

CREDIT UNIONS: A solvent credit union, subject to provisions of Chapter 370, RSMo 1949, but which cannot effect liquidation and dissolution under the provisions of that chapter, may do so under the provisions of Chapter 351, RSMo 1949.

JOHN M. DALTON
XXXXXXXXXXXX



May 15, 1953

J.C. JOHNSEN
XXXXXXX

Honorable R. B. Mackey
Acting Commissioner of Finance
Division of Finance
Department of Business and Administration
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"May a solvent credit union subject to the provisions of Chapter 370 RSMo 1949 effect liquidation and dissolution where it is impossible to dissolve under authority contained in Section 370.350 RSMo 1949?"

Chapter 370, RSMo 1949, to which you refer, is the law designed to apply specifically to the creation, operation, and dissolution of credit unions. Section 370.350 of this chapter provides the method to be followed in the dissolution of credit unions. Certainly Chapter 370, supra, should be followed by credit unions in all of their phases if it is possible for them to do so. However, you state that in the instant situation it is impossible for Section 370.350, supra, to be followed. Since that is the situation we must look to the general law to see whether dissolution could be effected under its provisions.

We note that paragraph four of Section 370.040, RSMo 1949, provides that the organizers of a credit union become and are created a corporation.

We now direct your attention to Chapter 351, RSMo 1949, which is entitled "General and Business Corporations." Section 351.690 of this chapter is entitled "Applicability of this

Honorable R. B. Mackey

chapter to existing corporations," and reads as follows:

"The provisions of this chapter shall be applicable to existing corporations as follows:

"(1) Those provisions of this law requiring report, registration statements, antitrust affidavits, and the payment of taxes and fees, shall be applicable, to the same extent and with the same effect, to all existing corporations, domestic and foreign, which were required to make such reports, registration statements and antitrust affidavits, and to pay such taxes and fees, prior to the enactment of this law;

"(2) No provisions of this law, other than those mentioned in subdivision (1), shall be applicable to banks, trust companies, insurance companies, building and loan associations, savings bank and safe deposit companies, mortgage loan companies, and nonprofit corporations;

"(3) Only those provisions of this law which supplement the existing laws applicable to railroad corporations, union stations, co-operative companies for profit, credit unions, street railroads, telegraph and telephone companies, boating and rafting companies and exposition companies, and which are not inconsistent with, or in conflict with the purposes of, or are not in derogation or limitation of, such existing laws, shall be applicable to the type of corporations mentioned above in this subdivision (3); and without limiting the generality of the foregoing, those provisions of this chapter which permit the issuance of shares without par value and the amendment of articles of incorporation for such purpose shall be applicable to railroad corporations, union stations, street railroads, telegraph and telephone companies, and boating and

Honorable R. B. Mackey

rafting companies, and those provisions of this law mentioned in subdivision (1) will apply to all corporations mentioned in this subdivision (3).

"(4) All of the provisions of this law to the extent therein provided shall apply to all other corporations, existing under prior general laws of this state and not specifically mentioned in subdivisions (1), (2) and (3) of this section."

(Emphasis ours)

It will be noted that the above section holds that the provisions of Chapter 351 are applicable to credit unions if such provisions supplement the existing laws relating to credit unions (which in this instance would be Section 370.350 mentioned above), and if such provisions "are not inconsistent with, or in conflict with the purposes of, or are not in derogation or limitation of, such existing laws," which, again, would be, for our purposes, Section 370.350. We must, therefore, examine the law relating to the dissolution of General and Business Corporations, and determine whether such laws supplement Section 370.350, or whether such law is "inconsistent with, or in conflict with the purposes of, or are not in derogation or limitation of, such existing laws," which, as we noted above, is, in this instance, Section 370.350, which section reads:

"1. At any meeting, called for the purpose, notice of the purpose being contained in the call, four-fifths of the entire membership may vote to dissolve the credit union and shall thereupon signify their consent to such dissolution in writing and shall file such consent with the said commissioner, attested by a majority of its officers, with a statement of the names and addresses of the directors and officers; duly verified.

"2. The commissioner, upon receipt of satisfactory proof of the solvency of the credit union, shall execute in duplicate a certificate to the effect that such consent and statement have been filed and

Honorable R. B. Mackey

that it appears therefrom that the credit union has complied with this section.

"3. Such duplicate certificate shall be filed by such credit union in the office of the recorder of deeds of the county in which said credit union has its place of business and thereupon such credit union shall be dissolved and shall cease to carry on business, except for the purpose of adjusting and winding up its affairs.

"4. It shall, by its board of directors, then promptly proceed to adjust and wind up its business, carry out its contracts, collect its accounts receivable, and liquidate its assets, and apply the same in discharge of the obligations of the credit union and, after paying such obligations, each share according to the amount paid in thereon, shall be entitled to its proportion of the balance of the assets.

"5. Said credit union shall continue in existence for the purpose of discharging its debts and obligations, collecting and distributing its assets, and doing all other acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up, for three years.

"6. The commissioner is authorized to promulgate rules and regulations for the dissolution of credit unions during the time such credit unions are adjusting and winding up their affairs, and, upon the termination of such credit union, the commissioner shall notify the secretary of state of such dissolution."

The law relating to the dissolution of General and Business Corporations is found in Section 351.460 through Section 351.565.

Honorable R. B. Mackey

In this regard we direct attention to Section 351.460, RSMo 1949, which is entitled "Voluntary dissolution on consent of shareholders," and which reads, in part:

"A corporation may be voluntarily dissolved by the written consent of the holders of record of all its outstanding shares in the following manner coupled with compliance with the provisions of sections 351.470 to 351.480: Upon the execution of such written consent by all the shareholders of record, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or assistant secretary, which shall set forth and contain * * *"

(Emphasis ours.)

Section 351.465, RSMo 1949, which is entitled "Voluntary dissolution by resolution of director," reads:

"A corporation may elect to dissolve voluntarily and wind up its affairs by the act of the corporation, in the following manner, coupled with compliance with the provisions of sections 351.470 to 351.480:

"(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved voluntarily, and directing that the question of such dissolution be submitted to a vote at a meeting of the shareholders, which may be either an annual or special meeting;

"(2) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of voluntarily dissolving the corporation shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such

Honorable R. B. Mackey

purpose may be included in the notice of such annual meeting;

"(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to dissolve voluntarily the corporation, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting.

"(4) Upon the adoption of such resolution, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth:

"(a) The name of the corporation;

"(b) The names and respective addresses, including street and number, if any, of its officers and directors;

"(c) A copy of the resolution of the shareholders authorizing the voluntary dissolution of the corporation;

"(d) The number of shares outstanding entitled to vote for or against such resolution of the shareholders and the number of shares voted for and against the voluntary dissolution of the corporation, respectively."

Section 351.485, RSMo 1949, which is entitled "Jurisdiction of court of equity in liquidation," reads:

"1. Courts of equity shall have full power to liquidate the assets and business of a corporation:

"(1) Upon the suit of a shareholder when it is made to appear

Honorable R. B. Mackey

"(a) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

"(b) That the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

"(c) That the corporate assets are being misapplied or wasted:

"(2) Upon the suit of a creditor whose claim has either been reduced to judgment and an execution thereon returned unsatisfied, or whose claim is admitted by the corporation, when in either case it is made to appear that the corporation is unable to pay its debts and obligations in the regular course of business as they mature;

"(3) Upon application by a corporation which has filed articles of dissolution, as provided in this chapter, to have its liquidation continued under the supervision of the court;

"(4) Where information has been filed by the attorney general to dissolve a corporation and it is made to appear that liquidation of its business and affairs should precede the entry of a decree of dissolution;

"(5) When for any reason the certificate of incorporation of a corporation, or the certificate of authority to a foreign corporation, issued by the secretary of state, shall have been forfeited or revoked and such forfeiture or revocation shall not have been rescinded as permitted by this chapter.

Honorable R. B. Mackey

"2. Such proceedings shall be brought in the city or county in which the registered office of the corporation is situated.

"3. It shall not be necessary to make shareholders parties to any such suit or proceeding unless relief is sought against them personally."

In the above we have indicated various methods by which we believe a solvent credit union may be dissolved, since, in our opinion, such methods are not inconsistent with, or in conflict with the purposes of, and are not in derogation or limitation of existing laws specifically applicable to credit unions, but that the above methods of dissolution simply supplement such laws.

CONCLUSION

It is the opinion of this department that a solvent credit union, subject to the provisions of Chapter 370, RSMo 1949, but which cannot effect liquidation and dissolution under the provisions of that chapter, may do so under the provisions of Chapter 351, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:mmm