LIQUIDATION A LOAN & INVESTMENT CO.: Department of Finance may hold funds remaining on liquidation of company.

April 13, 1945

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

Dear Mr. Harrison:

Your letter of March 16, 1945, accompanied by a statement of facts and memorandum brief, has been received and assigned to the writer to prepare the opinion requested.

Your letter states:

> "I shall appreciate an opinion from you as to whether the funds representing the outstanding certificates of The Morris Plan Company of Kansas City in the amount of $1,400 should be turned over to this Department and deposited in accordance with the provisions of Section 7897 of the Revised Statutes of Missouri, 1939."

That part of Section 7897, Article 1, Chapter 39, R.S. Mo. 1939, defining the authority of the Commissioner of Finance to take over such funds as are referred to, is as follows:

> "The commissioner may take and hold as trustee for the owners thereof any sums which remain due to and unclaimed by any creditor, depositor, stockholder or shareholder of any corporation, to which this chapter is applicable, after the completion of the voluntary or involuntary liquidation of the business and affairs of such corporation. * * * "

The statement of facts indicates that The Morris Plan Company was incorporated in 1916 as a general business corporation, but elected to come under the Loan and Investment Act by complying with Section 5425, R.S. Mo. 1939.

The Corporation Act, Laws of Missouri, 1943, page 502, and particularly Section 5425a thereof, l.c. 505, provides in part 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 statement of facts contains the further information that The Morris Plan Company has previously filed with the Secretary of State its certificate of dissolution and the company is now in process of liquidation. It is said that the company has redeemed all of its investment certificates, except such number thereof as aggragate the amount of $1,400, the owners of which cannot be found. The meaning and effect of the word "organized" as used in that part of said Section 5425a above quoted, seems to be the difficulty in the case. The question being, whether it is used in the sense of the company having been "organized" originally under the Loan and Investment Act or whether it means "organized" and "operating" and "as now existing" under said Act, when and after the company elected to come under the Loan and Investment Act.

The primary rule of construction which guides the Courts in construing statutes, is to arrive at the correct understanding of the intention of the Legislature in passing an Act.

59 C.J. page 948, very clearly and fully states this rule as follows:

> "As the intention of the Legislature, embodied in a statute, is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the court shall, by all aids available, ascertain and give effect, unless it is in conflict with constitutional provisions, or is inconsistent with the organic law of the state, to the intention or purpose of the legislature as expressed in the statute. * * * , "

citing Missouri cases following the rule under Note 5.

Article 7, Chapter 39, R.S. Mo. 1939, relates to small loan companies.

Section 5425a, supra, in providing that the Commissioner of Finance should have all the authority over, and be charged with the same duties toward, corporations organized under Article 8, Chapter 33, Revised Statutes of Missouri, 1939, which relates to "Loan and Investment Companies", as he now has and exercises with reference to licensees under Article 7, Chapter 39, R.S. Mo. 1939, which relates to small loan companies, makes it evident that the Legislature was using the word "organized" in its present tense, and was aware of the right and practice of corporations, organized originally as general business corporations, when desirable, to elect to come under the Loan and Investment Act by complying with Section 5425, R.S. Mo. 1939, and that they would then "be entitled to all provisions of this article", etc. Until a company, desiring to make such change of corporate existence had complied with the terms of said Section 5425, it could not be "organized", as a "Loan and Investment Company" but when so having complied with the terms thereof, may it not well be said that the Legislature intended that they would thus be "organized" in the present tense of the word? We think the Legislature so intended, and that when such terms are so complied with, a corporation would be "organized" under said Loan and Investment Act. We find no Missouri case construing these statutes or interpreting their meaning under the state of facts here existing. Webster's International Dictionary, page 1719, defines "organized" as: "Having organization", as being in the present tense.

The case of Bingham et al. vs. Savings and Investment & Trust Co. of East Orange et al., (N.J.), 138 Atl., page 659,

is a case construing a statute using the word "organized" and its applicability to other statutes under a state of facts very similar to the facts and statutes here being considered. The facts in that case were, that a Savings Investment Company, under the Trust Company & Bank Merger Act of New Jersey of 1925, had merged with a bank, and the question arose whether the said Savings Investment Company was of the class of trust companies authorized to so merge, since it was originally "organized" under the Safe Deposit and Trust Company Act of said State. The further question was, to determine whether the corporation should be considered "organized" under the Act, permitting the merger and as the result thereof, or whether it referred to its original creation. In holding that the New Jersey statute expressed the intention of the Legislature of that State to use the word "organized" in the sense of "operating" instead of as "created", the Chancery Court of New Jersey, l.c. 661, 662, said:

> "The next objection is that the Savings Investment Company is not one of the class of trust companies authorized to merge. The assertion is literally true. The Merger Act of 1925 (P.L. p.481) authorizes one or more trust companies organized under an act concerning trust companies (Revision 1899 (P.L. p. 450; 4 Comp. St. 1910, p. 5654)), or under any special act, to merge with banks. As we have seen, the Savings Investment Company was organized under the Safe Deposit and Trust Company Act of 1885. When the revision of 1899 came into being, for the formation thereafter of trust companies with enlarged powers and increased facilities for management and regulation, the act of 1885 (P.L. p. 270) was repealed, and companies theretofore created under general laws or special act were afforded the privileges of the revised act, and accordingly the Savings Investment Company accepted the grant by amending its charter. It was further provided that the revised act shall be applicable to all trust companies theretofore formed, reserving to them all their rights and powers and retaining their liabilities. All trust companies were operating under the Revision of 1899 at the time the Merger Act was passed in 1925, and it is plain, beyond question, that it was

> the intention of the Legislature to embrace all trust companies, however created, for no reason is apparent why the few formed under the act of 1885, and they are the only ones omitted, should be excluded. 'Organized' was not used to denote 'created,' but in the sense of 'operating'. This interpretation is consistent with the legislative scheme, and it may be said with assurance that the Savings Investment Company, by the bestowal of power of the Revision of 1899, and amending its charter, and availing itself of its priviliges, was 'organized' under that act, within the purview of the Merger Act. * * * "

It is believed that the New Jersey case quoted, furnishes sufficient authority as a precedent, in the absence of a decision by our own courts construing these statutes, warranting the conclusion that the Legislature intended that the word "organized" in said statute in the sense of "operating" and existing after a company organized under the general business corporation statute, has elected to come under the Loan and Investment Act.

CONCLUSION.

It is, therefore, the opinion of this Department, under the facts stated in this case, that the funds representing the outstanding certificates of The Morris Plan Company of Kansas City, Missouri, in the amount of $1,400.00, should be turned over to the Department of Finance to be held by the Department, as trustees for the owners thereof, upon the conclusion of the liquidation of said company, under the terms and provisions of Section 7897 of the Revised Statutes of Missouri, 1939.

Respectfully submitted,

GEORGE W. CROWLEY,
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
Attorney General

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