

CORPORATIONS - Entitled to certificate to commence business after obtaining corporate charter and recording same.

June 6, 1935

6-14



Honorable James A. Barks
Deputy Commissioner
Corporation Department
Secretary of State's Office
Jefferson City, Missouri

Dear Sir:

We have your request of May 15, 1935 requesting an opinion as to whether or not a certificate to do business should be issued to the "Blind Broom Exchange", a corporation.

Your request is as follows:

"On the 7th of January, 1935, articles of incorporation of the above named company were sent to this office and the same came under the attention of Mr. Wm. P. Goodman. He decided that they met the requirements of the statute and a charter was issued thereon.

"A short time later Mrs. Mary E. Ryder, Executive Director of the Missouri Commission for the Blind, wrote a letter to this department stating that she wanted to object to the incorporation of the above named company. A copy of that letter dated January 26th is attached herewith.

"The copies of the Articles of Association, together with certificate from the Secretary of State, were recorded in pursuance to statute and sent to this office with check for \$1.50 to cover the fees. Mr. Goodman returned the same under date of February 4th.

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Prior thereto he had advised Harzfeld, Beach, Steeper and Gordon of the protest on the part of the Missouri Commission for the blind and stated in his letter above referred to that 'the department will be glad to file the affidavit in question with the understanding that the said corporation will immediately file an affidavit for Change of Name'.

"On January 11th Mrs. Ryder addressed to this department in this connection a letter, copy of which is also attached. We are also attaching copy of another letter by Mrs. Ryder dated January 22nd.

"A number of letters were directed to Mr. Goodman by J. A. Harzfeld explaining the attitude of Mr. Catell and his new corporation. The business is carried on by means of solicitors and printed matter which is handed to prospective customers. It is headed 'BLIND PEOPLE NEED A Market For Their Products'. It lists the products to be sold in two groups. Group 1 names 11 different articles under the heading 'MADE BY THE BLIND'. Group 2 lists 36 articles under the heading 'NOT MADE BY THE BLIND'. It concludes in the following language: 'Our girls call regularly, once a month. Look over this list carefully. Will you give us an order when she calls you the next time? Read OUR TASK, the monthly bulletin of the Blind Broom Exchange. Sample copies free. Subscription 50¢ a year.'

"We are enclosing copies of the letters referred to herein and a copy of the Articles of Agreement for your consideration. There is no provision made under the purposes of the corporation for the publication or distribution of the printed matter referred to herein.

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"The question is strictly a legal one -- whether or not, over the objections of Mrs. Ryder for the Missouri Commission for the Blind, the department having granted a charter of incorporation, whether it is now compelled to issue the certificate to commence business, due to the discovered name irregularity granted under said charter."

From your letter, it appears that the Articles of Association have been duly filed in your office, a corporation charter issued thereon, and the same filed in the recorder's office and the required affidavit of the incorporators has been filed with you, showing such filing in the recorder's office.

Section 4955, R. S. Mo. 1929, relating to manufacturing and business companies, provides as follows:

"Every corporation formed under this article before it commences business shall file an affidavit with the secretary of state, made by its directors showing that a certified copy of its certificate and articles of association have been filed in the recorder's office as is required by section 4934, and showing that ten or more per cent of the authorized par value shares of stock has been subscribed and paid up in money, property or labor, and if any part of the capital stock is paid in property, the affidavit must give an itemized description of such property, setting out the cash value of each item thereof, and such itemization shall show:

(a) If such property be real estate, the exact description by metes and bounds and location of such real estate, and the actual cash value of each tract;

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(b) If such property be personal property, such itemization shall give the location of each class of personal property and the actual cash value of each class of such personal property. Upon the filing of such affidavit the secretary of state shall issue a certificate to said corporation authorizing it to commence business: PROVIDED, nothing herein can be construed as to prevent the corporation from organizing and financing and getting ready to do business as contemplated in its articles of association; and provided, if in the articles of association it is shown what per cent of the authorized capital stock has been subscribed and paid up, then that part of the affidavit referring to the payment of the capital stock may be omitted."

Since corporate existence commences at the time of filing the Articles of Association in duplicate with the Secretary of State, and the issuance of a certificate of incorporation, Williams v. Everett (1917) 200 S. W. 1045, and if the Articles of Incorporation and the certificates have been recorded as provided in Section 4934, R.S. Mo. 1929, then under Section 4955, upon the filing of such affidavit, the Secretary of State shall issue a certificate to said corporation authorizing it to commence business.

It is, therefore, the opinion of this office that the "Blind Broom Exchange" is entitled to a certificate to commence business as a corporation.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

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