

CORPORATIONS: Attorney for stockholder who is not an officer of the corporation cannot file affidavit for registration.

July 26, 1944.



Hon. Russell Maloney
Corporation Supervisor
Secretary of State's Office
Jefferson City, Missouri

Dear Mr. Maloney:

This is to acknowledge your request of July 24, 1944, for an official opinion, which is as follows:

"Attached hereto please find letter received from Mr. Walter L. Roos, Attorney at Law, 506 Olive Street, St. Louis, Missouri.

"I wish to have your opinion as to whether or not an annual registration report and anti-trust affidavit filed in accordance with Sections 114 to 119 inclusive as contained in the General & Business Corporation Act of Mo., pages 471 and 472 of the Laws of Missouri, 1943, may be executed by an attorney for one of the stockholders in order to keep the corporation in good standing.

"Your attention is directed to Section 119, of the above named Act and I am forwarding Mr. Roos's letter so that you may have the benefit of his contentions.

"Your early attention will be appreciated."

We have also noted the enclosure therein from an attorney and have carefully considered the arguments advanced by him.

Section 114, of the Corporation Act of 1943, found at page 471, Laws of Missouri, provides for an annual registration with the Secretary of State by every corporation.

Section 115, of the same act, at the same page, provides for an affidavit with reference to trust combination.

Section 116 of the same act, at the same page, provides the fee for annual registrations.

Section 117 of the same act, at the same page, sets out the duties of the Secretary of State in issuing the certificates of registration and is in part as follows:

" * * * Provided, that certificates of registration shall not be issued to any corporation until it has complied with all the provisions of this Act. Trans- action of business as, or the exercise of the functions of, a corporation with- out certificate of registration posted, as herein required, shall be prima facie evidence of a violation of this Act."

Section 118 of the same act, at page 472, Laws of Missouri, 1943, provides the penalty for failure to comply with the law and Section 119 of the same act on the same page is as follows:

"Registration and anti-trust affidavit shall be sworn to before whom. -- 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 corpora- tion 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." (Underscoring ours)

The answer to this question is merely one of statutory con- struction and Section 119, supra, plainly provides the manner in which the affidavit shall be filed.

In the case of Kean v. Strodman, 18 S.W. (2d) 896, 1.c. 898, the court declared the rule to be as follows:

"The familiar maxim of 'expressio unius est exclusio alterius' may also be in- voked, for the maxim is never more applicable than in the construction of statutes. White- head v. Cape Henry Syndicat^e, 105 Va. 463, 54 S. E. 306; Hackett v. Amnden, 56 Vt. 201, 206; Matter of Attorney General, 2 N.M. 49.

"Certainly where, as at bar, the statute (section 8702) limits the doing of a particular thing to a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done. This is the general rule as to the application of the maxim. Even more relevant under the facts in this case is the interpretation given to it by the Kansas City Court of Appeals in Dougherty v. Excelsior Springs, 110 Mo. App. 623, 626, 85 S.W. 112, 113, to this effect: 'That when special powers are conferred, or where a special method is prescribed for the exercise and execution of a power,' that exercise is 'within the provision of the maxim * * * and * * * forbids and renders nugatory the doing of the thing specified except in the particular way pointed out.'"

In the case of Kroger Grocery & Baking Co. v. City of St. Louis, Missouri, 106 S.W. (2d) 435, l.c. 439, this rule was further upheld in the following words:

"Summarizing the reasons under-lying Kansas City v. J. I. Case T.M. Co., supra, on the instant issue, they are to the effect, in so far as material here, that said act of 1879 conferred a permissive, not mandatory, power upon certain municipalities to impose a graduated license upon merchants; but (considering the word 'may' in said clause authorizing a graduated license as equivalent to 'must' or 'shall' (Id., 337 Mo. 913, loc. cit. 931 (8), 87 S.W. (2d) 195, loc. cit. 205 (15-17)), any attempt to exercise the authority there conferred to exact graduated license fees must be exercised in conformity with the authority delegated and graduated in proportion to the annual sales (Id., 337 Mo. 913, loc. cit. 930 (7), 87 S.W. (2d) 195, loc. cit. 205 (13) (14), and authorities cited; Keane v. Strodtman (Banc) 323 Mo. 161, 167 (11), 18 S.W. (2d) 896, 898 (II) (quoting Dougherty v. Excelsior Springs, 110 Mo. App. 623, 626, 85 S.W. 112, 113, to the effect that when special powers are conferred, or special methods are prescribed for the exercise of a power, the exercise of such power is within the maxim expressio unius est exclusio alterius, and 'forbids and renders nugatory the doing of the thing specified, except in

the particular way pointed out'); State ex rel. v. Clifford, 228 Mo. 194, 207, 128 S.W. 755, 758, 21 Ann. Cas. 1218)." (Underscoring ours)

In the case of Dietrich v. Jones, 53 S.W. (2d), 1059, l.c. 1061, the rule is adopted from Corpus Juris as follows:

"Whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative, namely, that the thing shall not be done otherwise'. 25 C.J. 220, note 16 (c)."

In addition to the above rules of statutory construction we also cite the recent case of State v. Phillips which provides that if the statute is clear and unambiguous, it is not necessary to search for an unreasonable interpretation of the statute. In that case, reported in 160 S.W. (2d) 764, l.c. 769, the court said:

"If section 8437, supra, is clear and unambiguous, it must be construed in accordance with its manifest intent and we may not search for a meaning beyond the statute itself. State ex rel. Cobb v. Thompson, 319 Mo. 492, 5 S.W. 2d 57, 59."

CONCLUSION

It is therefore the opinion of this office that Section 119 of the Corporation Act of 1943, is clear and unambiguous, and definite in its terms as to the manner in which a trust affidavit should be filed. It is also the opinion of this office that the statute should be followed and is mandatory in its direction. It is further the opinion of this office that, the above being true, an attorney for a stockholder would not be the proper person to file the trust affidavit unless he were an officer of the corporation as provided by the act.

Respectfully submitted

GAYLORD WILKINS
Assistant Attorney General