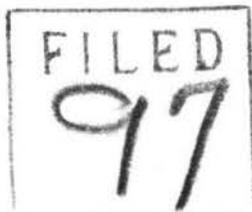


CO-OPERATIVES: Sec. 357.150, RSMo 1949, prevents use of funds of co-operative company organized under this chapter in order to pay expenses of organizing such company.

JOHN M. DALTON
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May 8, 1953



John C. Johnsen
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Honorable George D. Will, Jr.
Member, Missouri House of
Representatives
State Capitol
Jefferson City, Missouri

Dear Mr. Will:

This is in response to your request for an opinion dated April 22, 1953, which reads, in part, as follows:

"Thank you very much for your time this morning regarding Section 357.150 of the Revised Statutes of Missouri, 1949.

"In the above mentioned statute, you will find that the funds of any association organized under the provision of this chapter shall not be used in the payment of expenses for promotion of any such organization. It is my desire to have your opinion as to whether or not this section, referred to above, applies to the expenses for the promotion prior to organization or to expenses for promotion after the organization has been formed."

Section 357.150, RSMo 1949, reads as follows:

"None of the funds of any association organized under the provisions of this chapter shall be used in the payment of any expenses for promotion of any such organization, such, for instance, as commissions, salaries or expenses of any kind, character, or nature whatsoever."

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This section was Section 14, Laws of 1919, page 119, and remains the same now as it was then. We are unable to find any case in which the Missouri courts have construed this particular section. Construction of this section is confused by the use of the words "promotion of any such organization."

A co-operative company organized under Chapter 357, RSMo 1949, is nevertheless a corporation, and we take it that the word "promotion" is used in the sense that it ordinarily is with respect to corporations.

The word "promoters" is defined in Black's Law Dictionary, Second Edition, as follows:

"In the law relating to corporations, those persons are called the 'promoters' of a company who first associate themselves together for the purpose of organizing the company, issuing its prospectus, procuring subscriptions to the stock, securing a charter, etc. See *Dickerman v. Northern Trust Co.*, 176 U. S. 181, 20 Sup. Ct. 311, 44 L. Ed. 423; *Bosher v. Richmond & H. Land Co.*, 89 Va. 455, 16 S.E. 360, 37 Am. St. Rep. 879; *Yale Gas Stove Co. v. Wilcox*, 64 Conn. 101, 29 Atl. 303, 25 L.R.A. 90, 42 Am. St. Rep. 159; *Densmore Oil Co. v. Densmore*, 64 Pa. 49."

This term has also been defined by the Missouri courts as follows:

" * * * 'A promoter is a person who takes such preliminary steps in the formation of a corporation as to bring himself into a fiduciary relation thereto, analogous to that of trustee and cestui que trust.' *Cook on Stock and Stockholders* (2 Ed.), sec. 651, gives the following definition: 'A promoter is a person who brings about the incorporation and organization of a corporation. He brings together the persons who become interested in the enterprise, aids in procuring subscriptions, and sets in motion the machinery which leads to the formation of the corporation itself.'

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Our court has adopted practically the same definitions. (Exter v. Sawyer, 146 Mo. 302; Land Co. v. Case, 104 Mo. 572.) * * *

(South Missouri Pine Lumber Co. v. Crommer, 202 Mo. 504, 518, 101 S.W. 22.)

Section 357.010, RSMo 1949, reads, in part, as follows:

"2. For the purposes of this section the words 'association,' 'company,' 'corporation,' 'society' or 'exchange' shall be construed to mean the same."

Thus, the word "association" as used in Section 357.150, supra, refers to the corporate entity as that word is defined in Section 357.010, supra. The word "organization" does not refer to the corporate entity, but rather relates back to the word "organized" as it modifies the word "association" in this section. "Organization" as used here means the act of organizing, and not the result accomplished after that act is completed.

A similar provision is found in the laws relating to the organizing of banks. Section 362.070, RSMo 1949, in the chapter on banks, reads as follows:

"1. No individual, partnership or corporation shall, directly or indirectly, receive or contract to receive any commission, compensation, bonus, right or privilege, of any kind for organizing any bank in this state, or for securing a subscription to the original capital stock or surplus of any bank in this state, or to any increase thereof; provided, that this action shall not be construed as prohibiting an attorney at law from receiving compensation for legal service in connection therewith.

"2. Each and every individual, partnership or corporation violating the provisions of this section shall forfeit to the state one hundred dollars for each and every such violation, and in addition thereto double the amount of such commission, compensation or bonus."

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That section is more explicit than Section 357.150, supra, but we believe that Section 357.150 was designed to prevent the same evil with regard to the organization of co-operative companies that Section 362.070 prohibited with regard to the organization of banks.

CONCLUSION

Therefore, it is the opinion of this office that Section 357.150, RSMo 1949, prevents the use of the funds of any co-operative company organized under the provisions of Chapter 357, RSMo 1949, in order to pay the expenses of organizing such a company and does not refer to the furtherance of the activities of such a company after it has been organized and has acquired its corporate status.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml