

CORPORATIONS NOT
FOR PROFIT:

Section 355.335, RSMo Supp. 1957, of Missouri's General Not for Profit Corporation Law, does not authorize Secretary of State of Missouri to issue a certificate of authority to Teachers Insurance and Annuity Association of America, a New York corporation, to conduct its affairs in Missouri.

March 24, 1959



Honorable Walter H. Toberman
Secretary of State
State Capitol
Jefferson City, Missouri

Dear Mr. Toberman:

This opinion is rendered in reply to your recent inquiry reading as follows:

"It is respectfully requested that you advise this office as to whether or not the applicant can be properly admitted to this State pursuant to the foreign qualification provisions of Chapter 355. In consideration of this proposition, you will note that Article (7) of the Articles of Incorporation of applicant provides a capital structure of \$500,000.00, divided into 500 shares of \$1,000.00 par value each."

Documentary evidence submitted with your request allows us to restate the question in the following language:

Does Section 355.335, RSMo Supp. 1957, of Missouri's General Not for Profit Corporation Law, authorize the Secretary of State of Missouri to issue a certificate of authority to Teachers Insurance and Annuity Association of America, a New York Corporation, to conduct its affairs in Missouri?

Section 355.335, RSMo Supp. 1957, is found in the General Not for Profit Corporation Act, at Chapter 355, RSMo Supp. 1957, and reads as follows:

"A foreign corporation to which this chapter is applicable shall procure a certificate of authority from the secretary of state before conducting any affairs in this state. A foreign corporation shall not be denied a certificate of authority by reason of the fact

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that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation."

Before discussing applicable statutes in Chapter 355, RSMo Supp. 1957, we will make observations concerning the corporate character and basic organization of Teachers Insurance and Annuity Association of America based on documentary evidence submitted with your request for this opinion.

The charter of Teachers Insurance and Annuity Association of America discloses that it is a corporation organized under applicable provisions of the insurance laws of the State of New York, with corporate powers vested in and being exercised by a board of trustees, and officers and agents to be appointed by such trustees; that the corporation has powers of life insurance companies organized under the insurance laws of New York, but must transact its business exclusively on a nonmutual basis and may issue only non-participating policies; that the capital of the corporation is Five Hundred Thousand Dollars (\$500,000) divided into five hundred (500) shares of One Thousand Dollars (\$1,000) each; that the purpose of the corporation is specifically spelled out in the following language from Article Eight of its Charter:

"The purpose of the corporation is to aid and strengthen nonproprietary and nonprofit-making colleges, universities and other institutions engaged primarily in education or research by providing annuities, life insurance, and sickness and accident benefits suited to the needs of such institutions and of the teachers and other persons employed by them on terms as advantageous to the holders and beneficiaries of such contracts and policies as shall be practicable, and by counselling such institutions and their employees concerning pension plans or other measures of security, all without profit to the corporation or its stockholders. The corporation may receive gifts and bequests to aid it in performing such services."

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The capital stock of Teachers Insurance and Annuity Association of America appears to be wholly owned by Trustees of T. I. A. A. Stock, a non-profit corporation organized by an Act of the legislature of New York approved June 3, 1937. A review of the Charter of Trustees of T. I. A. A. Stock, and the charter of Teachers Insurance and Annuity Association of America, discloses abundant language to support a contention that Teachers Insurance and Annuity Association of America is not formed with a purpose of "profit" upon its original capital structure.

Teachers Insurance and Annuity Association of America is admittedly authorized to engage in the insurance business and in the business of issuing annuity contracts in the manner followed by regular life insurance companies, and it merely enjoys an exempt status from general regulatory laws of the State of New York applicable to regular life insurance companies by virtue of the following language from Sections 44 and 45, Article 4, Chapter 28, Consolidated Laws of New York:

"44. The following insurers, and their officers, agents, representatives and employees, as such, shall be exempt from the licensing and other requirements imposed by the provisions of this chapter to the extent hereinafter; but no such exemption shall affect the provisions of article sixteen:

1. All charitable annuity societies which comply with the requirements of section forty-five, to the extent therein stated.

* * *

"45. 1. The superintendent may, in his discretion, issue a special permit to make annuity agreements with donors to any duly organized domestic or foreign non-stock corporation or association conducted without profit engaged solely in bona fide charitable, religious, missionary, educational or philanthropic activities and which shall have been in active operation for at least ten years. * * *"

We cite the foregoing statutes of the State of New York solely to show that Teachers Insurance and Annuity Association of America is engaged in the insurance business and in the business of issuing annuity contracts, but enjoys an exempt status from certain regulatory provisions of the insurance laws of New York applicable to regular life insurance companies.

Having disclosed the corporate character of Teachers Insurance and Annuity Association of America under the laws of its home state, New York, we now review pertinent provisions of Chapter 355, RSMo Supp. 1957, to determine if such foreign corporation may be licensed under such law to conduct its operations in Missouri.

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Section 355.015, RSMo Supp. 1957, defines "foreign corporation" and "not for profit corporation" in the following language:

"As used in this chapter, unless the context otherwise requires:

* * * * *

(2) 'Foreign corporation' means a not for profit corporation organized under laws other than the laws of this state for the purpose or purposes for which a corporation might be organized under this chapter.

(3) 'Not for profit corporation' means a corporation no part of the income or property of which is distributable to its members, directors or officers; provided, however, that the payment of reasonable compensation for services rendered and the making of distributions not representing pecuniary profits or gains upon dissolution or final liquidation, as permitted by this chapter, shall not be deemed a distribution of income or property."

Looking to the foregoing definition of "foreign corporation," may it be concluded that Teachers Insurance and Annuity Association of America is organized "for the purpose or purposes for which a corporation might be organized" under Chapter 355, RSMo Supp. 1957, as such quoted language is used in the above definition of "foreign corporation"? An answer to such question relating to "purposes" must be found in the language of Section 355.025, RSMo Supp. 1957, reading as follows:

"Not for profit corporations may be organized under this chapter for any one or more of the following or similar purposes: charitable; benevolent; eleemosynary; educational, civic; patriotic; political; religious; cultural, social welfare; health; cemetery; social; literary; athletic; scientific; research; agricultural; horticultural; soil, crop, livestock and poultry improvement; professional, commercial, industrial, or trade association; wild life conservation; homeowner and community improvement association; and recreational club or association; or for the purpose of executing any trust, or administering any

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community chest, fund or foundation, to further objects which are within the purview of this section. No group, association or organization created for or engaged in business or activity for profit, or on the cooperative plan, provision for the incorporation of which is made by any of the incorporation laws of this state, shall be organized or operate as a corporation under this chapter." (Under-scoring supplied.)

The specific purposes set forth in Section 355.025, supra, are comprehensive, but are subject to limitations found in the language we have underscored in the statute. While Article Eight of the charter of Teachers Insurance and Annuity Association of America, quoted in the forepart of this opinion, clearly states that the purpose of the corporation "is to aid and strengthen nonproprietary and non-profit making colleges, universities and other institutions engaged primarily in education or research," such purpose is to be accomplished by conducting a life, health and accident insurance business, and the business of selling annuity contracts, such as is conducted by life insurance companies. Further, we have disclosed in the earlier portions of this opinion how such corporation is formed under the insurance code of the State of New York, and enjoys an exemption from general regulatory provisions of such insurance code solely by reason of arbitrary statutory directive and not by reason of any difference in character of its insurance and annuity business from that carried on by regularly licensed life companies. These observations enable us to reasonably conclude that Teachers Insurance and Annuity Association of America, if licensed to conduct its activities in Missouri, would be engaging in life, accident and health insurance business, and in the business of selling annuity contracts, the same as life insurance companies which are formed for profit or on a cooperative plan under and regulated by the insurance code of Missouri. The insurance code of Missouri does not contain an exemption statute similar to that found in the insurance code of New York applicable to the type of corporation in question.

In view of the fact that the insurance code of Missouri does provide for the organization and operation, on a profit plan as well as on a cooperative plan, of corporations seeking to conduct the business to be carried on by Teachers Insurance and Annuity Association of America, such corporation must be considered as coming within the prohibition contained in the latter portion of Section 355.025, RSMo Supp. 1957. In other words, since the subject corporation could not be formed under Missouri's General Not for Profit Corporation Law, it may not be considered within

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the definition of "foreign corporation" found at Section 355.015, RSMo Supp. 1957, in the following language:

"* * (2) 'Foreign corporation' means a not for profit corporation organized under laws other than the laws of this state for a purpose or purposes for which a corporation might be organized under this chapter."

Another positive prohibition contained in Missouri's General Not for Profit Corporation Law pertains to capital stock and distribution of income and dividends, and is found in the following language from Section 355.030, RSMo Supp. 1957:

"1. A corporation shall not have or issue shares of stock.

"2. No dividend shall be paid and no part of the income or property of a corporation shall be distributed to its members, directors or officers; provided, however, that a corporation may pay compensation in a reasonable amount to members, officers or directors for services rendered and may make distribution upon dissolution or final liquidation as permitted by this chapter."

Article Seven of the charter of Teachers Insurance and Annuity Association of America provides for capital stock shares in the following language:

"The capital of the corporation shall be Five Hundred Thousand Dollars (\$500,000) which shall be divided into five hundred (500) shares of One Thousand Dollars (\$1,000) each."

In view of the foregoing, it may reasonably be concluded that Teachers Insurance and Annuity Association of America, a New York corporation, is not a foreign corporation to which Chapter 355, RSMo Supp. 1957, is applicable and is not entitled to procure a certificate of authority from the Secretary of State of Missouri to conduct its affairs in Missouri.

Returned herewith are all enclosures of your letter of February 25, 1959.

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CONCLUSION

It is the opinion of this office that Section 355.335, RSMo Supp. 1957, of Missouri's General Not for Profit Corporation Law, does not authorize the Secretary of State of Missouri to issue a certificate of authority to Teachers Insurance and Annuity Association of America, a New York corporation, to conduct its affairs in Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

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