

IN RE: OPEN STEEL FLOORING INDUSTRY CODES RELATIVE TO MISSOURI
ANTI-TRUST STATUTES.

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August 31, 1933. 9/✓

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Arrowhead Iron Works, Inc.
421-431 West Fifth Street
Kansas City, Missouri

Gentlemen:

Your letter of August 19, in parts, reads as follows:

"The Open Steel Flooring Industry, through the Open Steel Flooring Association, has submitted a Code of Fair Competition to the N. R. A. for approval. As a member of the industry, but not of the Association, we have attended the meetings at which the Code was formulated. The Arrowhead Iron Works is the only firm in the industry operating in Missouri.

"We have received a very definite impression at the meetings that the object of the Code is to raise prices to a more profitable level and to reach an agreement whereby the products manufactured by the various firms in the industry will be sold on the same price basis. Article III, Section B (cost code) states:

'This industry shall proceed at once to provide for standard methods of costing which shall be used by all manufacturers for the purpose of this section of the Code. It shall be an unfair method of competition for any such manufacturer to sell below his cost. Each unit or participant shall use approved standard methods of costing in order that each unit will use the same rules for finding costs.'

"We refused to sign the Code on the grounds that we were forbidden to enter into price agreements by Section 4614, R. S., 1929 and Section 8728, R. S., 1929, governing the operation of firms doing business in the State of Missouri.

"Our position in the matter is briefly, as follows: We are now operating under the President's Blanket Code, and have increased our prices slightly to cover the additional expense incurred. It would, of course, be attractive to raise our prices to an appreciably higher level, being assured that our competition would do likewise, particularly with the protection of the Government and the sanction of the State of Missouri. If we sign the Industry's Code, it will be necessary for us to join the Association, as this is specifically provided for in the Code. This, of course, will necessitate obeying the rules of the Association."

"If we take the foregoing steps, we will expect your office to release us from submitting the Anti-trust affidavit (Form 3A) which we are required to send in each year with our Domestic Corporations report to the Secretary of State. At present, we are the only firm in the industry operating under the Blanket Code, and are abiding by the spirit and letter of the Code strictly. If we adopt the Code of the Industry, we want to be free to enter into and obey it fully."

This department has no power to relieve your corporation from filing the affidavit required by sections 8728 and 4614 Revised Statutes of Missouri, 1929.

This department has no power to relieve any person or corporation from the provisions of the Missouri Anti-Trust Statutes.

Section 8701, Revised Statutes of Missouri, 1929, provides as follows:

"Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation, or understanding with any other person or persons to regulate, control or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience or repair, or any product of mining, or any article or thing whatsoever, of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or participate in any pool, trust, agreement, contract, combination, con-

federation or understanding, to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and be punished as provided for in this article."

Section 8703, Revised Statutes of Missouri, 1929, provides as follows:

"All arrangements, contracts, agreements, combinations or understandings made or entered into between any two or more persons, designed or made with a view to lessen, or which tend to lessen, lawful trade, or full and free competition in the importation, transportation, manufacture or sale in this state of any product, commodity or article, or thing bought and sold, of any class or kind whatsoever, including the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, and all arrangements, contracts, agreements, combinations or understandings made or entered into between any two or more persons which are designed or made with a view to increase, or which tend to increase, the market price of any product, commodity or article or thing, of any class or kind whatsoever bought and sold, including the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, are hereby declared to be against public policy, unlawful and void; and any person or persons creating, entering into, becoming a member of or participating in such arrangements, contracts, agreements, combinations or understandings shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and punished as provided for in this article."

Section 3. paragraph (a) National Industrial Recovery Act, commonly known as "N. R. A." provides as follows:

"Upon the application to the President by one

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or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices. * * * *

It is the opinion of this department, the Industrial Recovery Act does not repeal nor suspend the operation of the herein above quoted provisions of the Missouri Statutes prohibiting contracts to fix prices or restrain trade and commerce.

This department will enforce the Missouri Anti-Trust Statutes against any person or corporation who violate same.

This department appreciates highly the spirit of your letter and will be pleased at any time to furnish you any information we may have available upon the subject matter of your letter or any other question properly coming within the sphere of the Legal Department of the State of Missouri.

Very respectfully yours,

APPROVED:

ROY McKITTRICK
Attorney-General.

EDWARD C. CROW
Assistant Attorney General.

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