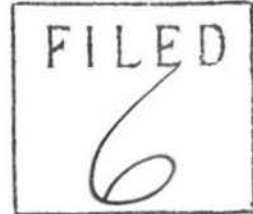


CORPORATIONS: Secretary of State has no authority to revoke certificate of change of name of corporation.

April 27, 1945



Honorable Wilson Bell
Secretary of State
Jefferson City, Missouri

Attention: Mr. Russell Maloney
Corporation Supervisor

Dear Sir:

Reference is made to your letter under date of April 17, 1945, requesting an official opinion of this office, and reading as follows:

"In accordance with our telephone conversation, find enclosed correspondence relating to the Geo. Kilgen & Son, Inc., a Missouri corporation.

"The question that has arisen is whether or not the Secretary of State, having once filed articles of incorporation or amendments to articles and issued certificates in connection therewith, may nullify the issuance of such certificates, and if so, the manner in which this can be done.

"As the enclosed correspondence will show, the above named corporation was refused the right to use this name, but later through inadvertence the use of the name was granted by an amendment."

We are unable to find any reported decisions of the Missouri appellate courts directly deciding the question pro-

posed by your letter of inquiry. We necessarily must, therefore, answer your question by reference directly to the statutes applicable thereto.

In the granting of a certificate of change of name of a corporation, the Secretary of State exercises a discretion that cannot be controlled by mandamus. In *State v. McGrath*, 5 S. W. 29, 92 Mo. 355, the effect of the decision was that the Secretary of State must exercise his discretion in determining whether a company asking of him a certificate of incorporation has adopted a name that is the same as, or an imitation of, that of an existing corporation, within the prohibition of the statute, and he will not be compelled by mandamus to issue a certificate, until it appears that the law has been complied with by the company in the adoption of its name.

Having once exercised his discretion, the Secretary of State cannot rescind or revoke his action, in the absence of specific authority to do so. No such authorization appears in the Corporation Code. In the premises, we think the general rule as expressed in "Officers", 46 C. J., par. 292, is applicable. We quote, in part, therefrom:

"In the absence of statutory authority, an officer in performing a statutory duty which does not involve the exercise of discretion is without the power of amendment; and when the judgment or discretion of an executive officer has been completely exercised in the performance of a specific duty, the act performed is beyond his review or recall, although the statute conferring authority expressly makes his determination discretionary. So the final decisions of public officers are binding upon their successors. * * *"

CONCLUSION

In the premises, we are of the opinion that, having once exercised his discretion in granting a certificate of

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change of name of a corporation, the Secretary of State has no authority to revoke or rescind his action with respect thereto.

Respectfully submitted

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:HR