

Acknowledgment--Extending existence of Corporations.  
Act of 1931, Page 297.

SB 131 LAW 31

January 24, 1933

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Mr. S. A. Cunningham  
Assistant Corporation Attorney  
Secretary Of State  
Jefferson City, Mo.

Dear Sir:

Your letter of January 20th, 1933, to the Attorney General has been referred to the undersigned for attention. Said letter being as follows:

"We have a proposition in this Department concerning a method of extending existence of corporations. Under Act of 1931, Page 297, certain notices are required to be given, and where they are not given, and the amendment is signed in duplicate, acknowledged and sworn to by all the stockholders, such notice may be waived.

There is a question now before this Department as to whether or not the following can be construed as an affidavit and an acknowledgment combined:

"State of Missouri )  
City of St. Louis ) SS

Frank M. Mayfield, J. J. Samesreuther, R. McK. Jones, S. Grobe, Linn Paine, Ed. H. Simmons, Oliver Anderson, A. L. Shapleigh, and E. D. Nims, being duly sworn on their respective oaths, state that they are all of the common stockholders of the Mermod, Jaccard & King Jewelry Company, and that they have read the above and foregoing instrument and the matters and things set forth therein are true and that they have executed the same as their free act and deed."

Beane  
Lansley

There is no question in our opinion as to it being a valid affidavit. But as to whether or not it could be construed as an acknowledgment we are at doubt.

We therefore desire your opinion on this question. Please submit same to us at your convenience."

Section 1, under acts of 1931, laws of Missouri, page 297 reads: "\*\*\*\*\*In case such amendment in duplicate is signed, acknowledged and sworn to by all the stockholders the notice of such meeting may be waived.\*\*\*\*\*" This procedure, if followed, is mandatory to the extending the existence of corporations. You will observe that the statute uses the words signed, acknowledged and sworn. The proposition under consideration is whether or not the instrument in question was acknowledged.

The instrument recites that the various parties were duly sworn; that they were all the common stockholders; that they had read the above and foregoing instrument and the matters and things set forth therein were true; that they had executed the same as their free act and deed. The statute uses the word acknowledged and not executed. This brings us to the proposition as to what is meant by executed and what is meant by acknowledged.

Executed is defined in Corpus Juris, Volume 23, page 278 as follows:

"The words "execute," "executed," and "execution," when used in their proper sense, convey the meaning of carrying out some act or course of conduct to its completion. Thus when the terms are applied to a written instrument, they include the performance of all acts which may be necessary to render it complete as an instrument importing the intended obligation, of every act required to give the instrument validity or to carry it into effect or to give it the forms required

to render it valid, in a technical sense, the words necessarily include the performance of three acts which are signing, sealing, and delivery, and in some instances the acknowledgment of the instrument, but the act of delivery is not always included, and not infrequently the terms are employed to express merely the acts of signing and sealing, or of signing only.\*\*\*\*\*"

Acknowledgment is defined by Corpus Juris, Volume 1, page 745 as follows:

"An acknowledgment in its broad, general sense is an admission; but in the technical, legal sense in which here used the term means a formal declaration or admission before an authorized court or public officer, by a person who has executed an instrument, that such instrument is his act and deed. It is a proceeding provided by statute whereby a person who has executed an instrument may, by going before a competent officer or court and declaring it to be his act and deed, entitle it to be recorded, or to be received in evidence without further proof of execution, or both.\*\*\*\*\*"

Act of 1931, page 297, under consideration herein, uses the following words: "\*\*\*\*\*The form of the amendment extending corporate existence shall be executed, acknowledged and sworn to in duplicate by the president of the meeting and attested by the secretary of said meeting and filed with the secretary of State as is required in case of any other amendment. In case such amendment in duplicate is signed, acknowledged and sworn to by all the stockholders the notice of such meeting may be waived/\*\*\*\*\*" Section 4934 R.S.1929, which we believe act

of 1931, page 297, was patterned after, uses the words:  
"\*\*\*\*\*shall be signed and acknowledged and sworn to.\*\*\*\*\*"  
Thus the word acknowledged is used in every instance while  
signed and executed are interchanged. In view, therefore,  
of the above we interpret-----"executed the same as their  
free act and deed", as set out in the instrument under  
consideration to mean signed and not acknowledged.

From the case of Alexander vs Merry, 9 Mo. 514, to the  
present date the law seems to be that a certificate of  
acknowledgment substantially complying with the statute as  
to the facts to be embodied therein is sufficient. In view  
of the above and of the cases holding such doctrine it is our  
opinion that said instrument does not substantially comply  
with the statute in these particulars, to wit; no formal  
declaration acknowledging same; no identification of the  
parties signing. In view of the fact that said instrument  
does not substantially comply with the statute it cannot be  
construed as an affidavit and an acknowledgment combined.

You are not requesting whether or not this is a valid  
affidavit but interested only in whether or not it is an  
acknowledgment. We hold that it is not an acknowledgment.

For your information we direct you to page 3862 R. S.  
Missouri 1929, that prescribes a form which we believe the  
statute under consideration contemplates should be followed.

Yours very truly,

James L. HornBostel  
Assistant Attorney General.

Approved

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Roy McKittrick  
Attorney General.

JLH:MM