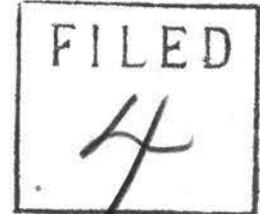


BANKS AND BANKING: Power and authority of Legislative  
SMALL LOAN LAW: Committees to compel the production  
LEGISLATIVE COMMITTEES: of books and records of American  
Investment Company.

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March 17, 1943

Mr. Walter E. Bailey, Chairman  
Legislative Investigating Committee  
Capitol Building  
Jefferson City, Missouri



Dear Sir:

Under date of March 11th, 1943, we gave you our opinion relative to the power of your Investigating Committee to punish for contempt.

We now come to the other question which is stated in your telegram of March 9th, as follows:

"I request your opinion as to the power of this Committee to subpoena and compel production of records and question officers of the American Investment Company, a holding company which does not loan money to the public in this state but does loan money to some small loan companies."

Substitute Resolution for House Resolution No. 81, under which your Committee is functioning, provides as follows:

"WHEREAS, the Speaker has appointed a committee of three members of the house pursuant to Substitute Resolution for House Resolution No. 73; and

"WHEREAS, it has been charged that there is undue and improper lobbying activities upon bills which deal with the interest

rates and charges which are now being made and charged by loan companies in this State; and

"WHEREAS, there has been introduced and is pending before a committee of this House, bills which deal with the rates of interest charged or to be charged by institutions, agencies and firms loaning money to the citizens of this State and it is contemplated that other bills will be introduced in the House which deal with the rates of interest charged by other financial institutions, agencies and firms; and

"WHEREAS, it is deemed advisable that a committee be appointed to investigate and make a survey of the rates of interest charged, and the proper rates of interest which should be charged by the institutions, agencies and firms in the State of Missouri which are loaning money to its citizens, in order that the committee or committees before which said bills are pending or will be pending in this House, will have the proper information before them when these bills are considered by said committees or the House;

"NOW THEREFORE, BE IT RESOLVED, that the committee appointed pursuant to Substitute Resolution for House Resolution No. 73 be hereby authorized and empowered to make a full and complete survey and investigation of the interest rates now charged, or proposed to be charged in any bills introduced in the House by any institutions, agencies, firms or corporations doing business in this State and loaning money to the public and to the citizens of the State of Missouri; that said committee be authorized and empowered to make a survey and to investigate the

manner in which said institutions, agencies, firms or corporations operate and do business in this State, that said committee be further authorized and empowered to make an investigation of the alleged lobbying activities of any of said institutions, agencies, firms or corporations, and that said committee have and it is hereby given the power by the House of Representatives to summons and subpoena witnesses and compel their attendance, to examine witnesses and to take testimony under oath and to require the production before said committee of any and all records, documents and papers which the committee may deem necessary in making said investigation and survey and that said committee be authorized to do all things necessary to proceed with the authority given to it by this resolution; and

"BE IT FURTHER RESOLVED, that the committee be allowed the sum of not more than One Thousand Dollars (\$1000.00) in order to pay any and all necessary expenses of said committee in making said survey and investigation and in carrying out the purpose of this resolution which said expenses shall be paid out of the contingent fund of the House of Representatives."

We assume that you refer in your question to the American Investment Company of Illinois, which is incorporated under the laws of the State of Delaware and licensed to do business in Missouri, having its Missouri office in the Ambassador Building, St. Louis, Missouri.

By a reading of the Resolution set forth above, we observe that your Committee has broad powers and wide latitude in its investigation. The Resolution may be divided into two parts:

First. You are authorized and empowered to make a full and complete survey and investigate all interest rates now charged or proposed to be charged in any bills introduced in the House by any institutions, agencies, firms or corporations doing business in this state and loaning money to the public and to the citizens of the state of Missouri; that you are authorized and empowered to investigate the manner in which said institutions, agencies, firms or corporations operate and do business in this state.

Second. That said Committee is further authorized and empowered to make an investigation of the alleged lobbying activities of any of said institutions, agencies, firms or corporations.

The Committee has been limited in its investigation to the two matters as above set forth, and you desire to know in your request whether the Committee may compel the production of the books and records of the above company and subpoena the officers of such company and compel them to testify as to matters relevant to your inquiry.

The purpose of your Committee is to investigate those matters incorporated in the Resolution, and gather information and make recommendations to assist the legislature in enacting laws on the subject of interest to be charged by certain agencies mentioned above, and also to investigate the lobbying activities of such agencies.

In 59 Corpus Juris, under the title of "States" at page 98, the following rule, or rules, supported by cases from various states of the Union, is announced:

"The powers of the investigating committee, subject to limitations upon the investigating power of the legislature, are in general as broad as the resolution constituting it. While the powers allowed to a legislative committee are necessarily exceedingly broad and include a search into the subject matter of the investigation far beyond the scope of a judicial trial, not being confined to evidence such as would be required upon a trial at law, its powers are not unlimited and its inquiry must be confined to facts relevant to the inquiry, and the answer of a witness

cannot be compelled either by the legislature or one of its committees on an inquiry or investigation, except for legislative purposes or in acquiring information upon which to predicate remedial legislation. \* \* \* \* \*

(Italics ours.)

Most of the cases that we have read have come up to the courts on some particular question asked the witness, or, on the question of the production of some particular record of a corporation. You have asked us to give our opinion as to whether you may go into the books and records of the American Investment Company, although we do not have before us at this time any fact or circumstance whereby the investigation of small loan companies require you to investigate this company, except the bald statement that it loans money to certain small loan companies and is a holding company for certain small loan companies. If the Committee has found some fact or circumstance of direct connection between the American Investment Company and certain small loan companies, which will aid and assist the Committee in making an intelligent and comprehensive report to the House, it may request the American Investment Company to disclose those particular facts. We do not think, however, that your Committee, without further specific information other than what you have given us, may compel the production of all the books and records of that company or any other company which loans money to small loan companies, or is a holding company for same, by reason of those facts alone.

Your Committee, as stated in the Resolution, may examine witnesses and take testimony under oath and require the production before said Committee of any and all records, documents and papers which the Committee may deem necessary in making said investigation and survey, which we interpret to mean that the Committee may question witnesses and have records produced which you may deem relevant to the matters before the Committee.

In the case of Ex parte Conrades, 185 Mo. 411, a Committee was appointed by the House of Delegates of the City of St. Louis "to fully and carefully investigate the books, records and accounts of the several departments (of the city) wherein

returns are made of taxes, and report their findings and recommendations as soon as possible." The court held in this case that this authorization by the House of Delegates did not empower the Committee to go into the records and question the officers of private corporations, for the reason that it did not have such right under the resolution, because it was limited by the resolution to investigate the books, records and accounts of the several departments of the city and not of other corporations.

In the case of *Ex parte Battelle*, 277 Pac. 725, 65 A.L.R. page 1497, the court held that legislative bodies of a state have the power to conduct investigations in aid of prospective legislation and as an incident to that power they possess the authority to require and compel the attendance of witnesses and the production of books and papers and, on the failure of a witness to appear, or to produce the required documents, the legislature has the power to punish for contempt.

#### CONCLUSION

It is, therefore, our opinion that if your Committee has, in its investigation of small loan companies, discovered some fact or circumstance which, in your opinion, would require you to investigate certain records of the American Investment Company, it may compel its officers to disclose such fact, by oral testimony or the production of its records, to ascertain that fact.

We do not think that, under this resolution, you have authority to compel the production of all the books and records of this company, but you do have authority to require the officers of the American Investment Company to testify orally before your Committee as to relevant and material facts which may be within the jurisdiction of the Committee or germane to the matters before you, or to produce their records to that extent.

Finally, it resolves itself into this question, if the officers will not disclose the pertinent facts by oral testimony, or supply those facts by their records, then, in that

Mr. Walter E. Bailey

-7-

3-17-43

event, it becomes a question for the courts to determine, based on the particular question asked or record requested to be produced, by some appropriate court proceeding.

Respectfully submitted,

COVELL R. HEWITT  
Assistant Attorney-General

CRH:CP

APPROVED:

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ROY MCKITTRICK  
Attorney-General