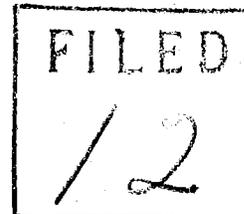


CORPORATIONS: A corporation doing business in this State may not transact its corporate business in this State under any other name than its corporate name.



April 4, 1947

4/
17

Honorable Joseph N. Brown
Assistant Prosecuting Attorney
Springfield, Missouri

Dear Mr. Brown:

This will acknowledge your letter of recent date, requesting an opinion from this Department whether a corporation may transact business in Missouri under a name other than its corporate name.

Your letter is as follows:

"RE: BANKERS LIFE & CASUALTY COMPANY

"Enclosed please find copies of two letters received from the above-mentioned company relative to doing business under a trade name and requesting that such trade name be filed of record in the recorder's office of this county.

"Please note that this company states that it is licensed to do business in the State of Missouri. It occurred to me that in the event it is licensed to do business as the Bankers Life and Casualty Company it would not be within the law for them to operate under a trade name.

"Please advise whether or not it is permissible under the law of this state for a corporation and particularly a life insurance company to do business under a trade name other than its incorporation name."

It is assumed that since the corporation named in this matter as the Bankers Life & Casualty Company, with its home office in Chicago, Illinois, and being a

foreign corporation, that said corporation has been licensed to carry on life and casualty insurance in the State of Missouri, as such, as domestic corporations do when organized under Article 2, Chapter 37, R.S. Mo. 1939.

Our new Corporation Code appearing in the Laws of Missouri, 1943, pages 410 to 491, inclusive, provides for a different and a very comprehensive manner of procedure by corporations in this State over the laws governing corporations under the old Corporation Code of this State.

Section 7 of our new Corporation Code, page 418, provides:

"Section 7. Regulating name of corporation.--The corporate name:

"(a) Shall contain the word 'corporation,' 'company,' 'incorporated,' or 'limited,' or shall end with an abbreviation of one of said words.

"(b) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than a purpose for which corporations may be organized under this Act.

"(c) Shall not be same as, or deceptively similar to, the name of any domestic corporation existing under any Act of this State or any foreign corporation authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act."

Section 8 of the new Code on page 418, further provides that a domestic corporation may change its name (emphasis supplied).

Sections 9 and 10, Laws of Missouri, 1943, page 419, permit other activities of corporations, such as maintaining a registered office, the selection and registry of an agent, the change of address of its registered office,

or a change of its registered agent. But it will be observed that said sections require the corporation in all of such activities that the corporation adhere strictly in the performance of all of the same to its corporate name.

We find no authority whatever in the Insurance Code respecting the organization and incorporation of insurance companies, or in the general corporation code, authorizing a corporation of any character to transact its corporate affairs in any other than its corporate name.

We do find authority which is not only persuasive, but convincing, that it was the intention of the Legislature, in granting to corporations under said Section 8, Laws of Missouri, 1943, page 418, the exclusive right to the use of a corporate name, that the obligation thereby was cast upon such corporations, not only to use its corporate name adopted in its Articles of Incorporation, but that for the protection of the public, and the elimination of its possible intrusion upon the rights of others, it must transact its business solely and exclusively also under its corporate name.

The natural query in such a situation as we are considering here is, "why a corporate name at all?". It is because if there were no corporate name the operators of any enterprise would be simply an association of persons, which might operate merely as a co-partnership or as an association of individuals under which "corporate" powers could not be exercised at all. Our statutes define privileges of carrying on business by co-partnerships and associations separately from the Corporation Code. The Corporation Code, as indicated hereinbefore, provides that individuals may associate themselves together and organize a "corporation" defining its powers and privileges. Among the first requirements of the law, as well as the exercise of the privilege on the part of the corporate being itself, is the necessity of selecting a corporate name. 14 Corpus Juris, page 136, Section 132 c, expresses it this way:

"(Sec. 132) c. Name and Seal of Proposed Corporation. The application, articles, or certificate must state the name of the

proposed corporation, and must state a name which may legally be assumed; and it is sometimes required that a facsimile or description of the corporate seal shall be given."

Section 4 of our new Corporation Code, Laws of Missouri, 1943, page 416, provides that:

"In order to carry out the purposes for which it is organized, each corporation shall have power:

(continuing to sub-section (1) on page 417)

"(1) To conduct its business, carry on its operations, and have offices within and without this State, and to exercise in any other state, territory, districts, or possession of the United States, or in any foreign country, the powers granted by this Act."

Sub-sections (a) and (b) of Section 4 of the new Corporation Code of this State, Laws of Missouri, 1943, page 416, provide separately, that among the powers of a corporation in carrying out its purposes, it shall have the right

"(a) To have succession by its corporate name for the period limited in its articles of incorporation or perpetually where there is no such limitation."

"(b) To sue and be sued, complain and defend in any court of law or equity."

It would be anomalous, we think, if a corporation were to be permitted to sue in its corporate name and must be sued as such, under our Code of Civil Procedure, as well as under said sub-section (b) of said Section 4, Laws of Missouri, 1943, and still be permitted to prosecute and administer its business affairs in some name other than its

Honorable Joseph N. Brown -5-

corporate name.

The information given to us in the correspondence and documents accompanying the request for this opinion indicates that the Bankers Life and Casualty Company is a foreign corporation, that is to say, an Illinois corporation.

In this connection we desire to quote a part of Section 97, Laws of Missouri, 1943, of our new Corporation Code, l.c. 462, which is as follows:

"* * * A foreign corporation which shall have received a certificate of authority under this Act shall * * * enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued. * * *".

The statutes above referred to and quoted in part, in and of themselves we believe, preclude any corporation from substituting any other name than its corporate name in the transaction of its corporate business.

There is no statute in this State permitting the registration of a trade name with the county clerk of any county in this State.

The question of the use of a fictitious name is not involved here.

CONCLUSION.

It is, therefore, the opinion of this Department that there is no statute in this State permitting the registration of a trade name with the county clerk of any county in this State.

It is the further opinion of this Department that under the facts stated in your letter it is not permissible,

Honorable Joseph N. Brown -6-

under the laws of this State, for the Bankers Life and
Casualty Company to transact its business under any name
other than its corporate name.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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