"Before any final order is entered, refusing registration to any dealer or agent or revoking any registration theretofore granted, the applicant or dealer affected thereby shall upon request be entitled to a hearing; and suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of any agent of the dealer." (Our emphasis)

The word "any" is very inclusive and so the provisions of Burns' 25-840, supra, apply to all orders revoking registrations previously granted even though the ground for such revocation may be set out elsewhere. It is to be noted that the requested hearing must be conducted pursuant to the Acts of 1947, Ch. 365, as set out in Burns' (1951 Repl.), Section 63-3001 et seq. concerning administrative adjudication.

In answer to your fourth question concerning return of any part of the filing fee for registration of a dealer, it is sufficient to say that there is no provision in the statute for such return and, without statutory authority, it cannot be done, for public officers have only such powers as are expressly given to them. (See: State ex rel. Young v. Niblack [1951], 229 Ind. 596, 99 N. E. [2d] 839.)

It should be noted that the Acts of 1937, Ch. 120, Sec. 11, as amended, and as found in Burns' (1957 Supp.), Section 25-839, contains language which was re-enacted in the Acts of 1959, Ch. 224, and which reads in part:

"Every dealer before engaging in business in this state shall file in the office of the commission an application for registration * * *

"Every registration under this section shall expire on the thirty-first day of December next after the date of registration, but the commission shall renew such registrations for the ensuing year upon the filing of written renewal applications * * *.
"The filing fee for registration or renewal thereof shall be seventy-five dollars in the case of a dealer, and five dollars in the case of an agent, and such fees shall be paid to the commission at the time of filing such application or renewal."

It is apparent that a dealer never before registered would, in all likelihood, be registered less than a year before he would be required to renew and to pay an additional seventy-five dollar filing fee. The Legislature has apparently determined that the filing fee should not be based upon the length of time that the registration is effective and has not provided for return of any part of the filing fee under any circumstances.

In answer to your fifth question concerning the possibility that Dealer X may not furnish bond by the time set in the statute and his registration is revoked by final order of the commission, it is my opinion that Dealer X should be required to present a new application for registration inasmuch as the 1959 Act contains no provision for reinstatement following revocation of registration.

Burns' 25-840, supra, provides for suspension of the registration of a dealer pending investigation, but such suspension must necessarily occur prior to issuance of a final order of revocation, not afterwards.

There being no authority for the commission to reinstate a dealer whose registration has been revoked, or authority for receiving the statutory bond unaccompanied by an application for reinstatement except during the sixty days following the effective date of the amendatory Acts of 1959, Ch. 224, it is my opinion that the bond could not be received after revocation except accompanied by an application for registration and the required filing fee.

Your sixth question concerns legal liability of the Secretary of State if he revokes Dealer X’s registration and X is thereby prevented from performing under a contract between X and an issuer (which contract was entered into after X’s 1959 registration but before enactment of the Acts of 1959, Ch. 224).

The Acts of 1937, Ch. 120, as amended and as found in Burns' (1948 Repl.), Section 25-830, reads in part as follows:
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"Neither the commission nor the securities commissioner nor any deputy or employee of the commission shall be liable, in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this act."

Since the duty to revoke registrations is mandated by the Acts of 1959, Ch. 224, amendatory of the Acts of 1937, Ch. 120, as amended, the Secretary of State, in his capacity as the Securities Commissioner, would not be liable to anyone for such revocation in connection with the performance of his duties under the Indiana Securities Act.

In conclusion and in summary, it is my opinion that a dealer already registered at the time that Acts of 1959, Ch. 224, became effective is required to furnish a bond within sixty days after that effective date and, if he does not, his registration shall be revoked for that reason; but that he is, upon request, entitled to a hearing under the Acts of 1937, Ch. 120, Sec. 12 (Burns' 25-840, supra). Furthermore, such dealer may not furnish bond following revocation of his registration without also submitting an application for registration and seventy-five dollars as a filing fee. In addition, that dealer would not be entitled to any refund of the filing fee previously paid. It is also my opinion that the Secretary of State would not be liable on his bond for damages sustained by a third party who had contracted with that dealer before enactment of the Acts of 1959, Ch. 224, and who had suffered loss because of that dealer's inability to perform the contract following revocation of his registration.