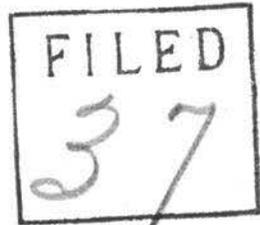


LOAN AND INVESTMENT COMPANIES:

Procedure by Commissioner of Finance to revoke license.

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Honorable D. R. Harrison
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Harrison:

Your letter of March 21, to General Taylor, requesting an opinion from this Department on the matters mentioned in your letter, has been received, and the writer has been directed to prepare the opinion.

Your letter states:

"Sometime ago this Department received a complaint from Mr. John R. Baker, 5655 Maple Avenue, St. Louis, 12, Missouri, against the Local Finance Company, 5899 Easton Avenue, St. Louis, Missouri.

"An investigation of the complaint was made by Mr. George E. Deutschman, Examiner in this Department, and from the report on the investigation I find that the transaction was handled by the Local Finance Company in the following manner:

"Mr. Baker purchased a 1940 Plymouth automobile from Forrest F. Heinritz, a fellow employee at McQuay-Norris for a price of \$850 and paid \$250 cash out of his own pocket on this deal. To pay the balance of \$600 he went to the Local Finance Company to borrow the money. The Local Finance Company sold him insurance at a premium of \$18 and for the \$618 charged Mr. Baker \$806.25 on a 15-month payment plan of \$53.78 per month. Mr. Baker prepaid the account in full on

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January 12, 1945, about five months after the loan was made. At the time the loan was made the Local Finance Company engaged in the subterfuge of having the note made payable to Forrest Heinritz and having him endorse it over to the Local Finance Company, without recourse. The card on the transaction in the office of the Local Finance Company shows the following:

"Loan	\$600.00
Insurance	18.00
Charges	<u>188.25</u>
	\$806.25

"Local Finance Company, 5899 Easton Avenue, St. Louis, Missouri, is licensed by this Department under the Loan and Investment Act.

"The Local Finance Company has violated the provisions of the Loan and Investment Act, and it is my opinion that its officers should be required to appear in this office for a conference to show cause why its license to conduct a Loan and Investment business should not be revoked.

"I shall appreciate an opinion from you regarding this matter and outlining the procedure to follow. In the event a conference with the officers of the Local Finance Company is scheduled, will you or one of your Assistants arrange to be present."

The Local Finance Company is said in your letter to be licensed by the Finance Department under the Loan and Investment Act, which is Article 8, Chapter 33, R.S. Mo. 1939, and which contains the new sections thereto added by the Laws of Missouri, 1943, page 502.

Sections 5421, 5422 and 5423 of said Article 8, Chapter 33, were repealed by said Laws of 1943, and five new sections known as Sections 5421, 5422, 5422a, 5423 and 5425a were enacted in lieu thereof.

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Sections 5418, 5419, 5420 and 5425 were not repealed by the Act of 1943, and remain as a part of the revision of 1939.

Section 5425a, Laws of Missouri, 1943, page 505, points out the powers of the Commissioner of Finance over Loan and Investment companies. That part of said Section giving the Commissioner powers incident to the matter being here considered, is as follows:

"The Commissioner of Finance shall have and exercise the same supervision, authority and power over, and shall be charged with the same duties toward all corporations organized under the provisions of Article 8, Chapter 33, Revised Statutes of Missouri, 1939, as he now has and exercises and is charged with by law with reference to licensees under the provisions of Article 7, Chapter 39, Revised Statutes of Missouri, 1939, as far as the same may be applicable, * * * "

The above quoted provision of said Section 5425a gives the Commissioner of Finance authority and power over, and charges him with the same duties toward all corporations organized under the provisions of said Article 8, Chapter 33, (Loan and Investment Companies), as he now has and exercises, and is charged with by law with reference to licensees under the provisions of Article 7, Chapter 39, R.S. Mo. 1939 (Small Loan Companies), as far as the same may be applicable.

The power to be exercised by the Commissioner of Finance over "licensees" under said Article 7, Chapter 39, among others are:

- 1) Under Section 8159, Article 7, Chapter 39, the power of investigation and determination whether any company operating under said Article and Chapter, is obeying the laws of this State, and,
- 2) Under Section 8155, to revoke the license of any company violating any of the provisions of Article 8, Chapter 33, R. S. Mo. 1939, to which such powers are extended by the terms of said Section 5425a. That part of said Section 8155 referred to is as follows:

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"The licensing official may, upon notice to the licensee and reasonable opportunity to be heard, revoke such license if the licensee has violated any provision of this article; * * * "

Whether or not the said Local Finance Company has violated any provision of said Article 8, Chapter 33, is a question of fact.

Your letter indicates that you have made the investigation authorized under said Section 8159, R. S. Mo. 1939, and you state further that this company "has violated the provisions of the Loan and Investment Act," and it is your belief "that its officers should be required to appear at your office for a conference to show cause why its license to conduct a Loan and Investment business should not be revoked."

The Department of Finance has the right to make further investigation of this company's affairs, and especially the loan in question, and to this end would be justified in requiring said company to appear at the office of the Department of Finance to disclose any and all facts relevant to the particular case, or its business generally, that the Department desires to learn. But, if the effort is one to revoke the license of this company it will be necessary, under the terms of said Section 8155, to give the licensee a hearing, after due notice, upon any charge that the company has violated such laws. These charges must be in writing and must state the violations of the laws of which the licensee is said to be guilty.

Our Appellate Courts have ruled that in such matters as the revocation of a license, State officials have only such powers as are expressly conferred upon them by law. This rule of law was stated by our Supreme Court in the case of State ex rel. Banister et al., v. Cantley, 52 S.W. (2d) 397, i.e. 398, as follows:

"The functions of the finance commissioner, like any other official, are limited to the powers and duties imposed upon him by the statute which creates the office. 46 C.J. 1031; State ex rel. Bradshaw v. Hackmann, 276 Mo. 600, 208 S.W. 445; Lamar Township v. City of Lamar, 261 Mo. loc.

cit. 189, 169 S. W. 12, Ann. Cas. 1916D, 740.

"An official such as the finance commissioner has no implied powers except such as are necessary to the effective discharge of the powers expressly conferred. 46 C.J. 1032."

Under the above authority, the acts constituting such violation must be set forth, reasonable notice must be given, and opportunity to be heard, must be given the company named. By the terms of that part of said Section 8155, above quoted, the burden would be upon your office to prove the acts charged as violations of said Article 8, Chapter 33. The statute, by stating that the company shall be given a reasonable opportunity to be heard means that it may appear in its own defense, and does not mean that the burden is cast upon the company of proving its innocence. The statute does not so provide. Such statutes must be strictly construed against the State and liberally construed in favor of said company.

This question of the construction of statutes providing for the revocation of a license, as penal statutes, was considered by our Supreme Court in the case of State ex rel. v. Robinson, 253 Mo. 271, l.c. 284, 285, where the Court said:

"The next preliminary question which arises in the case, is, shall that part of section 8317, supra, which authorizes the Board of Health to revoke licenses of physicians, be adjudged a remedial or a penal statute? If remedial, it must be liberally construed in behalf of both respondents and appellant, while if it be a penal law, it must be strictly construed against the respondents, as the representatives of the State, and liberally construed in favor of appellant. (State v. Balch, 178 Mo. 392; State v. Kooch, 202 Mo. l.c. 235; State v. McMahon, 234 Mo. l.c. 614.)

"This rule is announced in 2 Lewis' Sutherland's Statutory Construction (2 Ed.), section 531:

"Among penal laws which must be strictly construed, those most obviously included are all such acts as in terms impose a fine or corporal punishment under sentence in State prosecutions, or forfeitures to the State as a punitive consequence of violating laws made for preservation of the peace and good order of society. But these are not the only penal laws which have to be so construed. There are to be included under that denomination also all acts which . . . take away or impair any privilege or right."

"A statute which provides for the disbarring of attorneys has been held to be a penal law. (Moutray v. People, 162 Ill. 194.)

"A penal statute is construed with a degree of strictness commensurate with the severity of the penalty it imposes, and where the penalty, as in this case, is onerous, no one can be held to have violated its provisions unless his acts come within both the letter and the spirit of the law. (2 Lewis's Sutherland's Statutory Construction (2 Ed.), sec. 520-1; State ex inf. v. Railroad, 238 Mo. 605, l.c. 612.) All laws, however, must receive a rational, and not an arbitrary, construction.

"Upon the well-considered precedents we have no hesitation in holding that the law no in judgment, in so far as it authorizes the revocation of licenses of physicians, is highly penal, and must be treated as a penal law."

From the statement of facts in your letter there is no detailed statement of what you consider to be acts by this company which violate the Loan and Investment Act.

It may be that investigation has determined or might yet determine, that this company had no right to

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charge the 2% if they did charge it, mentioned in the third paragraph of Section 5421, Laws of Missouri, 1943, page 504, for examination and investigation, drawing papers and taking acknowledgment of papers in making the loan.

It may be that such investigation would determine that they had no right to charge a 5% charge, if they did charge it, as is provided for in the fourth paragraph of said Laws, page 504, or

It might, under investigation, be developed as a fact, that this company failed to refund, under the terms of Section 5422a of said Act of 1943, page 505, interest due the borrower on the loan for the remaining ten months of the period of the loan, it appearing that the loan was discharged in full on January 12, 1945.

Tracing the charges permitted to be made under the terms of Section 5421, Laws of Missouri, 1943, it appears that this company has made charges far in excess of those permitted by the statute on such a loan. However, speculation, or mere appearances, will not be sufficient evidence of violations of these statutes upon which to base an order to revoke the license of this company. The Department of Finance should develop such facts of violations by this company as will make a clear, definite charge and statement of such violations, and proof of such facts as may be charged must be supplied by either direct or circumstantial evidence to establish the truth of such charges as the basis for the revocation of the license of this company. This Department will be glad to assist in any way you may desire.

An Assistant will be detailed to attend any conference or proceeding in relation to the matter when you may call for assistance.

CONCLUSION.

It is, therefore, the opinion of this Department that definite charges in writing must be made against this company, and proof submitted in support thereof to establish actual violations of the provisions of Article 8, Chapter 33, R. S. Mo. 1939, as amended by the said Act of 1943,

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and that the said company will be entitled to a copy of such charges served upon it, together with due notice of the time and place of the hearing, as the necessary procedure before its license may be revoked.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
Attorney-General

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