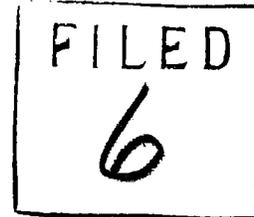


LOAN AND INVESTMENT CORPORATIONS-- : A corporation organized under  
MANUFACTURING AND BUSINESS CORPORA- : Art. VIII, Chap. 33, R.S. Mo.  
TIONS. : 1939, as a Loan and Investment  
 : Company may not by amendment  
 : of its Articles of Incorpora-  
 : tion change the purposes of  
 : its incorporation to those of  
 : a manufacturing and business  
 : corporation.

February 18, 1947



Honorable Wilson Bell  
Secretary of State  
Jefferson City, Missouri

Attention: Honorable W. Randall Smart.

Dear Secretary Bell:

This will acknowledge the letter of the Corporation Attorney of your Department, Mr. W. Randall Smart, of recent date, requesting an opinion from this Department on the subject-matter contained in the letter. Mr. Smart's letter is as follows:

"A few days ago Mr. Gregory Stockard, an attorney of this city representing the Securities Credit Company, a Missouri corporation, presented to this department for filing Certificate of Amendment to the Articles of Incorporation of the Securities Credit Company. This amendment proposed to extend or enlarge the business purposes of this corporation. Upon examining the Articles of Incorporation of this corporation, we found that this corporation was formed under the Loan and Investment Act, Article 8, Chapter 33, Revised Statutes of 1939. In view of the opinion heretofore rendered by your department, we refused to allow the filing of the Certificate of Amendment. We have been requested to ask you for opinion in this matter.

"We are enclosing our correspondence and a copy of the Certificate of Amendment, and would appreciate your early attention in this matter."

There is also accompanying said letter a statement and memorandum of the law of the case, as he views it, by Honorable Lon Hocker, Jr., counsel for the applicant corporation here, for an amendment of the Articles of Incorporation of said corporation.

It is stated both by your Department and counsel for said applicant that Securities Credit Company was organized and incorporated under Article VIII of Chapter 33, R.S. Mo. 1939.

It is disclosed in both the letter of your Corporation Counsel and the memorandum of counsel for the applicant that under the general term used in both of said documents "enlarging the purposes for which the corporation is formed" it is meant that Securities Credit Company proposes and is attempting by said "amendment" to convert its corporate existence as a Loan and Investment Company organized under said Article VIII, Chapter 33, R.S. Mo. 1939, into a Manufacturing and Business Corporation, under the Corporation Code enacted by the Legislature of this State in 1943, Laws of Missouri, 1943, page 410, which was represented, in part, by Article VI, Chapter 33, R.S. Mo. 1939, before the repeal of said Article VI, Chapter 33, and the enactment in place thereof, of the new Corporation Code, Laws of Missouri, 1943, page 410.

Reference is made by the letter from your Department and the memorandum of counsel for Securities Credit Company to an opinion rendered by this Department on October 1, 1934, approved by the then Attorney General of this State, covering most of the questions submitted to this Department at this time. A copy of said opinion is attached hereto. Counsel for Securities Credit Company requests that said opinion be again reviewed by this Department in the light of some of the provisions which he points out as contained in the new Corporation Code, Laws of Missouri, 1943, page 410, and in particular, Section 3, l.c. 415, and Section 55, l.c. 440, thereof. It is the contention of counsel for Securities Credit Company that since many of its powers were repealed by the Constitution of this State adopted in 1945, particularly naming Section 40 (26) and Section 44 (Article III thereof) as effecting such repeal, and that because of such repeal such former powers of Loan and Investment Companies are now prohibited by the Constitution. It is further contended by Securities Credit

Company that because not specifically prohibited as a named enterprise from organizing as a Manufacturing and Business Corporation under said Section 3, Laws of Missouri, 1943, l.c. 415, that the corporation may, under the terms of said Section 55, Laws of Missouri, 1943, l.c. 440, enlarge by amendment, the purposes for which it was incorporated and thereby become a Manufacturing and Business Corporation, or at least be empowered as a Loan and Investment Company to exercise some, if not all, of the powers of a Manufacturing and Business Corporation.

We have carefully reviewed the former opinion by this Department. We do not find any grounds of fact or rule of law, constitutional, statutory, or by decision by our Appellate Courts, or text authorities, to justify us in departing from the ruling of said opinion of this Department of October 1, 1934. We believe it correctly stated the law as it then existed, and as the law now exists, in so far as that opinion extended. Counsel for Securities Credit Company, in suggesting that certain sections of our said Corporation Code, Laws of Missouri, 1943, page 410, in his view, would permit the change of said corporation from a Loan and Investment Corporation to a Manufacturing and Business Corporation does, we think, require our attention and conclusions.

Counsel for Securities Credit Company on page 3 of the memorandum states as his view thereon, the following:

"\* \* \* It has power to amend its articles by virtue of Section 55, which does not limit its grant of powers to amend to corporations organized in any particular way and it therefore may properly change its charter to conform to the change in the laws. \* \* \*"

With such view of said Section 55 we cannot agree. We believe that the intention of the Legislature in enacting said Section 55 was, in permitting any Manufacturing and Business Corporation to amend its Articles of Incorporation, that it should not depart entirely from the purposes set forth in its original Articles of Incorporation for which said corporation was formed. Note the proviso

in said Section 55, Laws of Missouri, 1943, l.c. 440, which is, in part, as follows:

"\* \* \* provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, \* \* \*".

Thus, it will be readily observed that the purposes set forth in the amended Articles of Incorporation must be such as might have been contained in the original Articles of Incorporation. We believe, therefore, that said Section 55, Laws of Missouri, 1943, furnishes no authority for adopting an amendment changing entirely the statement of the purposes for which a corporation is formed from the statement of such purposes in the original Articles of Incorporation. We have high authority for this position in this State. Section 5, Article XI of the Constitution of this State of 1945, states, in part, the following:

"No corporation shall engage in business other than that expressly authorized in its charter or by law, \* \* \*".

Our Appellate Courts have had this direct question before them and have consistently held that a corporation is held strictly to the carrying on of the particular business set forth in its Articles of Incorporation as the purposes for which it was formed. The case of Bowman Dairy Company vs. Mooney, was before the St. Louis Court of Appeals on the question of whether a dairy company could sell other products as well as dairy products. The company was organized and set forth in its Articles of Incorporation that its purposes were to buy and sell dairy products, especially, milk, butter, cheese and ice cream. That company undertook to sell other edibles not the product of the dairy business. The dairy company sought by injunction to restrain another from violating a contract alleged to have been entered into with the dairy company providing that the defendant, Mooney, would drive a certain wagon in the sale of such other products not derived from the dairy business. The case is reported in 41 Mo. App. Rep. 665. The Court held that the dairy company had no right to sell such other

products as were not derived from the dairy business. The Court, l.c. 671, held as follows:

"It is a well-established principle that all corporate acts, not expressly granted to a corporation by legislative enactments, are prohibited by the common law; therefore, when a corporation derives its authority either from a special act of the legislature, or by virtue of a general law, to prosecute a particular business, in a particular way, it is as much incapacitated from engaging in another business as if it had not been incorporated at all. Any business prosecuted by a corporation must be expressly authorized by its charter, or must in some way be necessary to the successful prosecution of the business mentioned. \* \* \*".

The case of Van Doeren vs. Pelt, et al., was recently before the St. Louis Court of Appeals. The case was decided February 7, 1945, and is reported in 184 S.W. (2d) 744. The case grew out of a suit upon a note with the following background: The Secretary of State of this State on November 10, 1920, issued to the Walnut Park Loan and Investment Association, a Certificate of Incorporation as a Manufacturing and Business Company. On April 16, 1926, the Secretary of State issued a Certificate reciting that the Walnut Park Loan and Investment Association was organized under Article VII, Chapter 33, R.S. Mo. 1909, on November 10, 1920, and had that day filed a certified copy of a resolution adopting the provisions of Article VIII, Chapter 90, R.S. Mo. 1919, governing Loan and Investment Companies, and thereupon approved such resolution and asserted that said Walnut Park Loan and Investment Association be empowered with all the rights and privileges granted to such a corporation by the laws of this State.

The note in that suit was given by the defendants to the Walnut Park Loan and Investment Association. That company liquidated and dissolved. Prior, however, to its dissolution, the company assigned the note sued on to Van Doeren who filed the suit.

The Court held that when the defendants signed the note they admitted the corporate capacity of the Walnut Park Loan and Investment Association the assignor of plaintiff, and that defendants should pay the note.

The question of a Manufacturing and Business Corporation being unable to change by amendment to a Loan and Investment Company was indirectly involved in the suit. The Court declined to pass upon that particular question because, as the Court said, the Court was not called upon to do so in the case. But the Court discusses the statutes under which the Walnut Park Loan and Investment Association was organized as a Manufacturing and Business concern and also intervening statutes touching the organization of Loan and Investment Companies, and discussed very frankly the action of the Secretary of State in granting the Walnut Park Loan and Investment Association, a Manufacturing and Business Corporation, the right to adopt the provisions of the Loan and Investment Act. We think the Court's decision is susceptible of only one interpretation, and that is, that had the question of whether the Walnut Park Loan and Investment Association had the right to adopt the provisions of the Loan and Investment Company Act, and change from a Manufacturing and Business Corporation to a Loan and Investment Company been directly before the Court, and whether the procedure of the Secretary of State in granting such last named authority to said company was a mistake, the Court would undoubtedly have ruled that the Secretary of State did make a mistake and that the Walnut Park Loan and Investment Association being incorporated as a Manufacturing and Business Corporation could not adopt the Loan and Investment Company Act or become in fact a corporation carrying on the business of a Loan and Investment Company. The Court said on these questions, l.c. 746, 747, the following:

"It will be noted that the Loan Association was incorporated on November 10, 1920, which was after the Revised Statutes of 1909 had been superseded by the Revised Statutes of 1919, whereas the certificate of the Secretary of State granting to the Loan Association the rights and privileges of loan and investment companies recites that the Association was incorporated under Article

7, Chapter 33, R.S. Mo. 1909. This may have been an error of the Secretary of State, but regardless of whether the Loan Association was acting under the Revised Statutes of 1909 or those of 1919, it was acting under a certificate of authority from the State as a manufacturing and business company from and after November 10, 1920. What are now classed as loan and investment companies under Article 8, Chapter 33, R.S. 1939, Mo. R.S.A. Sec. 5418 et seq., were first provided for by an amendment to Article 7, Chapter 33, R.S. 1909, relating to manufacturing and business companies, which amendment appears in Laws 1919, pp. 239, 240 and 241, approved May 2, 1919. Then in the revision of 1919 this amendment so made to the article relating to manufacturing and business companies was carried as a separate article and appears under the heading 'Loan and Investment Companies,' as Article VIII, Chapter 90, R.S. 1919. This article has continued in the Revised Statutes and has now reached the current revision as Article 8, Chapter 33, R.S. 1939. When this Loan and Investment Companies Law was enacted in 1919 it provided by Section 7, Laws 1919, p. 241, as follows: 'Any company now incorporated under article VII of chapter 33 of the Revised Statutes of Missouri, 1909, as amended, which has heretofore exercised the powers conferred by this act may come within and be entitled to all the provisions of this act by filing with the secretary of state a duly authenticated copy of a resolution passed by a majority of the stockholders of said corporation of its election so to do, and by the payment of a fee of \$50.00 into the state treasury.'

"This section has been carried through the revisions of 1929 and 1939 the same

as originally enacted, except that in the revision of 1929 it reads, 'Any company now incorporated under article 7 of chapter 32, R.S. 1929, which has heretofore exercised the powers conferred by this article may,' etc., Rev. St. 1929, Sec. 4985, and in the revision of 1939 it reads, 'Any company now incorporated under article 6 of chapter 33, R.S. 1939, which has heretofore exercised the powers conferred by this article may,' etc. Mo. R.S.A. Sec. 5425.

"Appellants argue that it is apparent from a reading of this Section 7, Laws of Missouri 1919, page 241, that this was a law intended to cover a temporary situation then existing where some corporations previously incorporated under Article 7, Chapter 33, R.S. Mo. 1909, relating to manufacturing and business companies, which had by sufferance prior to the passage of the Loan and Investment Companies Act exercised powers later legalized for loan and investment companies by the Laws of 1919, might adopt such powers legally without reincorporating. There is much weight to such argument, but notwithstanding, the Legislature has left the section as originally passed, and two revision commissions have seen proper to carry it forward without question, except that each revision commission has changed the article and chapter number referred to therein so as to correspond to the current revision, and have thus recognized the section as permanent and not temporary. Appellants contend, as we understand, that the certificate conferring upon the Loan Association the rights and privileges of loan and investment companies is void because the Loan Association could not in 1926 have 'Heretofore exercised the powers' of loan and investment companies under its incorporation as

a manufacturing and business company in 1920. In other words, the defendants' position is that after the enactment of the loan and investment companies law in 1919, plaintiff could not legally be incorporated as a manufacturing and business company and later adopt the provisions of the Loan Investment Companies Law because Section 7 of the Loan Investment Companies Law had reference only to corporations then existing under the manufacturing and business companies laws. We will not attempt to say what is meant by Section 7, Laws of 1919, p. 241, nor by the same section as it now appears (Section 5425, R.S. 1939, Mo. R.S.A.), and do not think we are called upon to do so in this case. Sufficient to say that plaintiff was operating under a certificate of incorporation as a manufacturing and business company (now Article 6, Chapter 33, R.S. 1939, Mo. R.S.A. Sec. 5338, et seq.) from 1920 until 1926, at which time the proper officer of the State issued to plaintiff a certificate conferring upon it the rights and privileges of loan and investment companies, and if such acts of the Secretary of State were irregular it would not lie in the mouths of defendants to raise the question, because under the facts in this case defendants contracted with the plaintiff as a loan and investment company. When defendants entered into the contract and signed the note they solemnly admitted plaintiff's corporate capacity. \* \* \*".

We believe the former opinion of this Department, and the above cited and quoted authorities amply sustain your Department in refusing to allow the filing of the Certificate of Amendment by Securities Credit Company to change its statement of purposes for which it is organized from those of a Loan and Investment Corporation to a Manufacturing and Business Corporation.

Honorable Wilson Bell      -10-

CONCLUSION.

It is, therefore, the opinion of this Department, in view of the former opinion of this Department on the question, and considering the foregoing, that a corporation formed under Article VIII, Chapter 33, R.S. Mo. 1939, may not amend or change its Articles of Incorporation to obtain a Certificate as a Manufacturing and Business Corporation, and that your Department properly construes the law by refusing to allow the filing of such Certificate of Amendment.

Respectfully submitted,

GEORGE W. CROWLEY,  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General