

FINANCE DEPARTMENT:
COOPERATIVE COMPANIES:
BOND:

Concerns issuing coupon books for
trade do not come under the pro-
visions of Section 5426, R. S. Mo.
1939.

May 24, 1941

Department of Finance
State of Missouri
Jefferson City, Missouri



Attention: Mr. R. W. Holt, Commissioner.

Gentlemen:

This will acknowledge receipt of your recent communication enclosing a copy of a letter from Mr. Kenneth W. Hood, Manager of Better Business Bureau of St. Louis, Missouri, requesting an opinion as follows:

"A local concern proposes the following:

"To print a booklet containing coupons good for a total of \$5 in lieu of money on purchases. This booklet is to be sold by solicitors for \$1. The \$1 will be kept by the solicitors as a commission. The holder of a book who makes a purchase will use coupons in lieu of 20% of the cash price.

"From time to time other promoters get out booklets with coupons good for purchases or discounts at various business institutions.

"We are wondering if there is any way in which you can force a promoter of this type to deposit a bond with the State to protect the holders of the books. In many instances holders of similar books

have discovered that some of the merchants were forced to discontinue the offer in the book because of hindrance to their regular trade or because they found it too expensive.

"Please refer to Article 9, Sec.-5426 of the Revised Statutes 1939. This act requiring cooperative companies to make deposit with the state treasurer, contains the following language:

'*** providing for the payment of moneys or the granting or giving of any consideration, of any money or property, personal, real or mixed, greater in value, or represented to be greater in value, than the amount paid in upon such contracts or agreements, together with the actual net earnings accrued and accumulated thereon;'

"Can this language be construed to cover the situation outlined above?"

Section 5426 R. S. Mo. 1939, reads as follows:

"Any person, copartnership, association, organization or corporation which is now engaged in or shall hereafter engage in issuing contracts or agreements, whether in the nature of a bond, debenture, certificate or otherwise, providing for the redemption, or the fulfilling of such contracts or agreements by the accumulation of a fund or funds from the contributions made by the subscribers to, or the holders of such contracts or agreements; or providing for the maturing or fulfilling of such contracts or

agreements in the order of their issue or in some other fixed or arbitrarily determined order or manner; or providing for the payment of moneys or the granting or giving of any consideration, of any money or property, personal, real or mixed, greater in value, or represented to be greater in value, than the amount paid in upon such contracts or agreements, together with the actual net earnings accrued and accumulated thereon; or providing for the loaning of the funds contributed by the subscribers to or the holders of such contracts or agreements to such subscribers or holders in any fixed or arbitrarily determined order or manner; or for the making of loans or advances from such funds to or for such subscribers or holders to be repaid in installments; except such persons, copartnerships, associations, organizations or corporations as are organized or doing business under the statutes now in existence or which hereafter may be enacted as excepted in section 5435 of this article, shall, and the same are required, for the protection of the subscribers to, or the holders of its contracts or agreements, to deposit with the state treasurer in cash, United States bonds, or bonds of any county, or municipal township, or such parts of each of the above mentioned securities so that the whole deposit shall be equal in cash value to the sum of twenty-five thousand dollars, and whenever the liability of such contracts or agreements, as hereinafter determined, shall exceed the amount of such deposit, there shall be made an additional deposit on the first days of January and July of each year, in a sum sufficient to cover the excess liabilities accrued during the last preceding six months; and provided further, that no part of such original deposit of twenty-five thousand dollars shall be derived from or consist of any funds contributed by the subscribers to, or the holders of, any such contracts or agreements."

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This provision is applicable to cooperative companies and comes under Article 9, R. S. Mo. 1939, which deals exclusively with cooperative companies. Therefore, it is necessary to determine what a cooperative company is before we can determine if Section 5426, supra, is applicable in the instant case.

Webster's New International Dictionary defines "cooperative" as follows:

"A store established by a consumers' cooperative system, where the members make their purchases and share in the profits and losses."

In State ex rel. Cantley, State Commissioner of Finance v. Meyer Tailoring Co., 25 S. W. (2d) 98, 1. c. 99, 100, the court held that the tailoring company, the defendant in this case, was operating as a cooperative company and had failed to comply with the law regulating such cooperative companies and in so holding the court said:

"The affirmative allegations of the petition are that the respondent has engaged in the issue of more than 3,000 contracts providing for the fulfilling of same from the accumulation of funds, the maturing of contracts in an arbitrarily determined manner, and a consideration in personal property greater in value than the amount paid in upon said contracts, together with the net earnings accumulated thereon. These acts and others set forth at more detail in the petition are sufficient to bring the respondent within the regulator provisions of the Co-operative Companies Act, Sec. 10237, R. S. 1919. * * * * *"

However, in that case people were making a specified number of monthly payments and from such accumulations of these payments and funds often times their contracts would mature before all such payments were made. All suits

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were purchased at less than same could be purchased elsewhere. It can be seen from the above statement of facts that this defendant was operating a cooperative company as provided in Section 5426, supra.

The fundamental principle of a cooperative company is for the subscriber to receive some benefit from an accumulation of money paid into the company by themselves, we fail to see wherein such a concern issuing these books which may be used as 20% of the total price of each purchase would come within the purview of Section 5426 R. S. Mo. 1939.

Therefore, the opinion of this department is that Section 5426, supra, is not applicable in this case, but only applies to cooperative agencies or companies.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

ARH:LB