

BUILDING & LOAN: Foreign associations advertising in newspapers are not doing business within this state.

March 4, 1941.

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Honorable J. W. McCammon
Supervisor
Bureau of Building and Loan
Jefferson City, Missouri

Dear Sir:

This Department is in receipt of your request for an official opinion, which reads as follows:

"Enclosed is file relating to recent activity of the United Building and Loan Association, Little Rock, Arkansas.

"Our records or files do not show any correspondence with the subject association. Our question is, therefore, whether or not a building and loan association not receiving a charter from this state or the United States government may solicit sale of its shares to residents of Missouri, by advertising in a Missouri newspaper without first meeting the requirements of the building and loan laws of Missouri.

"In the event you hold that the subject association has committed a violation of the Missouri statutes, what procedure should be properly taken by the Supervisor in this matter?"

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The advertisement mentioned in your request is as follows:

" INSURED SHARES

4% CURRENT DIVIDENDS

"Now is the time to put your savings dollars to work earning a good yield in a convenient plan protected by an agency of the U. S. Government. Write or call for full details on Insured Shares.

UNITED BUILDING & LOAN ASSOCIATION
627 Pyramid Bldg., Phone 2-3464
Nathaniel Dyke, Jr., Sec.
Little Rock, Arkansas."

Section 8235, R. S. Missouri, 1939, provides in part as follows:

"Foreign building and loan associations doing business in this state shall conduct their business in this state in accordance with the laws of the state governing domestic associations and no such association shall do any business in this state until it shall procure from the supervisor of building and loan associations a certificate of authority to do so. * * *"

Section 8241, R. S. Missouri, 1939, provides in part as follows:

"It shall be unlawful for any foreign building and loan association to do business in this state without having first complied with the provisions of the preceding section of this chapter,

and any such association violating any of the provisions of said sections of this chapter, or failing to comply with any of said provisions shall be fined not less than fifty nor more than one thousand dollars, to be recovered by an action in the name of the state; and on collection paid into the state treasury, to the credit of the bureau of building and loan supervision fund in the office of the said state treasurer:
* * * * *

The question presented in your request is whether a foreign building and loan association which places an advertisement in a newspaper soliciting inquiries from the residents of the State of Missouri as to the stock of such association is "doing business" in the State of Missouri so as to bring them within the purview of the statutes quoted above?

As is said in 12 C. J. S. 551, "Whether associations are amenable to the statutes specifically requiring the performance of conditions precedent by a foreign building and loan association depends on whether they are 'doing business' within the state."

Moreover, as pointed out in 9 Am. Jur. 190, "The rules and principles which govern the operations of corporations generally outside the jurisdiction of their origin or domicil, apply for the most part to foreign building and loan associations."

While it is true that the rule in Missouri is that ordinarily a foreign corporation soliciting and accepting stock subscriptions is not doing business in the state. Myer v. Crossley, 264 S. W. 882, still if the sale of stock is the business of the corporation and not a mere incident, then it is doing business within the state of such sale. Booth v. Scott, 205 S. W. 633, 276 Mo. 1. However, in the Booth Case, supra, the foreign corporation had an office within this state and had several officers and agents within

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the state selling stock to the citizens of Missouri. From the facts in your request the association in question has no place of business or agent within this state.

We are unable to find any cases which hold that a mere solicitation in a newspaper advertisement constitutes the "doing of business" within the state.

In *People's Building and Loan Association v. Berlin*, 201 Pa. 1, 50 A. 308, the Supreme Court of Pennsylvania, which state has been called the birthplace of building and loan associations, said at l. c. 6:

"As we have already seen, under the articles of association and the by-laws, and as a matter of fact, the business of the association was done in New York. Its corporate functions were all exercised there. The applications for stock and for the loan were made and considered in New York, and there accepted. By the express terms of the by-laws, the money paid by the stockholders and borrowers was to be paid there, as was also the payment of the money to the defendant by the association in the completion of the transaction. In the completion of the law, the entire contract, from inception to the finish, was performed in New York."

In *Neal v. New South Building & Loan Association*, 100 Tenn. 607, 46 S. W. 755, the court held at l. c. 757:

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"The loan secured by the mortgage executed by complainant to defendant company is payable in New Orleans, in the state of Louisiana, and each of the installment notes is so payable. The contract is essentially a Louisiana contract, and does not contravene any statute of this state. The defendant company, at the time this contract was made, was domiciled in the state of Louisiana, it had no local board or agency here, and was not carrying on business in this state in the sense of the statute. It was, therefore, not amenable to the statute requiring a foreign corporation to register its charter as a condition of doing business in this state."

In view of the above authorities it will be seen that the corporation in question is not doing business within this state and therefore does not have to comply with the provisions of Section 8235, supra.

CONCLUSION.

It is, therefore, the opinion of this Department that a foreign building and loan association which solicits inquiries as to shares in a newspaper of the State of Missouri, but which has no agents or office within this state, is not "doing business" within this state within the meaning of the building and loan statutes relating to foreign corporations.

Respectfully submitted,

APPROVED:

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(Acting) Attorney General

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