

CORPORATIONS:
INSURANCE:
BUILDING & LOAN ASSOCIATIONS:

Insurance companies, both foreign and domestic, are required to register under the provisions of Section 5085 of R. S. Mo., 1939. Building & Loan Associations not required to comply with the general statute respecting registration of corporations.

May 13, 1941

Hon. Russell Maloney
Supervisor of Corporation Registration
Secretary of State's Office
Jefferson City, Missouri



Dear Sir:

This will acknowledge your letter of recent date, requesting an opinion, reading in part as follows:

"The purpose of this inquiry is directed to the following questions.

(1) May the office of the Secretary of State lawfully require and demand that insurance companies incorporated in states other than Missouri and which are licensed to do business in Missouri under the insurance laws of this state, file in his said office the registration provided for by section 5085, of article 1, of chapter 33, and require the payment of the registration fee provided for under section 5089, of said article and chapter?

(2) In the event that such foreign insurance corporations are not required to file annual registration under the provisions of section 5085, of article 1, chapter 33, is it the duty of the Secretary of State to address to such companies the letter required by section 8329 of article 3, of chapter 43, and enclose the form of affidavit set out in said section?

(3) What is the status of building and loan associations organized under the building and loan laws of Missouri with respect to the sections and articles of the Revised Statutes of Missouri 1939, herein before mentioned?"

The section of the statute (Section 5085 of R. S. Mo., 1939) to which you have above referred, reads as follows:

"Every corporation authorized or licensed, foreign or domestic, to do business in this state, other than corporations exempted from taxation by the laws of this state and farmers mutual insurance companies and mutual automobile insurance companies organized under article 15, chapter 37, R. S. 1939, shall annually, on or before the first day of July, register, in the office of the secretary of state, its corporate name and postoffice address, giving street and number, or building and number, or both, as the case may require; the name and correct postoffice address of its officers and directors, and if a foreign corporation, its principal agent in Missouri."

You will particularly notice the language of the statute, reading as follows: "Every corporation authorized or licensed, foreign or domestic, to do business in this state, * * * * * shall annually, on or before the first day of July, register, in the office of the secretary of state". Apparently by this language, the legislature intended that all corporations were to register with the secretary of state, excepting those which were expressly exempted. From this, it may be assumed that, since the legislature exempted, "* * * corporations exempted from taxation by the laws of this state and farmers mutual insurance companies and mutual automobile insurance companies organized under article 15, chapter 37, R. S. 1939 * * *" it was intended to include all corporations of whatever kind and character, whether foreign or domestic. The language, in this respect, is clear and unambiguous, and therefore, no room for construction exists. *Cummins v. Kansas City Public Service Co.* 66 S. W. (2d) 920, 334 Mo. 672; *Keller v. State Social Security Commission*, (Mo. Appeal) 137 S. W. (2d) 989. This conclusion

is fortified by consideration of Section 5078 of R. S. Mo. 1939, which reads as follows:

"Sections 5072 to 5077, inclusive, do not apply to insurance companies, and are not to be taken or construed to change or modify the laws which are directly applicable to that character of corporations, but apart from the insurance laws, all laws and parts of laws inconsistent with said sections are hereby repealed."

While the above section of the statute expressly exempts foreign insurance companies from compliance with the sections of the statutes therein mentioned, nevertheless, the language of that statute exempting insurance companies is not to be construed so as to exempt foreign insurance companies from registering under the provisions of Section 5085, supra. That section is mandatory in its terms. This is evidenced by the use of the word, "shall". Usually, the use of the word, "shall" in a statute indicates a mandate. This is particularly true when results shall follow in the event of failure to comply with such statute. *Ousley v. Powell* 12 S. W. (2d) 102; *State ex rel. Stevens v. Wurdeman*, 295 Mo. 566, 246 S. W. 189; *State ex inf. McKittrick v. Wymore*, 119 S. W. (2d) 941, 343 Mo. 98. Section 5091 of R. S. Mo., 1939, in substance and effect, provides that if any corporation fails to comply with the provisions of Article I, Chapter 33, on or before the 31st day of December in each year, the corporate rights and privileges of such corporation shall be forfeited.

It therefore follows, from what has been said, foreign insurance companies are required to register under the provisions of the statute before noticed, and pay a fee therefor as provided under the provisions of Section 5089 of R. S. Mo. 1939. Moreover, that the secretary of state is required to comply with Section 8329 of R. S. Mo., 1939. This is because Section 5086 of R. S. Mo., 1939 requires a corporation to make an affidavit to the effect that no part of the corporation's business or interests violates the laws of this state, relating to pools, trusts and combinations.

With respect to your third inquiry, it is our opinion that Section 5085, supra, does not apply to building and loan

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associations organized under the building and loan laws of Missouri. This is because the Supreme Court in the case State ex rel. Wagner v. Farm & Home Savings & Loan Ass'n of Missouri, 90 S. W. (2d) 93 held that building and loan laws were exclusive for the regulation of such corporations. The court said:

"Building and loan associations are quasi public financial institutions, and for the protection of them the state of Missouri has by the act of 1931, provided special inquisitorial, supervisory, and regulating laws which are specific, adequate, complete and therefore exclusive. * * * * *

CONCLUSION

In view of the above, it is our opinion (1) that foreign corporations, authorized or licensed to do business in this state, are required to annually register on or before the first day of July in the Office of the Secretary of State. Moreover, that (2) it is the duty of the secretary of state, under the provisions of Section 5096 of R. S. Mo., 1939 to mail registration blanks as required under the provisions of Article I, Chapter 33 of R. S. Mo., 1939 and Section 8329 of R. S. Mo., 1939.

Building and Loan Associations are not required to comply with Section 5085 of R. S. Mo., 1939.

Respectfully submitted

APPROVED:

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