

CORPORATIONS; A Foreign corporation incorporated to make loans, secured by real estate, chattel mortgages, or otherwise than to carry on a general mortgage business in all its forms may be domesticated in the State of Mo.

1-15  
January 10, 1934.



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

Attention: Corporation Dep't.

Dear Sir:

This department is in receipt of your request for an opinion as to the following state of facts:

"We are handing you the enclosed copy of certificate of incorporation of Union Mortgage Loan Company and ask that you furnish us an opinion as to whether or not we are authorized to domesticate this corporation in Missouri as a foreign corporation. You will note first, that it takes for its name Union Mortgage Loan Company. It is not and does not purport to be a business or manufacturing corporation such as are contemplated in our statute under Article 7, Chapter 32. The purpose of this corporation, as we understand, is to borrow money from the Reconstruction Finance Corporation and then to loan this money to the various telephone companies. I don't think they intend to loan money to anyone except companies organized for the purpose of carrying on the telephone business.

This matter has been submitted to us before and at that time we took the view that since it was a mortgage loan company, it properly belonged in the Finance Department. It was submitted there and I understand refused on the ground that corporations could be organized in Missouri for the purposes mentioned in this copy, but that no provision was made for domesticating such companies. It has now come back to the Corporation Department and they are very anxious to have the question determined. We are at a loss to know whether the Secretary of State is authorized to issue a certificate on

proper certification of the articles of incorporation from the state of origin, which is Delaware in this case, and with the other necessary affidavits which are to be supplied together with the designation of principal agent for Missouri. We will appreciate your early advice in this matter."

I.

A foreign corporation incorporated to make loans secured by either real estate or chattel mortgages or otherwise than to carry on a general mortgage business in all its forms may be domesticated in the State of Missouri.

Section 4936, R.S. Mo. 1929 provides as follows:

"No corporation organized or incorporated under the laws of any other state shall do business in this state, if such company, if organized in this state, would organize under article 7 of chapter 32, R.S. 1929, without first procuring a license therefor, which license shall be granted by the Secretary of State."

Section 4937, R.S. Mo. 1929 provides as follows:

"In order to procure such license it shall be necessary for the corporation applying therefor to file with the secretary of state a copy of its articles of association and charter granted by the state or territory under which it is organized, and if it shall appear that such company or corporation could not organize under the laws of this state, license shall be refused: Provided, that foreign corporations otherwise qualified to engage in business in this state, but whose authorized capital stock exceeds ten million dollars, may obtain such license, if the proportion of the capital stock of such corporation employed in this state shall not exceed the amount of capital which domestic corporations are permitted to have: Provided, that sections 4936 to 4939, inclusive, shall not be construed so as to permit any corporation violating the anti-trust laws of this state to have license to transact business."

The above sections of the statutes of Missouri set out the general rules necessary for foreign companies to follow in order to do business in the State of Missouri. These sections of the statutes are found under Art. VII, Chapter 32, R.S. Mo. 1929, referring to manufacturing and business companies.

Chapter 32, Art. VIII, R.S. Mo. 1929 provides specifically for the incorporation of loan and investment companies. Sec. 4980 of Article VIII provides:

"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."

This section of the statutes declares that corporations may be organized under Article VIII in the same manner as they may be organized under Article VII. In other words, foreign corporations may be formed under Article VIII, providing they comply with the rules as set out in Article VII.

Sec. 4982, R.S. Mo. 1929, referring to the powers of loan companies under Article VIII has been amended by Sec. 4982, Laws of Mo. 1933, p. 200, which 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: \*\*\*\*"

It is the disposition of this state as manifested by its statutes to be liberal in its comity towards outside corporations applying for admission into this state. In the case here before us we have a foreign corporation seeking to come into the State of Missouri and carry on business such as is contemplated by Article VIII, Chapter 32, R.S. Mo. 1929. The public policy of the State of Missouri with respect to a corporation of this nature is well stated in the case of State ex rel. v. Cook, 181 Mo. 596:

"Looking to our statutory provisions for the public policy of the State, it will be readily observed that we have adopted a most liberal comity towards corporations organized under the laws of other states and countries. Indeed, we have placed them upon substantially the same footing as our own domestic corporate bodies and given them the same powers, and subjected them to the same obligations that are provided for like corporations in this State..... When, therefore, such foreign corporation presents itself for admission to the State, and not only shows that its articles provide powers and a business not opposed to our laws, but such as we grant to our own like domestic corporations, there is nothing in the proviso of the Act of 1903 (namely that companies shall not be formed in other states by citizens of Missouri to evade its laws) which would exclude them."

#### CONCLUSION

In view of the foregoing, it is the opinion of this department that the Secretary of State is authorized to domesticate this corporation in Missouri as a foreign corporation upon proper

Hon. Dwight H. Brown

-5-

Jan. 10, 1934.

certification of the Articles of Incorporation from the state of origin, together with the other necessary affidavits required by the statutes 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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