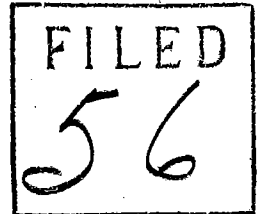


AFFIDAVITS:

An attorney-in-fact may not swear to the registration and anti-trust affidavit of a corporation under Sec. 119, page 472, Laws of Mo., 1943. Exception found in this section not applicable under the facts presented.

January 3, 1946



Mr. Russell Maloney
Corporation Supervisor
Office of Secretary of State
Jefferson City, Missouri

Dear Sir:

Receipt of your request for an opinion is hereby acknowledged, which reads as follows:

"Mr. L. R. Gifford has presented the annual report and anti-trust affidavit of the O. K. Harry Steel Company, a Missouri corporation, and the company's check in the sum of \$40.00, the fee for filing such instruments in the month of December. Both reports are sworn to by L. R. Gifford as Attorney-In-Fact and I have enclosed photostatic copy of the instrument which purports to clothe Mr. Gifford with authority to execute the annual report and anti-trust affidavit.

"Section 119, page 442, Laws of Missouri 1943, in substance provides that these instruments shall be sworn to by the President, Vice-President, the Secretary or Treasurer of the corporation. Since this section has been the law we have required the signatures of one of the above designated officers. We are informed that this corporation is more or less defunct and the only remaining officer, the President, has moved away and has refused to respond to the request that she execute the affidavits. It is stated that very little, if any, assets remain and in due course of time the corporation will be dissolved, however, there are some assets that will need to be transferred to the

now corporation and for that reason they wish to keep the existing corporation in good standing.

"It would seem that it was not the purpose of the Legislature to hamper the filing of these reports, but rather to encourage such filings. I would, therefore, appreciate an opinion on this subject at the earliest possible date as we have agreed to hold the fully executed 1945 annual report and anti-trust affidavit awaiting your opinion."

We note that Section 119 referred to in your letter is to be found on page 472, Laws of Missouri, 1943, and provides that,

"The registration and anti-trust affidavit in this Act required shall be sworn to before any officer having a seal authorized to administer oaths, by the president, a vice-president, the secretary or treasurer of such corporation. Whenever any corporation is in the hands of an assignee or receiver, it shall be the duty of such assignee or receiver, or one of them, if there be more than one, to register such corporation and otherwise comply with the requirements of this Act."

It is true that anti-trust legislation is enacted for the protection of the public and when public rights are involved it is proper to construe such legislation liberally in favor of the public and against trusts and combines. However, as is held in the case of Toledo P. & W. R. R. v. Stover, 60 Fed. Supp. 587, l. c. 583:

"A statute which directs performance of a certain thing in a certain manner, bears the implication that the action taken shall not be carried out otherwise than as directed nor by a different person."

A similar rule stated by the United States Supreme Court in the case of Botany Worsted Mills v. United States, 278 U. S.

232, 239, 49 Sup. Ct. 129, 132, 73 Law Ed. 379, holds:

"When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode. Raleigh etc., R. R. Co. v. Reid, 13 Wall. 269, 270, 20 Law Ed. 570; Scott v. Ford, 52 Ore. 288, 296, 97 P. 99."

This is but another way of stating the well-known rule that "the expression of one thing is the exclusion of another," as found most recently in the case of State v. Smith, 111 S. W. (2d) 513, 1. c. 514.

In the present situation we have a statute which directs the performance of a certain thing in a particular manner, that is, that the registration and anti-trust affidavit shall be sworn to by the president, a vice-president, the secretary or treasurer of a corporation and such provision bears the implication that the action taken shall not be carried out otherwise than as directed nor by a different person.

Although we feel that the principal question has been covered by the foregoing it is well to note the exception in Section 119, page 472, Laws of Missouri, 1943, supra, concerning the duty of an assignee or receiver of a corporation "to register such corporation and otherwise comply with the requirements of this Act."

We are informed by your letter that the present corporation has not been dissolved. In the absence of a statement or showing that there has been an assignment or that the corporation is in receivership there can be no application of the rule presented by the exception noted. Mr. L. R. Gifford is not identified as one of the required officers of the corporation nor as an assignee or receiver but rather as an attorney-in-fact with stipulated powers concerning the management of the affairs of the company, among which stipulated powers is not to be found the authority to swear to the registration and anti-trust affidavit.

Conclusion

We are, therefore, of the opinion that Section 119, page 472, Laws of Missouri, 1943, requires the president, a vice-president, the secretary or treasurer of a corporation to swear to the registration and anti-trust affidavit of the corporation

Mr. Russell Maloney - 4

and an attorney-in-fact may not be substituted to execute such instruments.

We are of the further opinion that the facts presented do not bring this corporation within the exception found in Section 119, page 472, Laws of Missouri, 1943, whereby an assignee or receiver of a corporation is authorized to register such corporation and otherwise comply with the requirements of this Act.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JMA:EG