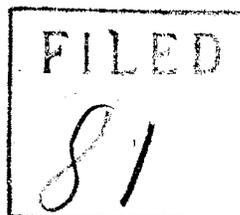


TRUST COMPANIES: Corporations may be created under Section 8024, Article 3, Chapter 39, R.S. Mo. 1939, to do a trust company business as provided therein, without being required to do "banking" business.

April 14, 1947



Honorable H. G. Shaffner
Commissioner of Finance
Jefferson City, Missouri

Dear Commissioner Shaffner:

This will acknowledge your letter of recent date requesting the opinion of this Department if it is permissible for your Department to issue a charter to a corporation as a trust company, under the terms of Section 8024, R.S. Mo. 1939, without infringing upon the business of banking as defined in Section 7949, R.S. Mo. 1939.

Your letter is as follows:

"Parties within the state are interested in organizing a trust company. A copy of the Articles of Agreement are enclosed.

"You will note that Paragraph Seven sets out the purposes for which the corporation is to be formed. It appears that those parties interested wish to obtain a charter which will exclude rights and powers in connection with banking corporations as defined in Section 7949, Banking Laws, State of Missouri, 1939.

"Can this Department issue a charter to operate in the manner as described in the paragraph referred to in the Articles of Agreement."

Section 8024, R.S. Mo. 1939, is one section of Article 3, Chapter 39, dealing with trust companies, and by the terms of said Article 3 the incorporation and

supervision and control of such trust companies are placed under the administration of the Department of Finance.

The first clause of said Section 8024, is as follows:

"Corporations may be created under this article for any one or more of the following purposes."

Then said Section 8024 declares what business may be transacted by a corporation organized under said section.

It is true that a trust company may, if its Articles of Incorporation so provide, do a banking business under the terms of said Section 8024. But unless the Articles of Incorporation do so provide, a trust company, as such, would have no power to transact any kind of banking business whatever.

In the case being considered, where the incorporators desire to organize a trust company under the corporate name of The Guaranty Trust Company of Missouri, and following the conference with the same persons in your office on April 1, this Department has received from such proposed incorporators a copy of the proposed Articles of Incorporation of the said trust company. These persons not only do not include in their Articles of Incorporation any expressed purpose to carry on any banking business, but they do expressly disclaim any such purpose or intention, or right, if and when incorporated, of doing any banking business whatever.

A trust is defined in 65 C.J., pages 212, 213, under the subject of "Trusts" as follows:

"In its technical legal sense a trust has been defined as the right, enforceable solely in equity, to the beneficial enjoyment of property the legal title to which is vested in another. It has been otherwise defined as an

obligation upon a person arising out of a confidence reposed in him to apply property faithfully and according to such confidence; a holding of property, subject to a duty of employing it or applying its proceeds according to directions given by the person from whom it was derived; a right of property, real or personal, held by one party for the benefit of another. That relation between two persons by virtue of which one of them holds property for the benefit of the other, an equitable right, title, or interest in property, real or personal, distinct from the legal ownership thereof."

The terms of said Section 8024 in prescribing the purposes for which corporations may be organized as trust companies, adhere very closely to the performance of such acts by a trust company as would come strictly within the above text definition of a trust.

A bank is defined in 7 C.J., 473 as: "* * * 'an association or corporation whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer, * * * ' * * *'".

It will be readily seen, therefore, that the purposes set forth in the Articles of Incorporation of this proposed corporation do not propose to do any of the acts or things set forth in Section 7949, R.S. Mo. 1939, or in any other section of our Banking Code, which are prescribed as incidents and acts of banking.

Said Section 8024, gives incorporators the privilege of organizing as a corporation for any "one or more" of the purposes set forth in the sub-sections of said section. This section means that a trust company, may, if it declares its purpose so to do, do a banking business, along with other acts incident to a trust company business but if the purpose of undertaking any kind of banking business is disclaimed, as here, in the considered

Articles of Incorporation, a trust company may be organized as a corporation for the transaction of any other of the kinds of business set forth in said Section 8024, without violating the terms of said Section 7949, or any other section of our Banking Code, or without being required to include "banking" in its business unless it is expressly provided for in its Articles of Incorporation.

We have examined these proposed Articles of Incorporation of the proposed The Guaranty Trust Company of Missouri, and find that they comply strictly with the provisions of said Section 8024, with respect to the organization of and transacting business by a trust company, excluding positively any purpose or intention, or the asking of any right or privilege, to transact any banking business whatsoever. Under these Articles of Incorporation, and under the terms of said Section 8024, these incorporators have the right to incorporate as a trust company to transact such business as a trust company as is provided in said Section 8024, without including the business of banking.

CONCLUSION.

It is, therefore, the opinion of this Department that The Guaranty Trust Company of Missouri, under the terms of said Section 8024, R.S. Mo. 1939, may organize and incorporate as a trust company for the purpose of carrying out trusts in property rights for others, and for the purpose of transacting such business for which its Articles of Incorporation provide, and that your Department may lawfully issue a charter to said The Guaranty Trust Company of Missouri, as a corporation to operate and carry out the business proposed in its said Articles of Incorporation.

Respectfully submitted,

APPROVED:

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