

CORPORATIONS - FOREIGN:

SECRETARY OF STATE:

Secretary of State can not issue a license to a foreign corporation without statement of such corporation as to its capital stock authorized in Missouri.

*Sec 4598 R.S. 1927*

August 31, 1934



Honorable James A. Barks  
Securities Commissioner  
Jefferson City  
Missouri

Dear Sir:

This department acknowledges receipt of your letter dated July 21, 1934, as follows:

"We will appreciate your opinion with reference to the new code authority corporations.

These corporations are usually formed in Delaware. They have no capital stock and say they are organized for profit yet they want to qualify in Missouri and set up in this state divisional code organizations.

We have one called 'Divisional Code Authority Retail Solid Fuel Industry Division 31 Incorporated.' It states in its Articles of Association that it has no capital stock and is a non-profit corporation, that its purpose is to act as code authority in the retail solid fuel industry.

Our question is the method of qualifying in Missouri and what first should be charged if they can qualify or whether they would be required to use the same forms and pay the same fees that other foreign corporations are required to do in business under provisions of Section 4598.

We will appreciate your opinion in this matter."

August 31, 1934

Attached to your letter is the certificate of incorporation of the Divisional Code Authority Retail Solid Fuel Industry, Division No. 31, Inc., organized under the laws of the State of Delaware, with the articles of agreement of such corporation attached thereto.

1.

The third paragraph of such articles of association of the corporation in part is,

"The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

To act as the Divisional Code Authority for Division No. 31 of the Retail Solid Fuel Industry as provided in the Code of Fair Competition for the Retail Solid Fuel Industry, approved by the President of the United States on February 14, 1934, (hereinafter referred to as 'the Code'), to further effectuate the policies of the National Industrial Recovery Act, approved by the President of the United States on June 16, 1933, and to administer the Code within Division No. 31 of the Retail Fuel Industry; and to possess and exercise all of the authorities, powers and duties, including the power of delegation, conferred upon Divisional Code Authorities for the Retail Solid Fuel Industry by the Code, or by any supplement thereof or amendment thereto, or by the National Code Authority for the Retail Solid Fuel Industry created under the Codes. \* \* \* \* "

It is further provided that the corporation has the power to acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description, in any state, district, territory or colony of the United States and in all foreign countries, subject to the laws of such state, district, territory, colony or country. It is provided that the corporation is further empowered to borrow and raise

money for any of the purposes of the corporation and to receive contributions and assess and collect fees, dues and other payments as may be provided for in the Code and by the by-laws of the corporation.

In the fourth paragraph of the articles of association it is provided:

"This corporation shall be a membership corporation and shall have no capital stock. The corporation is not organized and shall not be conducted for profit. The membership shall consist of members of the Retail Solid Fuel Industry, except that one such member may be from within or without the said Industry."

By the tenth paragraph of the articles of association the corporation reserves the right to amend, alter, change, or repeal any provision contained in the articles of association, in the manner now or hereafter prescribed by the laws of the State of Delaware for the amendment of certificates of incorporation, upon the vote of at least two-thirds of the members entitled to vote.

2.

Section 4598 Revised Statutes 1929 requires that

"Every company incorporated for the purpose of gain under the laws of any other state, territory or country \* \* \* shall file in the office of the Secretary of State a copy of its charter or articles of association\* \* \* and \* \* \* shall make and forward to the Secretary of State\* \* \* a statement sworn to of the proportion of the authorized capital stock of such corporation which is represented by its property located and business transacted in Missouri\* \* \*. Such corporation shall be required to pay into the state treasury upon the proportion of its authorized capital stock represented by its property and

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business in Missouri, incorporating tax and fees equal to those required of similar corporations formed within and under the laws of this state, with an additional ten dollars as a fee for issuing the license authorizing it to do business in this state\* \* \* \* \*."

While it is true it is stated in the articles of association that the corporation is not organized and shall not be conducted for profit, but it is apparent that the corporation intends to engage in a general business and it is not proposed that its purposes are either charitable or benevolent.

#### CONCLUSION.

Since the proposed articles of association do not set forth a capital stock upon which fees against same could be based, the Secretary of State is without authority to issue the proposed foreign corporation a license, by virtue of any of the provisions of the constitution and laws of the State of Missouri, and such is the opinion of this department.

We are returning you your inclosures herewith.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General.

GL:LC

Inclosures