

BANKS & BANKING: ) Persons seeking to incorporate; doing a  
CORPORATIONS: ) safety deposit box business, must comply  
with the provisions of Article 5, Chapter 34,  
R. S. Mo. 1929.

January 20, 1936.

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Hon. Russell Maloney  
Corporation Commissioner  
Secretary of State  
Jefferson City, Missouri

Dear Mr. Maloney:

This is to acknowledge your letter dated January 17, 1936, as follows:

"Re: University Safe Deposit Co.  
"Find enclosed proposed articles of association of the above company purporting to be drawn under the provisions of Article 7, Chapter 32, Revised Statutes of Missouri, 1929, governing manufacturing and business companies which were submitted to this department and a charter certificate of incorporation was denied on the grounds that the proposed business purposes are only extended to corporations organized under the provisions of Article 5, Chapter 34, Revised Statutes of Missouri, 1929. In this connection call your attention to that part of Section 5496, Revised Statutes of Missouri, 1929, worded as follows:

"and secondly, also, at its option, in connection therewith, for the purpose of taking and receiving as bailee for safe-keeping and storage only, jewelry, plate, money, specie, bullion, stocks, bonds, securities and valuable papers of any kind, and other valuables, and guaranteeing their safety, upon such terms and for such compensation as may be agreed upon, and to let out vaults, safes and other receptacles for the uses, purposes and benefits of such corporation."

"Request for an opinion from your office as to whether or not the proposed business purposes of the enclosed articles properly come within the provisions of Article 7, Chapter 32, Revised Statutes of Missouri, 1929, is made for reason that we find of record in this department several Missouri corporations whose business purposes are those of a Safety Deposit Company and organized under the provisions governing business and manufacturing companies.

"Upon inquiry of the State Finance Department we find that the said department has no record of a single Safety Deposit Company organized under the provisions of Article 5, Chapter 34, Revised Statutes of Missouri, 1929.

"Kindly advise if the proposed business purposes of the enclosed articles should be placed under the provisions of Article 5, Chapter 34, Revised Statutes of Missouri, 1929."

As stated in your letter, the University Safe Deposit Company seeks to be incorporated under the provisions of Article 7, Chapter 32, Revised Statutes of Missouri, 1929; capital stock of said corporation was placed at \$2000.00, of which \$300.00 was subscribed and paid up in moneys of the United States, and the shareholders and board of directors consisting of three persons; said corporation was formed for the following purposes:

"To erect, purchase, lease or otherwise acquire warehouses, storage houses and storerooms or any or all of them for the storage and safe keeping of goods, wares and merchandise, including jewelry, plate, money, specie, bullion, stocks, bonds, notes, mortgages and other securities and valuable papers, deeds, wills and all other kinds of personal property, and to take, receipt, keep and preserve as a

bailee such property, or any other part thereof, for the respective owners thereof upon such terms and for such compensation as may be agreed upon, and to that end to purchase, construct, lease or otherwise acquire, hold and own such storage compartments, vaults, safes, boxes and such other property and appliances as may be necessary or proper for engaging in the business aforesaid or any part thereof; also to rent out vaults, safes and other receptacles for the uses, purposes and benefits of such corporation."

It will be noted that said corporation is formed for only one purpose, and that is to conduct a safety deposit box business.

Section 4940, found in Article 7, Chapter 32, R. S. Mo. 1929, provides in part as follows:

"Corporations may be created under this article for any of the following purposes:

\* \* \* \* \*

"Thirteenth--For any other purpose intended for pecuniary profit, or gain not otherwise especially provided for, and not inconsistent with the Constitution and laws of this State: Provided, that nothing in this section shall be construed to authorize the incorporation of a bond investment company or association to issue bonds or debentures based upon payments upon the installment plan, nor any company which savors of the character of a trust company, bank, saving fund, building and loan or fiduciary company."

Article 5, Chapter 34, R. S. Mo., 1929, pertains to "Savings Banks and Safe Deposit Institutions." Section 5491 of said article and chapter provides in part as follows:

"Any five or more persons who shall have associated themselves by articles of agreement, in writing, as provided by law for the purposes included under section 5496 of this article, may be incorporated under any name or title designating such business. \* \* \* \* \*"

Section 5496, R. S. Mo. 1929, provides in part as follows:

"Corporations may be created under this article: \* \* \* \* \*; and secondly, also, at its option, in connection therewith, for the purpose of taking and receiving as bailee for safe-keeping and storage only, jewelry, plate, money, specie, bullion, stocks, bonds, securities and valuable papers of any kind, and other valuables, and guaranteeing their safety, upon such terms and for such compensation as may be agreed upon; and to let out vaults, safes and other receptacles for the uses, purposes and benefits of such corporation. \* \* \* \* \*"

A reading of Article 5, Chapter 34, shows that a corporation desiring to do business as a safe deposit box institution must comply with the provisions of that article and chapter, and must record its articles of agreement in the office of the recorder of deeds and file a certified copy of such recorded instrument in the office of the Commissioner of Finance, and if said Commissioner finds that all the requirements of Article 5, Chapter 34, have been complied with, and upon payment of certain fees and charges, he issues his certificate which entitles said corporation to engage in the safe deposit box business.

Section 4940, supra, Paragraph 13, provides that a corporation may be formed and created under Article 7, Chapter 32 "For any other purpose intended for pecuniary profit, or gain not otherwise especially provided for."

We invite your attention to the words "not otherwise especially provided for."

A safe deposit institution is provided for in Section 5496, supra. The Supreme Court of Missouri, en banc, in State ex rel. Walker v. Corkins, 123 Mo. 56, l. c. 64, said the following:

"The settled policy of the state to encourage the combination of capital, in lawful business enterprises, under corporate management, is apparent from the number of laws upon its statute books authorizing the creation and existence of corporations. \* \* \* \* The relation the business of some corporations bears to the public has made it necessary to impose special duties and restrictions upon them. Of these may be named railroad companies, insurance companies, and banks."

And further, page 66,

"The primary object to be attained in the interpretation of statutes is to ascertain and give effect to the intention of the legislature; and this is to be determined upon a consideration of the entire act and the objects and purposes intended to be accomplished. The evident purpose of this article was to authorize in corporation for business purposes. The other articles of the chapter, and the first ten subdivisions of article eight, include only purposes which are not common, but are unusual and extraordinary, or such as require special powers and duties."

It is thus seen that Article 7, Chapter 32, R. S. Mo. 1929, specifically provides that no corporation can be created by virtue of said article and chapter if such savors of the character of a trust company, bank, et cetera, or is "not otherwise especially provided for." And Article 5, Chapter 34, specifically provides for a corporation to do business as a safe deposit box institution. A safe deposit box institution savors of the character of a savings bank and reposes a trust, i.e., bailee, upon the corporation seeking to do business as such.

From the above it is our opinion that a corporation, formed for the purpose of engaging in the safe deposit box business, must comply with Article 5, Chapter 34, R. S. Mo. 1929. It follows that the University Safe Deposit Company cannot incorporate under Article 7, Chapter 32, R. S. Mo., 1929.

We are returning herewith the Articles of Association, together with Cashier's Check in the amount of \$54.50 payable to Richard R. Nacy, State Treasurer, appended to your letter.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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

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Encs.