

CORPORATIONS - Loan and investment companies - Right of incorporators of loan and investment company to include in original charter specific powers authorized for business and manufacturing companies by R. S. Mo. 1929, Sec. 4940.

10-13

October 1, 1934.



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

Dear Sir:

A request for an opinion has been received from you under date of September 13, 1934, such request being in the following terms:

"We are requested to ask for an opinion on the question of whether or not a new corporation may be organized under more than one Article of Chapter 32 R.S. Mo. 1929.

Formerly you ruled that it would be necessary to incorporate under one specific Article and that if the corporation desired powers that are granted by another Article, either to incorporate two companies embodying such powers or to pay an additional \$50.00 fee. The question arises more generally with corporations organized under Article 7 and the inclusion of the four specific powers provided in Article 8.

You will note Section 4932 calls all the powers therein granted 'additional powers to those granted by Articles 1 and 7.'

Judge Harry F. Russell has presented Articles of Incorporation drawn as he says under provisions of Article 8, but he includes three specific powers which are derived from the provisions of Article 7. He consulted you in this connection and we would be glad to have your written opinion on the questions involved."

The opinion to which you refer was formerly issued from this office and was signed by Roy McKittrick, Attorney-General, and William Orr Sawyers, Assistant Attorney-General, dated May 13, 1933, and in it the following paragraph states the conclusion reached:

October 1, 1934.

"It follows, then, as the opinion of this office that stock holders cannot incorporate a loan and investment company in conjunction with a manufacturing and business company, but each must be incorporated as separate entities, and each entity must pay its individual incorporation fee as required by law."

Apparently in the opinion of May 13, 1933, the Articles of Incorporation specifically requested a charter under both Articles 7 and 8 of Chapter 32, R. S. No. 1929, whereas it is our understanding that the Articles of Incorporation concerning the issuance of which you are now asking for our ruling do not specifically ask for a charter under both Articles 7 and 8, but on the contrary ask that the charter be issued under Article 8 with three chartered powers enumerated which fall within three of the thirteen categories authorized by Section 4940 which is a part of Article 7. This distinction technically might be regarded as a proper basis for distinguishing these two situations. However, the substance of these two situations seems identical, and to penalize a group of incorporators solely because they expressly refer to both Articles 7 and 8 in their association papers would seem to us to be unsound.

You refer in your letter to Section 4982. This section was enacted in 1933 (Laws of 1933, page 199) and repealed a section of the 1929 statutes having the same number. The new section begins 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:"

As a first impression it might seem that this section would grant to loan and investment companies all the powers granted to business and manufacturing corporations under Article 7. Closer scrutiny will demonstrate the error of such a conclusion, for the key of this section is the word "general". Corporations under our laws are artificial persons and strictly the creatures of statute. Consequently their various general powers and limitations are embodied in great detail in the statutory scheme of Chapter 32. Article 8 relating only to loan and investment companies contains only eight sections. The General Assembly, had it intended to make Article 8 self-sufficient and able to stand alone, would have found it necessary to include in Article 8 all of the general provisions governing corporations which are at present found in Articles 1 and 7. Since this method would have been exceedingly cumbersome it would seem that the General Assembly preferred the obvious more simple method of incorporating such general provi-

sions into Article 8 by reference.

It might be well to mention some of these general provisions of Articles 1 and 7. Thus, in Article 1 provisions and rules are made for the calling and holding of meetings (Sections 4537-34), the election of directors (4535-8), the amendment of the Articles of Incorporation (4540), the making of by-laws (4553-4), dissolution (4561-6), the sale of the assets (4567-8), and payments to employees (4600). In Article 7 provisions are enacted for the declaring of dividends (4942), the keeping of statements of the affairs of the corporation (4943), increasing or diminishing the capital (4943-53), consolidations (4954), and the jurisdiction of courts over corporations (4959-61). Many other provisions are in Articles 1 and 7 dealing with the internal and external affairs of corporations, which provisions would seem equally applicable to all types of corporations in the absence of express conflicting statutes. Another significant fact is the lack of distinction between Articles 1 and 7 in their inclusion of these general types of provisions. Article 7 is not as is Article 8 confined solely to provisions which are peculiarly applicable to corporations of the type which give Article 7 its title of "Manufacturing and Business Companies".

With so many sections in Articles 1 and 7 which could be applicable equally to all types of corporations and thus must appropriately come within the designation of the word "general", and with the added fact that Article 8 to be effective would need the support of these provisions and that it can only claim such support by that part of Section 4982 above referred to as an incorporation by reference, the true meaning of Section 4982 becomes apparent, i.e. a provision incorporating into Article 8 the provisions of Articles 1 and 7 which are necessary to the vitality of Article 8, the "general" provisions as opposed to the specific provisions of Section 4940 which are peculiarly applicable to business and manufacturing companies and consequently are specific and not general. Indeed it would be necessary to distort the meaning of Section 4982 and the word "general" to incorporate Section 4940 into Article 8. To turn from the meaning of words to the practical considerations involved, it would hardly seem reasonable to contemplate that a loan and investment company should be given powers under Section 4940 to construct toll bridges, to build wharves and docks, to construct and operate horse railroads or to purchase and use fire engines.

In conclusion, it is our opinion that a corporation cannot be incorporated under P. S. No. 1929, Chapter 32, Article 8, as a loan and investment company and contain in its original Articles of Incorporation other specific charter powers authorized by Section 4940 of Article 7 of Chapter 32 for business and manufacturing companies.

Very truly yours,

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