

RECORDERS OF DEEDS - CORPORATIONS:

Articles of agreement should be filed and not recorded in the office of the recorder of deeds.

January 11, 1943

Honorable D. W. Breid
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Union, Missouri

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Dear Sir:

This will acknowledge receipt of your request for an opinion, under date of January 8, 1943, which reads as follows:

"We have a matter in dispute here and would like your opinion on same. The Tri-County Bus Company, Inc., filed their certified copy of the certificate and articles of association with the Recorder of Deeds, who promptly recorded it and returned the original to the President of the bus company, who returned same and directed the Recorder to keep it on file in the Recorder's office. As I interpret Section 5339, it is my opinion that after recording the articles should be returned to the President or Secretary of the corporation. There seems to be a difference of opinion among the attorneys and I would like to know what should be done with the certificate and articles of association, whether to keep them on file in the Recorder's office or return them to the corporation."

Section 5339 R. S. Missouri, 1939, reads as follows:

"The articles of agreement in duplicate shall be signed and acknowledged and sworn to by all the parties thereto, including the parties selected as directors or managers for the first year, before some officer having a seal. Each copy of the articles shall be filed in the office of the secretary of state, one of which shall be retained by him as a permanent file. The secretary of state shall give a certificate that said corporation has been duly organized which shall set forth the amount of its capital stock, the period of the existence and its permanent place of location and a certified copy of such certificate shall be attached to the other copy of the articles of association so filed with the secretary of state and by him delivered to the incorporators which shall by them be filed in the office of the recorder of deeds of the county or city in which the corporation is to be located: Provided, that no subsequent amendment of the articles of agreement, which is expressly authorized by law, shall take effect until same, in due form, has been so filed in duplicate, certified and recorded as hereinbefore provided; and provided further, that in the increase of the capital stock of any corporation, the same proceedings shall be had, so far as practicable, as in the original proceedings for incorporation."

In construing statutes, and in order to ascertain the purpose of a statute, it must be considered historically. (Cummins et al vs. K. C. Public Service Company, et al, 66 S. W. (2d) 920.)

Prior to its amendment in 1927, Section 5339, supra, read as follows:

"The articles of agreement shall be signed and acknowledged and sworn to by all the parties thereto, including the parties selected as directors or managers for the first year, before some officer in the state of Missouri having a seal, and recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located, and a certified copy of such recorded instrument shall be filed in the office of the secretary of state: Provided, that no subsequent amendment of the articles of agreement, which is expressly authorized by law, shall take effect until same, in due form, has been so recorded and certified, and sworn to as hereinbefore provided; and provided further, that in the increase of the capital stock of any corporation the same proceedings shall be had, so far as practicable, as in the original proceedings for incorporation."

As amended in 1903, the section read as follows:

"The articles of agreement shall be signed and acknowledged by all parties thereto, and recorded in the

office of the recorder of deeds of the county or city in which the corporation is to be located; and a certified copy of such recorded instrument shall be filed in the office of the secretary of state: Provided, that no subsequent amendment of the articles of association, which is expressly authorized by law, shall take effect until same in due form has been so recorded and certified."

The proviso was added by the amendment of 1903 as it appears therein.

Prior to the amendment of 1927, the section, which is now 5339 R. S. Missouri, 1939, provided that the articles of agreement should be recorded in the office of the recorder of deeds, but, as amended in 1927, the section provided: " * * be filed in the office of the recorder of deeds." Also, as amended in 1903, this section provided that the articles of agreement should be recorded in the office of the recorder of deeds, and since the present section, which was amended in 1927, specifically states, "filed", it shows it was the intention of the legislature to file, and not record, the articles of agreement in the office of the recorder of deeds.

In the case of Wallace v. Woods, 102 S. W. (2d) 91, pars. 9-11, the court, in referring to amendments of certain laws said:

"The primary rule of construction of statutes is to ascertain the law-makers' intent, from the words used

if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration. * * * 2 Lewis, Sutherland on Stat. Const. (2d Ed.) Sec. 363; Endlich on Interpretation of Statutes, Sec. 329; and Maxwell on Statutes (5th Ed.) 425. Cummins v. Kansas City Public Service Co., 334 Mo. 672, 66 S. W. (2d) 920, loc. cit. 925. We must determine the question involved upon the statute we now have rather than upon the original enactment. Words used must be read in the light of the amendments made, and might take a broader meaning as the application of the statute was broadened. We can best decide the present meaning of this section by considering the various steps taken to change it from what it was at first to what it is now."

The Court of Appeals of this State, in the case of Dawson v. Cross, 88 Mo. App. 292, l. c. 299, defined "file" as follows:

"'File' meant at common law, a thread, string, wire, upon which writs and other exhibits of courts and offices were fastened or filed for the more safe keeping and ready turning the same. A paper is said to be filed when delivered to the proper officer and received by him to be kept on file. This, which

we take to be the present ordinary sense of the word 'filed,' would be presumed to be the legislative sense unless the contrary is made to appear which it does not. * * * * *

The Court of Appeals, also, in *Murphy v. Overall Co.*, 225 Mo. App. 866, l. c. 869, in defining, "file," said:

"The word 'file' has a well understood meaning, as well as legal significance, and inasmuch as it is impossible to file an oral demand, the words of the statute, its purpose and intent and the object to be accomplished by it cannot be met except by a written statement of the claim. The lexicographers derive the word 'file' from the Latin 'Filum,' a thread; and its application seems to be drawn from the ancient practice of placing papers upon a thread or file for ready reference. Webster says 'to file' means to lay away papers for presentation and reference. Bouvier says a paper is said to be filed when it is delivered to the proper officer.' (Thompson v. Southern Express Co., 61 S. E. 182, 183.)"

Under the above quotation it can be said that the word "file" means, "laying it away in the office of any office to remain there for reference." Under the facts in your request the recorder of deeds recorded the articles of agreement and then returned them to the corporation. But, under Section 5339, supra, it is

specifically provided that the articles of agreement of the corporation should be filed and no mention is made of the recording of the same. "Filing" an instrument is more for the safekeeping of the original instrument. It was so held in the case of Paving Co. v. O'Brien, 128 Mo. App. 267, 1. c. 282, where the court said:

"A paper or document is said to be filed when it is delivered to the proper officer and lodged by him in his office. At common law, a file meant a thread, string, or wire upon which writs and other exhibits of courts and officers were fastened or 'filed for the more safe keeping and right turning of same.' (Dawson v. Cross, 88 Mo. App. 292.) * * * "

The word "recorded" in ordinary usage signifies copied or transcribed into some permanent book, and word is also defined as copying an instrument into public records in book kept for that purpose by or under superintendence of officer appointed therefor. Word "record," in statute respecting reclamation district tax sale certificate, means copying instrument into proper book and indexing as provided by law (Pol. Code, Sec. 3480). (Dougery v. Betten-court (Cal.) 6 P. (2d) 499, 502.)

The word "recorded," in ordinary usage, signifies copied or transcribed in some permanent book. It is in this sense that the word "recorded" is used in Civ. Code, Sec. 1213, declaring that every conveyance of real property, acknowledged or proved and certified and recorded, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees. (Cady v. Purser, 63 P. 844, 846, 131 Cal. 552, 82 Am. St. Rep. 391.)

In discussing the distinction between "filing", and "recording", the Supreme Court of this State, in one case, held that filing could be considered recording. It was so held in the case of State v. Hurt, 183 S. W. 333, 1. c. 335, where the court said:

"Section 6323, R. S. 1909, extends the provisions of said section 2819 so as to cover any instrument 'for the recording of which provision has been made by law.'

"The chattel mortgage in question here had been recorded, not by copying it on books in the recorder's office, but by placing it on file in such office. We hold that by being thus on file it was 'recorded' in the contemplation of such sections, and that the certified copy of the mortgage to the Bank of Alton was properly admitted in evidence."

CONCLUSION

It is, therefore, the opinion of this office, that under Section 5339 R. S. Missouri, 1939, the articles of agreement of a corporation should be filed in the office of the recorder of deeds and should remain in the office of the recorder of deeds.

It is further the opinion of this department that the recorder of deeds should not record the articles of agreement of a corporation and then return them to

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the president or secretary of the corporation.

Respectfully submitted

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APPROVED:

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