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Restatement of the Law of Agency with Annotations to the Indiana Decisions

State of Indiana Legislators

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Topic 2. Termination of Apparent Authority

Section 125. By Notice of Termination of Authority, or of Principal's Consent, or of Fundamental Error.

Apparent authority, not otherwise terminated, terminates when the third person has notice:

(a) of the termination of the agent's authority;
(b) of a manifestation by the principal that he no longer consents; or
(c) of facts, the failure to reveal which, were the transaction with the principal in person, would be ground for rescission by the principal.

Comment:

a. The termination of the agent's authority does not necessarily terminate his apparent authority, since apparent authority exists in accordance with the manifestations of the principal to the third person. Revocation of authority or the happening of an event which terminates authority, with or without notice to the agent, except supervening lack of capacity or other impossibility, does not terminate the apparent authority which was created by the third person's knowledge of the agency, if the third person reasonably infers from the principal's manifestations that the principal consents to his dealing with the agent until he has notice of the facts. Ordinarily, the power of one who has been held out to third persons as a general agent terminates only when they have notice that the principal no longer intends him to act; on the other hand the apparent authority of one who is held out as a special agent ordinarily terminates when his authority terminates (see §§ 127, 132).

*Continued from March, 1936, issue and to be continued in subsequent issues.
Apparent authority, however, terminates when the third person has notice that the agent's authority has terminated (see Comment b), or that, whether or not the agent's privilege to act has terminated, the principal no longer consents that the agent shall deal with him (see Comment c), or that the agent is acting under an essential error as to the facts (see Comment d).

Comment on Clause (a):

b. Apparent authority can subsist only as long as the third person, to whom the principal has made a manifestation of authority, continues reasonably to believe that the agent is authorized. He does not have this reasonable belief if he has reason to know that the principal has revoked, or that the agent has renounced, or that such time has elapsed or such events have happened after the authorization as to require the reasonable inference that the agent's authority has terminated. If the authority is terminated only when the agent has notice of the happening of an event, the apparent authority may not terminate although the third person has notice of the event (see Comment d); it is terminated, however, if he has notice that the agent knows or otherwise has notice of it. In such case it would be a breach of duty to the principal for the agent to act, and a third person having notice of this can acquire no rights against the principal by thereafter dealing with the agent. The third person has notice of the termination of authority, although he does not know the facts, is he has reason to know them or if, knowing the facts, he would, if reasonable, draw the inference that the authority is terminated although in fact he unreasonably infers that it is not. He is also bound by a notification given him by the principal in accordance with the rules stated in § 136.
Comment on Clause (b):

c. In cases where, under the rules stated in §§ 106-119, the authority of the agent terminates only upon notice to him, the apparent authority may terminate while the agent is still privileged to act for the principal. This occurs if the third person has notice, which the agent does not have, of a manifestation by the principal indicating the withdrawal of his consent to have the agent deal on his account. In such cases, while the agent has authority to bind the principal in transactions with others who have no notice of such withdrawal, and while he is privileged to act for the principal even with one who has notice, a person having notice can acquire no rights against the principal by entering into a transaction with the agent. The notice of the termination of the principal's consent may result from a statement or notification by the principal to the third person, or from knowledge of conduct by the principal inconsistent with the continuance of consent, as where he sells the subject matter, or from any other manifestation indicating a definitive withdrawal of consent whether or not intended to be communicated to the third person.

* * *

Comment on Clause (c):

d. Where there has been a change in conditions subsequent to the authorization, the fact that the third person believes that the principal would not consent to have the agent deal with him if the principal knew facts known to the third person is not, of itself, sufficient to terminate apparent authority. A person has the same privilege in dealing with an agent that he would have in dealing with the principal; in the absence of a fiduciary or other special relationship with the principal, he has no duty to reveal facts to the agent which would make the transaction inadvisable from the principal's standpoint. If, however, he has notice that the trans-
action with the agent is so different in effect from that contemplated by the principal that, were he dealing with the principal in person, it could be avoided by the principal for non-disclosure, he acquires no rights against the principal in dealing with the agent. If he deals with the agent under such conditions the transaction is ineffective unless ratified by the principal, and the third person is subject to liability to the principal for any loss caused to him thereby. If he contracts with the agent, both he and the agent making a mistake as to the existence of a fact upon the assumption of which the contract is entered into, both he and the principal have a right to have the contract rescinded. The Restatement of Contracts, §§ 472, 502, states the rules applicable to rescission for non-disclosure and mistake.

The rule stated in this Clause is to be contrasted with that stated in § 108 dealing with the termination of authority. The difference in result is due to the fact that an agent is employed to further the objects of the principal and must seek to do what he should know the principal would wish, whereas one dealing with an agent is privileged to look first to advancing his own purposes, as is any contracting party who is not a fiduciary.

* * *

Annotation:
No Indiana cases have been found dealing with the subject matter of this section.

Section 126. APPARENT AUTHORITY CONDITIONED BY TIME OR EVENTS.

Apparent authority conditioned as to time or the happening of events terminates when the time has elapsed or the events have happened, either at once or when the third person has notice thereof, dependent upon the manifestation of the principal to him.
Comment:

a. Where the terms of the instrument or the words of the principal which constitute the manifestations to the third person provide that the agent's authority is conditioned as to time or events, the apparent authority terminates when the third person has notice of the expiration of the time or the happening of the events, if not when the events have occurred. Whether or not the manifestation is conditioned in this way depends upon the interpretation thereof in light of business customs. The rules stated in §§ 105-107 as applicable to authority are applicable to apparent authority. The interpretation of the principal's manifestation to the third person is governed by the rules which determine the interpretation of authority and these, except when the manifestation is ambiguous, are consistent with the interpretation of contracts (see §§ 32-49). As stated in Comment d on § 125, however, the apparent authority of an agent does not terminate merely because the third person knows circumstances which lead him to believe that the principal did not wish the agent to act under the conditions, unless the authority is so expressly limited, although if the agent had such knowledge his authority would terminate.

* * *

Annotation:

No Indiana cases have been found dealing with the subject matter of this section.

Section 127. Apparent Authority of General Agent.

Unless otherwise agreed, if the principal has manifested that an agent is a general agent, the apparent authority thereby created is not terminated by the termination of the agent's authority by a cause other than incapacity or impossibility, unless the third person has notice thereof.

Comment:

a. A manifestation that an agent is a general agent is a manifestation that his authority is not confined to the per-
formance of a single act or to action upon a single occasion but is to continue for a class of acts not yet fully performed or for a succession of periods not yet wholly expired. Such a manifestation ordinarily indicates a willingness by the principal to have the third person deal with the agent until the third person has notice of an event which terminates the authority.

* * *

b. The manifestations of the principal may be made by him directly to the third person or indirectly through authorized statements of the agent or others. If the principal permits the agent to acquire the reputation of a general agent and this becomes known to a third person, the agent has the apparent authority of a general agent as to such person. The principal is not, however, affected by unauthorized statements as to the agent's authority, either by the agent himself or by others, unless they become known to the principal and he acquiesces therein.

* * *

Annotation:

A 'general agency once established is presumed in law to continue and one dealing with such a person as the agent of his principal, in good faith, is not affected by the revocation of the agent's authority unless notice is given thereof. George Life Ins. Co. v. Otter Creek Coal Co., 67 Ind. App. 277, 119 N. E. 151 (1918). Third parties dealing bona fide with one who has been accredited to them as an agent are not affected by the revocation of his agency, unless notified of such revocation. Miller v. Miller, 4 Ind. App. 128, 30 N. E. 535, (1892).

Section 128. Apparent Authority of Specially Accredited Agent.

Unless otherwise agreed, if the principal has specially accredited an agent to a third person, the apparent authority thereby created is not terminated by the termination of the agent's authority by causes other than incapacity or impossibility, unless the third person has notice thereof.

Comment:

a. An agent is specially accredited to a third person when such third person has been specially invited by the principal
to deal with the agent under such circumstances as lead him reasonably to believe that he will be notified if the authority is altered or revoked. The principal in person may specially accredit the agent to a third person or he may do so through the agent specially accredited or through another agent. It is not enough, however, that the principal has cards made upon which the agent’s name is printed, indicating that he is an agent or that the principal directs the agent to say that he is instructed to call upon the third person. In order that an agent may be specially accredited, there must be some assurance given to the particular third person other than that which ordinarily exists in the case of persons who know that a certain person is an agent. Either a general or a special agent may be specially accredited. No more definite statement can profitably be made.

* * *

Annotation:
Third parties dealing bona fide with one who has been accredited to them as an agent are not affected by the revocation of his agency, unless notified of such revocation. Miller v. Miller, 4 Ind. App. 128, 30 N. E. 535 (1892).

Section 129. Apparent Authority of Agent Who Has Begun to Deal.

Unless otherwise agreed, if the agent properly begins to deal with a third person and the principal has notice of this, the apparent authority to conduct the transaction is not terminated by the termination of the agent’s authority by causes other than incapacity or impossibility, unless the third person has notice thereof.

Comment:

a. Where the principal knows that an agent has begun to deal with a third person, he ordinarily has reason to know that the third person is likely to continue to deal with the agent until he has information as to facts indicating that the agent’s authority has terminated or otherwise has notice of
the termination. The third person on his part, is ordinarily reasonable in believing that he will be informed if conditions change.

* * *

Annotation:
No Indiana cases have been found dealing with the subject matter of this section.

Section 130. APPARENT AUTHORITY OF AGENT HAVING INDICIA OF AUTHORITY.

If the principal entrusts to the agent a power of attorney or other writing which manifests that the agent has authority and which is intended to be shown to third persons, and this is retained by the agent and exhibited to third persons, the termination of the agent's authority by causes other than incapacity or impossibility does not prevent him from having apparent authority as to third persons to whom he exhibits the document and who have no notice of the termination of the authority.

Comment:

a. Although the principal is entitled to have indicia of authority returned to him upon termination of the relationship, if he is unsuccessful in accomplishing this the risk of the deception of third persons who have otherwise no notice of the termination rests upon the principal.

* * *

Annotation:
No Indiana cases have been found dealing with the subject matter of this section.

Section 131. AGENT HAS APPARENT AUTHORITY TO REPRESENT NONEXISTENCE OF TERMINATING EVENTS.

If, as a third person has notice, the agent's authority terminates upon the happening of an event other than the occurrence of incapacity or impossibility, the occurrence of the event does not terminate apparent authority if the agent is apparently authorized to represent its nonoccurrence and so represents to the third person, who has no notice that the event has occurred.
Comment:

a. The fact that an event, upon the happening of which the agent's authority to conduct a particular transaction is to terminate, is peculiarly within the agent's knowledge is an indication that the principal intends third persons to deal with the agent in reliance upon the agent's statement that the event has not happened, if the agent is a general agent authorized to conduct other transactions of a similar nature. On the other hand, if the terminating event is one not within the exclusive knowledge of the agent and if the agent is a special agent, the inference ordinarily would be that the agent is not authorized to make representations upon which the third person may exclusively rely as to the nonexistence of the terminating event.

* * *

Annotation:
No Indiana cases have been found dealing with the subject matter of this section.

Section 132. Apparent Authority of Special Agent.

Unless otherwise agreed, if the principal has manifested to the third person that the agent is to do a single act or perform a single transaction, the apparent authority terminates with the termination of the agent's authority, unless:

(a) the principal has specially accredited the agent to the third person;
(b) the agent has begun to deal with the third person as the principal has notice;
(c) the agent is in possession of indicia of authority entrusted to him by the principal and shown by him to the third person; or
(d) the principal has manifested that the agent has authority to represent the nonexistence of the terminating event and the agent does so represent.

Comment:

a. This Section assembles the rules as to the termination of the apparent authority of a special agent. Ordinarily, the
manifestation to a third person that an agent is authorized only to perform a single act or transaction is interpreted as a manifestation that the agent's power is subject to defeasance by any terminating event without notice to the other party. This is not so, however, if the facts are such that the other party has reason to believe that he is to receive notice of the termination. Ordinarily, he has reason so to believe under the conditions stated in Clauses (a-c) (see §§ 128-130 for Comment and Illustrations which are applicable both to general and to special agents). In such cases, the apparent authority continues until the third person has reason to know of facts from which, if reasonable, he would infer that the authority has terminated or until the principal gives a notification in accordance with the rule stated in § 136 (1). Under the conditions stated in Clause (d), he is entitled to rely upon the statement of the agent with reference to the authority.

Annotation:
The rule stated in this section is in accord with the law of Indiana. The authority of an agent appointed for a special purpose ceases when that purpose is accomplished. Bragg v. Bamberger, 23 Ind. 198 (1864).
The rule stated in this subsection (a) is in accord with the law of Indiana. Third parties dealing bona fide with one who has been accredited to them as an agent are not affected by the revocation of the agency unless notified of such revocation. Miller v. Miller, 4 Ind. App. 128, 30 N. E. 535 (1892).
No Indiana cases have been found involving the subject matter of subsections (b), (c), and (d).

Section 133. Incapacity of Parties or Other Impossibility.
The apparent authority of an agent terminates upon the happening of an event which destroys the capacity of the principal to give the power or otherwise makes the authorized transaction impossible.

Comment:
a. Since apparent authority means an appearance of authority which results in a power of the purported agent to act for his principal with legal effect, an event which destroys the power ends the apparent authority whether or not the
third person has notice of it. Unless the principal has lost capacity, however, the agent may still have power to bind the principal in a transaction incapable of execution. The rules stated in §§ 120-124 as applicable to the termination of authority apply also to the termination of apparent authority.

* * *

Annotation:
No Indiana cases have been found dealing with the subject matter of this section.

The following cases are illustrative of analogous situations where express authority exists: Johnson and Wife v. Wilcox, 25 Ind. 182 (1865); Chase v. Chase, 163 Ind. 178, 71 N. E. 485 (1904); Rowe v. Rand, 111 Ind. 206, 12 N. E. 337 (1887).

Topic 3. Notice of Termination of Authority and Apparent Authority

Section 134. When Principal or Agent Has Notice of Termination of Authority.

Unless the parties have manifested otherwise to each other, a principal or agent has notice that authority to do an act has terminated or is suspended if he knows, has reason to know, should know, or has been given a notification of the occurrence of an event from which the inference reasonably would be drawn:

(a) by the principal, that the agent does not consent to act;
(b) by the agent, that the principal does not consent to the act or would not if he knew the facts;
(c) by either, that the transaction has become impossible of execution because of incapacity of the parties, destruction of the subject matter, or illegality.

Comment:

a. Section 9 states when a person has knowledge, reason to know, or should know of a fact. What a principal or agent should know in dealings between themselves is stated in § 10. Section 11 states how a notification is given by the principal or agent to the other, in the absence of a special agreement providing for other means. To those Sections reference is made for Comment and Illustrations.
b. The authority of an agent may terminate either upon the happening of an event or when he has notice of it. See §§ 105-119 for the rules and Illustrations as to this. In cases where an event happens which terminates the authority of the agent irrespective of notice to him, it may be important to determine whether or not the agent had notice, since this may affect the rights between the principal and the agent or between the agent and a third person. Thus, although an agent has no power to bind the estate of a deceased principal, the fact that he had no notice of the principal’s death may enable him to maintain an action on a contract by which the principal had agreed to indemnify him for loss caused by acting in ignorance of the death. Likewise, if the agent’s authority terminates without his knowledge he ordinarily would not be liable in an action of deceit to a third person with whom he deals on account of the principal for representing that his authority still is in existence.

c. Either principal or agent may notify the other by giving a notification to an agent of the other in accordance with the rules stated in § 268.

d. The facts of which the parties have notice may indicate that the authority is terminated or that it is suspended. If the authority is merely suspended, it revives under the conditions stated in § 108 (2).

Annotation:
Service of a written revocation by the principal on his attorney revokes the authority of the attorney. Haney v. Guillaume, 172 Ind. 552, 88 N. E. 937 (1909). See, also, Clark v. Mullenix, 11 Ind. 532 (1859).

Section 135. When Third Persons Have Notice of Termination of Authority.

A third person to whom a principal has manifested that an agent has authority to do an act has notice of the termination of authority when he knows, has reason to know, should know, or has been given a notification of the occurrence of an event from which, if reasonable, he would draw the inference that the principal does not consent to have the agent so act
for him, that the agent does not consent so to act for the principal, or that the transaction has become impossible.

Comment:

a. What a person has reason to know or should know is stated in § 9. How a principal gives a notification to a third person of the termination of the agent's authority is stated in § 136.

b. The rule stated in this Section applies where a notification is given by an agent that he renounces or that his authority is otherwise terminated. The manner in which an agent may give notifications to third persons depends upon the previous relations between the agent and the third person, customs of business, and all other relevant circumstances. It is not within the scope of the Restatement of this Subject to state general rules as to the method of giving a notification by one person to another. If the third person is a subagent of the agent, the latter gives him a notification of a termination of authority in the same way in which a principal gives a notification of a revocation to his agent.

c. In determining whether or not the events of which the third person has knowledge are such as to indicate to him the termination of the agent's authority, the rules stated in §§ 105-116 are applicable, subject to the limitations stated in §§ 125-126. His knowledge of the relations between the principal and agent, and of other matters which affect the existence of the authority is considered, just as the agent's knowledge of such matters is considered in determining when the agent should realize that his authority has terminated.

Annotation:

Notice of the creation of a second agency which is inconsistent with the first is sufficient notice to a third person of the revocation of the first agency. Clark v. Mullenix, 11 Ind. 532 (1859). See, also, Springfield Engine Co. v. Kennedy, 7 Ind. App. 502, 34 N. E. 856 (1893).
Section 136. Notification Terminating Apparent Authority.

(1) Unless otherwise agreed, there is a notification by the principal to the third person of revocation of an agent's authority or other fact indicating its termination:

(a) when the principal states such fact to the third person; or

(b) when a reasonable time has elapsed after a writing stating such fact has been delivered by the principal
   (i) to the other personally;
   (ii) to the other's place of business;
   (iii) to a place designated by the other as one in which business communications are received; or
   (iv) to a place which, in view of the business customs or relations between the parties, is reasonably believed to be the place for the receipt of such communications by the other.

(2) Unless otherwise agreed, a notification to be effective in terminating apparent authority must be given by the means stated in Subsection (1) with respect to a third person:

(a) who has previously extended credit to or received credit from the principal through the agent in reliance upon a manifestation from the principal of continuing authority in the agent, as stated in § 127;

(b) to whom the agent has been specially accredited, as stated in § 128;

(c) with whom the agent has begun to deal, as the principal should know, as stated in § 129; or

(d) who, as the principal should know, relies upon the possession by the agent of indicia of authority entrusted to him by the principal, as stated in § 130.

(3) Except as to the persons included in Subsection (2), the principal may give notification of the termination of the agent's authority by:

(a) advertising the fact in a newspaper of general circulation in the place where the agency is regularly carried on; or

(b) giving publicity by some other method reasonably adapted to give the information to such third person.

Comment:

a. In the absence of a special agreement, notification of termination of authority to be effective in terminating ap-
parent authority must be given in the manner specified in Subsection (1) to those persons who are most likely to deal with the principal through the agent and of whose identity the principal is most likely to know. Other persons, such as those who have not dealt with the principal through the agent, but who have known of the authority by reputation or have dealt with him on a cash basis, are entitled only to a notification given in the manner stated in Subsection (2), although the first stated method of notification is sufficient as to them also. Persons to whom there is apparent authority only after the authority of the agent has terminated are as much entitled to notice of termination as those to whom there was apparent authority previously. On the other hand, there is no apparent authority with respect to one who deals with the agent for the first time after the agent’s authority has terminated and who relies wholly upon the misrepresentations of the agent as to the continuance of his authority. No notification of the termination of authority of a special agent need be given, except as stated in § 132.

* * *

b. The requirements of Subsection (1) are not met by mailing a letter to the third person; the letter or message must reach him personally, his place of business, or other designated place; if delivered to a person there or elsewhere, it must be delivered to a person who has authority or apparent authority to receive it. The principles of agency are applicable and a notification given to an agent of the third person with power to bind his principal by its receipt is notification to the principal (see § 268).

Annotation:
No Indiana cases dealing with the subject matter of this section have been found.
Topic 4. Termination of Authority and Apparent Authority of Subagent

Section 137. General Rule.

The principles stated in §§ 105-136 as applicable to the termination of an agent's authority or apparent authority are applicable also to the termination of the authority or apparent authority of a subagent.

Comment:

a. As stated in § 5, there is subagency only if an agent employs his own agent to conduct the principal's affairs, and if the agent has authority or other power to bind the principal by such appointment. The relationship is created by the agent's manifestation to the subagent both of his own consent and that of the principal, except where the agent is acting for an undisclosed principal, in which case no manifestation of the principal's consent is required. Conversely, a subagency terminates if the relations between either the principal and the agent or the agent and the subagent are severed, unless the agent continues to have apparent authority or other power to continue the employment for the principal; if the subagent otherwise continues to have authority to act for the principal after the termination of the agent's authority, it is because of a newly created authority and not because the subagency continues. The subagent has no authority to act after he has notice of events from which he should infer that either the principal or the agent, his principal, does not desire him to act, in accordance with the rules stated in §§ 105-116. Either the principal or the agent has power to revoke his authority; he renounces his authority by conduct manifesting to either of them that he will no longer act (see §§ 118-119).

b. Notice of agent or subagent. If, in situations not involving subagency, authority would terminate because the agent has knowledge of facts or should know of them (see §§ 105-116), the authority of a subagent terminates under
similar conditions when either he or the intermediate agent acquires knowledge of or should know of such facts; except that where such knowledge is acquired by the intermediate agent it does not become operative as to the subagent until the agent has had time to communicate with him, and except that the agent may have apparent authority or other power to continue to authorize him to act for the principal. The agent and subagent are not, however, to be charged with their combined knowledge, if the knowledge had by each is not sufficient to create an inference of termination, unless the agent has failed in his duty to the principal to communicate to the subagent the knowledge which he has, or the subagent has failed in his duty to communicate facts to the agent. If in situations not involving subagency, the authority of an agent would terminate by notification by the principal to him, the authority of a subagent under similar conditions terminates by notification by the principal either to the agent or the subagent. If the notification is given to the agent, the subagent’s authority terminates only when the agent has had an opportunity to communicate with him. If the notification is to the subagent, it is ineffective if the subagent does not know that he is transacting the principal’s business, as would be true where he is employed by an agent for an undisclosed principal, unless the principal can reasonably satisfy the subagent of his identification with the transaction. After the agent’s authority to authorize a subagent to act for the principal has terminated, he may have apparent authority or other power to do so. If he has this and continues to direct the subagent to act, the latter’s authority does not terminate.

The authority of the subagent may terminate because of the death or incapacity of the principal, the agent, or himself. In accordance with the rules generally applicable to agents (see §§ 120-123), no notice of such death or incapacity is necessary for the termination of authority. If the sub-
agent continues to act after the death of the agent, he alone is responsible to the principal; the estate of the agent is not liable for his unauthorized acts, unless it had been so agreed between the principal and agent. His authority terminates without notice when the authorized act becomes impossible of execution (see § 124).

* * *

c. Apparent authority. The apparent authority of a sub-agent is terminated in accordance with the rules stated in §§ 125-136, which deal with the apparent authority of an agent. Thus, the apparent authority of the subagent terminates when the third person has notice that the agent's authority to employ the subagent has terminated, or that the agent or the principal has revoked the subagent's authority, or that the principal has manifested dissent to the continuance of the authority, or other facts, notice of which would terminate the apparent authority of an agent. Third persons may be given notification of the termination of the sub-agent's authority in accordance with the rule stated in § 136.

Annotation:
No Indiana cases dealing with the subject matter of this section have been found.

Topic 5. Termination of Powers Given As Security

Section 138. Definition.

A power given as security is a power to affect the legal relations of another, created in the form of an agency authority, but held for the benefit of the power holder or a third person and given to secure the performance of a duty or to protect a title, either legal or equitable, such power being given when the duty or title is created or given for consideration.

Comment:

a. A power given as security arises when a person manifests consent that the one to whom it is given may act to create liability against him, or to dispose of some of his
interests, or to perfect or otherwise protect a title already in the power holder for the person for whom he is to act. If the power is given as security for the performance of a duty, it must be supported by consideration, but consideration is not necessary if the power is in aid of and accompanies a transfer of a title to the power holder.

b. Distinguished from authority. A power given as security is one held for the benefit of a person other than the power giver. An agent appointed to perform a transaction for the principal may be granted a power which is expressed to be for the protection of his interests in the compensation to become due him for the exercise of his authority as an agent. If, however, the power so given is held for the benefit of the principal and the agent is interested in its exercise only because it entitles him to compensation for exercising it, then even though the principal contracts not to terminate it, and although the agent gives consideration therefor, as by acting or agreeing to act, the power is not a power given as security as the term is herein used. An agent’s interest in earning his agreed compensation is an ordinary incident of agency, and neither a contract that the principal will not revoke nor a contract that the agent may protect his rights to earn commissions in spite of the revocation will deprive the principal of control over acts to be done by the agent on his behalf.

On the other hand, if an agent acquires an interest in the subject matter, as where he engages in a joint enterprise in which another supplies the subject matter, a power given him by the other to protect such interest is a power given as security.

* * *

c. Purposes for which created. The power may be granted either for the purpose of furnishing a security to protect a debt or other duty, or for the purpose of facilitating the per-
formance, effectuating the objects, or securing the benefits of a contract as part of or in performance of which it is given for the protection of a party to that contract. A power given without consideration after a contract has been made to protect the other contracting party is effective until terminated but is terminable at the will of the power giver.

A power given as security may also be granted to perfect or to protect a title which has been created by the power giver. A gratuitous transfer of title to tangible things or to choses in action, by deed or otherwise, accompanied by a power to deal with the things or to act in the name of the power giver, creates a power given as security in such things. If the power is given with reference to a chose in action not represented by a document, or if there has been no delivery of a thing to which the power relates, a power granted without consideration and without seal does not effect a transfer of title and, consequently, is not a power given as security and may be terminated at the will of the power giver.

* * *

d. Agent having power as security. A person authorized to act as agent may also hold a power for his own benefit. Thus, an agent to whom goods are sent for sale may, in selling the goods, be exercising a power of agency or, where he has advanced money upon the goods, he may be exercising a power given for his own security (see § 464). Likewise, an agent who has become a party to a transaction and has incurred liabilities on behalf of the principal may, in the protection of his own interests, subject the principal to liability although the principal has terminated the authority which he held as agent. Such powers are powers given as security.

Annotation:
The rule stated in this section is in accord with the law of Indiana. A power coupled with an interest is created by an instrument which vests title to the subject of the agency in the agent in such a manner that he may execute the power in his own name. Jeffersonville Ass'n v. Fisher, 7 Ind. 699 (1856).
Section 139. Termination of Powers Given As Security.

(1) Unless otherwise agreed, a power given as security is not terminated by:

(a) revocation by the creator of the power;
(b) surrender by the holder of the power, if he holds for the benefit of another;
(c) the loss of capacity during the lifetime of either the creator of the power or the holder of the power; or
(d) the death of the holder of the power, or, if the power is given as security for a duty which does not terminate at the death of the creator of the power, by his death.

(2) A power given as security is terminated by its surrender by the beneficiary, if of full capacity; or by the happening of events which, by its terms, discharges the obligations secured by it, or which makes its execution illegal or impossible.

Comment on Subsection (1):

a. A power given as security can be terminated by conduct on the part of the one giving the power only in accordance with the agreement by which the power was created, except where he destroys the subject matter, conveys it to a bona fide purchaser, or otherwise makes impossible the exercise of the power.

* * *

b. Surrender of power. The beneficiary of the power, if of full capacity, can terminate it by surrender. The holder of the power, however, unless he is himself the beneficiary, cannot surrender it, except by the consent of the beneficiary.

c. Loss of capacity. Supervening insanity, coverture, or bankruptcy of either the creator of the power or the holder of the power does not affect its validity. If the holder of the power becomes incompetent to exercise it, a court of equity will direct it to be exercised for the benefit of the beneficiary.
d. *Death.* If the power holder dies, a court of equity will direct the exercise of the power for the benefit of the beneficiary. If the creator of the power dies and the power is given to secure the performance of a duty not terminated by the death of the power giver, the power survives.

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*Annotation:*

The rule stated in sub-section 1, division (a), is in accord with the law of Indiana.

A power of attorney to confess a judgment is not revocable by the act of the party giving it. Kindig v. March, 15 Ind. 248 (1860).

No Indiana cases dealing with the subject matter of sub-section 1, divisions (b) and (c), have been found.

The rule stated in sub-section 1, division (d), is in accord with the law of Indiana.

A power to sell coupled with an interest in the thing to be sold survives the grantor of the power; otherwise when the interest is in the proceeds of the thing only. Hawley v. Smith, 45 Ind. 183 (1873); Jeffersonville Ass'n v. Fisher, 7 Ind. 699 (1856). An agency is not terminated by the agent's death where the power is coupled with an interest. Todd v. Griffin, 55 Ind. App. 605, 104 N. E. 519 (1914).

No Indiana cases dealing with the subject matter of sub-section 2 have been found.