

CORPORATIONS,

EXTENSION OF FRANCHISE:-Building and loan associations are required to pay the fees required under the general corporation laws, Section 4556, and may not extend corporate existence by merely paying the \$5.00 provided for in Section 5613, Laws 1931, page 158.

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Mr. Neal J. Ross,  
Corporation Supervisor,  
Jefferson City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"This Department is requesting an opinion from you on a proposition which has heretofore been passed upon but in a different connection.

The Webster Groves Building and Loan Association has consulted the Department on the question of extension of its corporate existence. The charter of this association is about to expire. There are three or four other building and loan associations in the state whose charters are about to expire. They desire an extension under Section 5613, page 158, Session Acts 1931. This section provides that the charter may be extended upon the payment into the State Treasury of a fee of \$5.00. You have heretofore under date of June 27th, handed us an opinion on Section 1, laws 1931, page 297, a very similar statute to the one now in question but which deals with private corporations, while the one now in question has reference only to building and loan associations. It has been the policy of this Department for several years to refuse to follow these sections or similar statutes on the broad ground that the Legislature cannot, under our Constitution, favor one corporation over another in respect to the fees that it must pay, or the taxes to be collected by the state.

The opinions rendered by your Department absolutely coincide with the practices and opinions held by the Department and especially with the holding of the Supreme Court in the case of State ex rel. v. Roach, 269 Mo. 1. c. 443, and that seems to be the law upheld by the Supreme Court as declared in State ex rel. Richey v. McGrath, 95 Mo. 193.

If Section 5613, Laws of 1931, permits building and loan corporations to extend their charters which are about to expire by limitation for a fee of \$5.00, and receive therefor a certificate for a perpetual charter, or for

an extended period of fifty years, the state will lose a large amount of fees in each of the cases now pending; we could safely say that the fees will amount to \$1500 or more, in each case.

Under date of April 1, 1932, G. C. Weatherby, special counsel for the then Attorney General, Stratton Shartel, in discussing the same matter, made this statement:

'Of course, should the Association see fit to withdraw the present extension and through the procedure required by said Section 5613, provide for an extension of corporate existence for a period the same or less than that provided for in its charter, I think you could properly receive and file such extension upon the payment only of the \$5.00 fee in said section provided.'

If that is the law, then the purpose of the Legislature in passing that statute has been accomplished and our contention is lost, for these corporations may provide for an extension of fifty years and relieve themselves of paying the full fees for the privilege of conducting their business for a limitation period of fifty years.

We expect mandamus in at least one case, in order that they may get the Supreme Court to interpret this law, and we shall be very glad to have your opinion in the matter so that we may follow the same in our future actions."

You inquire whether a building and loan association may extend its corporate existence by the payment of the \$5.00 fee authorized under Laws of 1931, page 158, or whether it should be required to pay the fees under Section 4556, R. S. Mo. 1929.

Section 5613, Laws of Missouri 1931, page 158, provides as follows:

"Every such corporation, whether heretofore or hereafter organized, may extend the time of its duration for such period as may be stated in its resolution of extension, as adopted by a vote of three-fourths of its stockholders present at any regular or special meeting called for that purpose, and of which meeting public notice of the time, place and general purpose of such meeting shall be given in manner as provided in Section 5588 of this chapter. A copy of said resolution, certified by its president and secretary, shall be filed with the secretary of state, who, upon payment into the state treasury of a fee of five dollars, shall issue a certificate for such extension, a copy of which shall be filed for record in the office of the recorder of deeds in the county wherein the original articles of incorporation have been recorded."

Section 4556 of the General Corporation Laws, chapter 32, Laws of Missouri 1929, among other things, provides as follows:

"\* \* \*Provided, further, that the duration of such corporation shall not be continued as aforesaid, until such corporation shall pay into the state treasury fifty dollars for the first fifty thousand dollars or less of the capital stock of the corporation, and a further sum of five dollars for every additional ten thousand dollars of its capital stock, as provided by law: Provided, that nothing in this section contained shall be construed to authorize the renewal, continuance or extension of the charter of any company engaged in the manufacture or sale of illuminating gas."

Section 21 of Article X of the Constitution of Missouri provides as follows:

"No corporation, company or association, other than those formed for benevolent, religious, scientific or educational purposes, shall be created or organized under the laws of this State, unless the persons named as corporators shall, at or before the filing of the articles of association or incorporation, pay into the State treasury fifty dollars for the first fifty thousand dollars or less of capital stock, and a further sum of five dollars for every additional ten thousand dollars of its capital stock. And no such corporation, company or association shall increase its capital stock without first paying into the treasury five dollars for every ten thousand dollars of increase: Provided, That nothing contained in this section shall be construed to prohibit the General Assembly from levying a further tax on the franchises of such corporation."

In State ex rel. Telephone Company v. Roach, 190 S. W. 862, the relator sought to amend its charter and extend its corporate existence, but refused to pay the fees required under what is now Section 4556. The court, however, held that it was necessary to pay the tax required under said Section. The court at page 863 says:

"It was then written into the Constitution that corporations, except municipal, should hereafter be formed, if at all, only in pursuance of general laws, and in 1866 the General Assembly accordingly provided general laws therefor. The Constitution of 1875 extended the inhibition against the creation of corporations by special acts to municipal corporations. The manifest intention of those framing and adopting these constitutional provisions was to place the franchises and

privileges of corporations on a basis of equality and uniformity and give to all for future operations a fair field with no favor.

If the phrase found in the proviso that 'the duration of such corporation shall not be continued as aforesaid' applies only to corporations organized prior to 1875, as relator contends, the segregation thus accomplished results in discrimination and does violence to the policy of equality. A corporation, having spent the life which the law gave it, can assert no inherent rights to further existence. Natural, not artificial, resuscitation is its relief, and this comes only through the law and as it decrees. Having provided equality in all other respects, it is not strange that the law would exact the same conditions of all when it comes to the matter of renewing the life."

In *State ex rel. v. McGrath*, 95 Mo. 193, the court held that the Legislature could not exempt incorporators of building associations from paying the incorporation tax required by the Constitution, and held that it was not a benevolent institution, as came within the exception. The court says at page 198:

"It is clear, we think, from the sections above quoted as well as from the articles of association, that the leading purpose of this corporation is not to promote benevolence or charity, but to better the pecuniary condition of its members or share-holders alone, and we are unable to see how the fact that such an association may tend to promote frugality and economy, and open up a way 'whereby the share-holders, cut of their savings, may be enabled to secure houses, or loan their savings to others at high rates of interest, to be fixed by the directors,' can be said to impress or characterize the association as one formed for benevolent purposes, when the chief incentive to each stockholder is that he may benefit himself."

It, therefore, has been held that a building and loan association is not created for benevolent purposes within the exceptions contained in Section 21 of Article X of the Constitution. The constitutional provision, therefore, must be held to apply, *in fact*; in its original incorporation it was bound to pay the fees required by the Constitution from all corporations. When the term of its charter expires, it ceased to be a corporation and if it did desire to renew its corporate existence it must be held to pay the same fees for such privilege as all other corporations. Section 4556 above, requires the payment of fifty dollars for the first fifty thousand dollars of capital stock and an additional sum of five dollars for every additional ten thousand dollars of capital stock. Under the *Roach* case above, it was held that that section, when read in connection with the section authorizing the amending of its char-

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ter, required the payment of those fees when the corporate existence was extended. The court announced that any other interpretation would result in inequality and favoritism, and that all corporations must be treated upon the same basis.

It is therefore our opinion that Section 5613, Laws of Missouri 1931, page 158, and Section 4556, R. S. Mo. 1929, must be read together in determining the right of this association to extend its corporate existence, and that the fees for said extension must be paid according to Section 4556. In view of the foregoing statutes and decisions we conclude that that part of Section 5613 which authorizes building and loan companies to extend their corporate existence upon the payment of a fee of five dollars is of no effect, and that you may rightfully require said association to pay the fees required under the General Corporation Law, as provided in Section 4556, before permitting an extension of their corporate existence.

Very truly yours,



Assistant Attorney General.

APPROVED:

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Attorney General.

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