

INVESTMENT CERTIFICATES: Investment certificates used by corporations making loans on automobiles are under the supervision of the Securities Dep't. of the State of Mo.

*October*  
September 20, 1933.

10-28



Hon. Neal J. Ross,  
Commissioner of Securities,  
Secretary of State,  
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter in which you request an opinion from this department as to the following state of facts:

"The Missouri Securities Act embodies a concise definition of the word 'security' as intended by the Act.

During the past several years, various chattel loan corporations making loans on automobiles have used a so-called 'investment certificate' in connection with such loans. That is, instead of operating under the small loan act supervised by the Commissioner of Finance, they have qualified their 'investment certificates' under the Securities Act, thus placing their operations under the supervision of this Department.

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On July 24, 1933 the new amendment to the Loan and Investment Company Act became effective. On page 2 of the House Bill, lines 20 and 21, the legislature has added the words 'nor to constitute a violation of any other law', and added provisions following this clause. It is contended that the legislature intended this to mean that the issuance of investment certificates will not constitute a violation of the Securities Act. It is argued that there are only two acts of the statutes that could be violated by the issuance of these certificates: one is the usury act, and the other the Securities Act.

It is further argued that the withdrawal charges which might have been permitted under the old law are now prohibited by the addition of the section

starting with line 40 and ending with line 48 on page. 3. The new section provides for a cash surrender value or off-set of any amounts paid under the certificate. It is said that there can never be a situation where the company owes the borrower more money than the borrower owes the loaning company, therefore there could never be any fraud upon the borrower in the issuance of these certificates.

It is stated that these 'certificates issued in connection with a loan' are not the same type of certificate as would be used for savings purposes. They are not an investment, but are solely used when a loan is made. It is argued that, while the Securities Act calls for the registration of certificates of indebtedness or evidence of indebtedness, yet it does not call for 'an evidence or certificate of indebtedness or of investment issued in connection with or used as security for such note or loan.'

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A considerable number of such loan companies, in the past few years, have registered their certificates in this Department. Such registration provides revenue for the State, and also insures supervision by the State. In a recent case, we cancelled registration of Southern Loan & Investment Co., and have put them out of business, at least temporarily while their mandamus suit is pending. If the newly amended Loan and Investment Company Act takes these certificates away from registration in this Department, it eliminates all State supervision of these chattel loans on automobiles.

The Securities Act defines a 'security', and in my opinion covers these certificates of indebtedness. However, the language 'nor to constitute a violation of any other law' is contended eliminates by implication, at least, the necessity for registration under the Securities Act. Will you kindly favor me with your opinion in the premises?'"

#### I.

Chapter 40, R.S. Mo. 1929, known as the "Securities Department", provides for the registration of all securities.

Section 7725, R.S. Mo. 1929, provides as follows:

"No person, either acting personally or through an agent, or as the agent of another, shall on and after the date when this chapter goes into effect sell any security to any person in the State of Missouri contrary to the provisions of this chapter."

A "security" is defined under the Act in Sec. 7724, R.S. Mo. 1929, sub-section (c) as follows:

"The term 'security' or 'securities' shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, transferable certificate of interest or participation, interim certificates or receipts, certificate of interest in a profit-sharing agreement, certificate of interest in an oil, gas, or mining lease, collateral trust certificate or any transferable share, investment contract, or beneficial interest in or title to property or profits, pre-organization certificate or receipts, or any other instrument commonly known as a security."

## II.

Section 4982, Laws of Mo. 1933, p. 200 provides for the powers of loan companies relative to charges on loans.

Section 4982, Laws of Mo. p. 200, provides in part as follows:

"In addition to the general powers conferred upon corporations by articles 1 and 7 of said chapter 32, R.S. 1929, as amended, every loan and investment company organized under the provisions of this article shall have the following powers:

First: To lend money to any person, firm or corporation, secured by the obligation of such person, firm or corporation, or otherwise.

Second: To sell or offer for sale its secured or unsecured evidences or certificates of indebtedness or of investment and to receive from investors therein or purchasers

thereof payments therefor in installments or otherwise with or without allowance of interest on such installments, whether such evidences or certificates of indebtedness or of investment be hypothecated for a loan or not, and to enter into contracts in the nature of a pledge or otherwise with said investors or purchasers with regard to said evidences or certificates of indebtedness or of investment securing any loan, and no such transaction shall in any way be construed to effect the rate of interest on such loan, nor to constitute a violation of any other law, conditioned that there be compliance with the limitations thereon in this section contained. \*\*\*\*\*

### III.

Section 4982, Laws of Mo. 1933, p. 200 does not take from the jurisdiction of the Securities Department investment certificates in connection with loans on automobiles.

It will be noted in referring to Section 4982, Laws of Mo. 1933 that this Act merely confers additional powers to loan and investment companies and does not in any manner attempt to remove from the jurisdiction of the Securities Department the supervision of the certificates of indebtedness. It merely provides that a loan and investment company may sell or offer for sale its secured or unsecured evidences or certificates of indebtedness or of investment. It gives to such corporation the power to issue certificates, but nowhere in the Act can there be found any provision exempting such company from the provisions of the Securities Act, as found in Chap. 40, R.S. Mo. 1929.

The argument that the words "nor to constitute a violation of any other law" are sufficient to remove the certificates from the jurisdiction of the Securities Department is without merit for the reason that the words "nor to constitute a violation of any other law" merely signify an intention on the part of the Legislature that no law shall interfere with the power of such loan and investment company to issue such certificates. However, Section 4982, supra, does not destroy the conditions precedent to the actual sale of these certificates as set up in the Securities Act in Chapter 40, R.S. Mo. 1929. The plan whereby loan and investment companies may issue certificates of indebtedness is explained

in your letter as follows:

"For each \$100 loan, the company took a note for \$100 payable within a year without interest. At the same time it 'sold' the borrower for \$100 an investment certificate having a face value of \$100. The price of the certificate was to be paid for by the borrower in installments within a year, on terms complying with the Loan and Investment Company Act as amended in 1929. The investment certificate was to mature and is payable to the borrower five years after its date, and with interest. If the borrower paid the loan in installments within a year in accordance with the terms of the Amended Loan and Investment Company Act and also paid the certificate, he would receive his \$100 with interest at 6% for four years, upon expiration of the five year maturity date. If he did not care to continue with the investment certificate he could surrender the certificate for the amount paid in less a withdrawal charge. Such withdrawal charge was indeterminate, and depended upon the whim and demand of the loaning company."

If the Amended Loan and Investment Company Act, Sec. 4982, supra, takes these certificates away from registration in the Securities Department, it eliminates all state supervision of these chattel loans on automobiles. It certainly cannot be said to have been the intention of the Legislature to produce this result. Sec. 7753, R.S. Mo. 1929, under the Securities Act, provides as follows:

"Nothing in this chapter shall be construed to relieve corporations from making reports now or hereafter required by law to be made to the Secretary of State, or paying the fees now or hereafter to be paid by corporations. This chapter shall not be construed to repeal any law now in force regulating the organization of corporations in this state or the admission of any foreign corporation, but the provisions of this chapter shall be construed to be additional to any provision relating to the organization of a corporation under the laws of the State of Missouri or the admission of a foreign corporation to do business in this state."

This section clearly shows that the Securities Act is in addition to any provision relating to the organization of corporations.

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Section 4982, supra, has to do with additional powers conferred upon loan and investment companies and relates to the organization of corporations. The Securities Act is in addition to any provision relating to the organization or powers of corporations.

It is therefore the opinion of this department that the investment certificates used by chattel loan companies in making loans on automobiles, as set out in your letter to us, are such securities as are contemplated by the Securities Act as found in Chapter 40, R.S. Mo. 1929; and the Amended Loan and Investment Company Act, Section 4982, supra, does not in any way exempt or remove the securities from the jurisdiction of the Securities Department of the State of Missouri.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

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ROY MCKITTRICK,  
Attorney General

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