

INCORPORATION of loan and investment companies can include only one purpose.

Dec 1932 R.S. No. 1929

May 13, 1933. *5/22*

FILED
//

Hon. Dwight H. Brown
Secretary of State
Jefferson City, Mo.

Attention: Mr. Neal J. Ross
Corporation Supervisor

Dear Sir:

Your request for an opinion dated May 5th, 1933, is at hand and is in words and figures as follows:

"A company has made application for incorporation under Articles 7 and 8, Chapter 32, R. S. No. 1929, relating to business and manufacturing companies, and loan and investment companies. We understand, of course, that the fee where the capital stock is \$50,000, or less, is \$50.00 for the incorporation in each case. Section 4985, where a corporation has been organized under the business and manufacturing chapter by filing authenticated copy of a resolution passed by a majority of the stockholders of said corporation and paying a \$50.00 fee may be authorized to do business under the loan and investment company Article 8.

The question that is confronting us is whether or not they can incorporate one company under both articles for one fee of \$50.00. We have come to the conclusion that they may probably be joined. However, we may not be right about that. Please give us your opinion at any early date as we are holding up an incorporation for this purpose."

Section 4980, R. S. No. 1929, of Chap. 32, Art. 8, provides as follows:

"CORPORATIONS MAY BE ORGANIZED, NOW.--Corporations may be organized under and by virtue of this

article in the same manner as manufacturing and business corporations, under and by virtue of article 7 of chapter 32 R. S. 1929, except as otherwise herein provided."

In Wilder's S S Co. v. Low, 112 Fed. 161 l. c. 165, the United States Supreme Court said:

"Besides, the phrase 'in the same manner' has a well understood meaning in legislation, and that meaning is not one of restriction or limitation, but of procedure. It means by similar proceedings, as far as said proceedings are applicable to the subject matter."

Then again, in State v. Cook, 14 S. W. 996 l. c. 998, 78 Texas 408; Brown v. O'Connell, 36 Conn. 447; Wells v. Bain 75 Pa. St. 54; the phrase "in the same manner" was held to mean "by the same proceedings so far as applicable to the subject matter".

The phrase, "in the same manner as manufacturing and business corporations" in Section 4980 above set out, interpreted in the light of adjudicated cases above set out (there being no Missouri authority) means by the same process of organization as manufacturing and business corporations are organized, and does not mean that said corporations can be organized to include the same purposes as described in Art. 7, Chap. 32, R. S. No. 1929, as the purposes of manufacturing and business corporations.

The fact that the Legislature has established the method of organization by adopting an already workable procedure established in the provisions of article 7 and then proceeding in each succeeding section of said article 8 to define the powers and duties of loan and investment companies so organized, indicates that said purpose of incorporation was not intended to be joined with the other legitimate purposes of incorporation allowed under article 7. The fact that the Legislature provided a \$50.00 fee, taking no consideration of the amount of capital stock in establishing said fee, would also indicate that loan and investment corporations were not intended to be joined with manufacturing and business corporations. It would be unreasonable to construe the provisions of article 7 otherwise.

It follows, then, as the opinion of this office that stock holders cannot incorporate a loan and investment company

in conjunction with a manufacturing and business company, but each must be incorporated as separate entities, and each entity must pay its individual incorporation fee as required by law.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney-General.

APPROVED: _____
ROY McKITTRICK
Attorney-General.

WOS:EG