CORPORATIONS: That portion of Sec. 368.040, RSMo 1949, which relates to special charges in addition to interest rates, is invalid because of its conflict with Sec. 44 of Art. III of the Constitution. A corporation may be incorporated under the provisions of Chapter 368, since the remaining portions of the chapter constitute a workable plan without the invalid portions.

December 9, 1957

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

Dear Sir:

Your recent request for an official opinion is as follows:

"Proposed articles of incorporation for a corporation styled and titled 'C. M. Loan and Investment Company' have been submitted to this department, by counsel, for incorporation under Chapter 368, R.S. Mo., 1949. In view of the apparent conflict between certain provisions of this chapter (Loan and Investment Companies - Chapter 368, supra) and Section 44 of Article Three, Constitution of Missouri, 1945, the following questions are submitted:

"Are the charges, in addition to the interest rate, which are allowed under the provisions of Section 368.040, supra, invalid and void when construed with the language of Section 44, Article Three, Constitution of Missouri, 1945?

"If your answer is in the affirmative, then the following question is submitted:

"May a corporation be incorporated under the provisions of Chapter 368, R.S. Mo., 1949?

"Enclosed you will find a photostatic copy of the proposed articles; especially

> note the fourth paragraph of Article Eight. Enclosed also find a letter from J. E. Taylor dated July 1, 1946 wherein certain views were expressed concerning another statutory law. It would appear that the same reasoning which was applied to that particular law would apply in this case."

Unless otherwise indicated, all references to statutes are to RSMo 1949.

We note paragraph four of article eight of the proposed articles of incorporation of G. M. Loan and Investment Company, which paragraph reads:

> "To charge and receive for such loans and negotiations, such interest and profits as may be permitted by the laws of the State of Missouri and more particularly Sections 368.010 and et and seq RSMo 1949."

That portion of Chapter 368 relating to the powers of loan and investment companies relative to charges on loans is 368.040, which reads:

> "In addition to the general powers conferred upon corporations by chapter 351, RSMo 1949, every loan and investment company organized under the provisions of this chapter shall have the following powers:
>
> (1) To lend money to any person, firm or corporation, secured by the obligation of such person, firm or corporation or otherwise;
>
> (2) To sell or offer for sale its secured or unsecured evidences or certificates of indebtedness or of investment and to receive from investors therein or purchasers thereof payments therefor in installments or otherwise with or without allowance of interest on such installments, whether such evidences or certificates of indebtedness or of investment be hypothecated for a loan or not, and to enter into contracts in the nature of a pledge or

otherwise with said investors or purchasers with regard to said evidences or certificates of indebtedness or of investment securing any loan, and no such transaction shall in any way be construed to effect the rate of interest on such loan, nor to constitute a violation of any other law, conditioned that there be compliance with the limitations thereon in this section contained; provided, however, that no such evidences or certificates of indebtedness or of investment, payable in installments, shall be sold wherein the aggregate amount of the installment payments agreed to be paid therefor shall be in excess of the face amount thereof, and further that evidences or certificates of indebtedness or of investment payable in installments and hypothecated for a loan with such loan and investment company shall not be for an amount in excess of the actual amount of the proceeds of the loan, plus any interest which may be taken in advance, or discount at a rate not to exceed the lawful rate of interest, together with charges permitted by this chapter, and that, with the exception of the last payment, no payment in excess of equal weekly, semimonthly, or monthly payments, extending over the entire period for which the loan is made shall be required by the terms of such evidences or certificates of indebtedness or investment payable in installments which have been so hypothecated; and provided further, that at the maturity of any note or loan or at any time payment or settlement is made or demanded thereon, any evidence or certificate of indebtedness or of investment issued in connection with or used as security for such note or loan, shall have a cash surrender value of an amount not less than the sum of all payments made upon it whether such evidence or certificate shall have matured or not;

(3) To charge for a loan made pursuant to this section two per cent of the amount loaned for any examination or investigation of the character and circumstances of the borrower, comaker or surety and the drawing and taking acknowledgment of necessary papers in making

> the loan; no charge shall be collected unless a loan shall have been made as the result of such examination or investigation; and provided further, that this charge shall not be collected from the same borrower more than once during any six month period;
>
> (4) When a loan is made which is evidenced by a nondeficiency note secured in whole or in part by a chattel mortgage or other lien upon a motor vehicle and when it is provided in said note that said motor vehicle may be returned to the company voluntarily or otherwise, regardless of condition, in full satisfaction of the unpaid balance due thereon, after crediting any amounts paid on any certificate of indebtedness or of investment, if any, and a statement of such right be printed on the face of said note, and a simple and concise printed statement of such right be delivered to the borrower at the time the loan is made, to charge in addition to the interest and other charges permitted by this chapter, an additional five per cent of the face amount of the note; provided, however, that on a note in excess of four hundred dollars, this charge may be computed only on the first four hundred dollars of such note; and provided further, on a note under one hundred dollars, the charge may be computed as on a note of one hundred dollars; provided further, that whenever such a loan or note is renewed, extended or refinanced, or a new or additional loan secured in whole or in part by a lien against the same motor vehicle, any such renewal or extension or refinance, new or additional loan, shall not be subject to the charges provided in this paragraph when any such transactions exceed the number of one within any six month period."

Section 44 of Article III of the 1945 Constitution reads:

> "Uniform interest rates.- No law shall be valid fixing rates of interest or return for the loan or use of money, or the service or other charges made or imposed in connection therewith, for any particular group or

> class engaged in lending money. The rates of interest fixed by law shall be applicable generally and to all lenders without regard to the type or classification of their business."

In Household Finance Corporation v. Shaffner, 203 SW2d 734, the Supreme Court said, l.c. 737:

> "It is not, and cannot be, denied that Section 44 prevents the fixing of interest rates for any particular group or class.
>
> * * * *
>
> "Section 44 does not prohibit the enactment of laws authorizing the formation and regulation of different types of lenders, such as banks, savings and loan associations, etc. Nor does it prohibit the enactment of laws providing reasonable clasification of loans as to amounts, or otherwise, with different permissible rates of interest for different types of loans, but the rates provided for any type of loans, must be available to all lenders who make such loans, without regard to the type or classification of their business. Whether the constitutional provision is wise or unwise is not our province to decide."

In view of the above, it is the opinion of this department that the answer to your first question is in the affirmative, which is to say that the charges, in addition to the interest rate, which are allowed under the provisions of Section 368.040, are invalid and void because they are in conflict with Section 44 of Article III of the Constitution of Missouri.

Your second question is whether, if we find the charges in addition to interest rates, which are allowed under the provisions of Section 368.040, to be invalid and void when construed with the language of Section 44, Article III of the Constitution, which we do so find them to be, then may a corporation be incorporated under the provisions of Chapter 368, supra. In this respect we direct attention to Section 1.140, Senate Bill No. 79, Laws of 1957, which reads:

> "The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. Revised and reenacted Laws 1957, p. _____, S.B. No. 79, §1."

It is a familiar rule of statutory construction that, although a portion of a statute may be held to be invalid because of its unconstitutionality, yet that if that portion which remains is workable the remaining portions are to be considered operative.

In the case of Household Finance Corporation v. Shaffner, supra, the Missouri Supreme Court stated, l.c. 736:

> "Both parties agree that Section 8171 cannot stand against Section 44 and, of course, that is true. Section 44 makes the the same interest rates available to all types of money lenders while Section 8171 purports to deny certain rates to banks and other institutions.
>
> "Both parties have cited many authorities on rules for determining the validity of the remainder of a statute when some part of the statute has been rendered invalid by a later constitutional provision.
>
> "The rule stated by Cooley in his Constitutional Limitations, 7th Ed., page 247, is sufficient for our present purpose. 'If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained.'"

In the case of State v. Curtis, 283 SW2d 458, at l.c. 463, et seq., the Missouri Supreme Court stated:

> "'It is well settled that a statute may be sustained as constitutional in part though void in other parts, unless its provisions are so connected and interdependent that it cannot be presumed the legislature would have enacted one without the other. "The test * * * is whether or not * * * after separating that which is invalid, a law in all respects complete and susceptible of constitutional enforcement is left, which the Legislature would have enacted, if it had known that the exscinded portions were invalid." State ex rel. Audrain County v. Hackmann, 275 Mo. 534, 205 SW 12, 14. The rule is thus succinctly stated in State ex inf. Hadley v. Washburn, 167 Mo. 680, 697, 67 S.W. 592, 596, 90 Am. St. Rep. 430: "Where the part of an act that is unconstitutional does not enter into the life of the act itself, and is not essential to its being, it may be disregarded, and the rest remain in force."' Poole & Creber Market Co. v. Breshears, 343 Mo. 1133, 125 S.W. 2d 23, 33; 82 C.J.S., Statutes, §92, p. 149."

It would appear to be clear that Chapter 368, supra, is workable without the special provisions regarding charges in addition to interest rates, which we have held to be invalid. We believe, therefore, that a corporation may be incorporated under the provisions of Chapter 368 to operate at general rates of interest.

CONCLUSION

It is the opinion of this department that that portion of Section 368.040, RSMo 1949, which relates to special charges in addition to interest rates, is invalid because of its conflict with Section 44 of Article III of the Constitution.

It is our further opinion that a corporation may be incorporated under the provisions of Chapter 368, supra, since

Honorable Walter H. Toberman

the remaining portions of the chapter constitute a workable plan without the invalid portions.

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

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:ld;ml