

Loan Companies—Articles of Incorporation.

The articles of association containing the matters referred to in the opinion constitute the association an investment company, and as such it should have a minimum of \$100,000 subscribed and paid up in cash before making application to the State Superintendent of Banks for a certificate to do a banking business.

L. Q. Skelton, Esq.,
Superintendent of Banks,
Helena, Montana.

My dear Mr. Skelton:

You have submitted to this office articles of incorporation of the Security Savings and Loan Association, together with copy of its by-laws and other literature, including savings certificate forms and coupons. These papers were referred to you by Hon. C. T. Stewart, Secretary of State, who calls attention to the word "savings" in the title.

Your observations, from examination of the various papers, are that it is a sort of "hybrid," inasmuch as it uses the word "savings," proposing thereby to do business as a savings institution. "Its articles of incorporation would indicate that it also proposes to do a trust and agency business, and there is little doubt in our mind that its real function is that of an investment company. * * *

You call attention to Section 10 of the Banking Act. This section requires the capital stock of a savings bank or investment company to be fixed and limited by its articles of incorporation, and requires a minimum of \$100,000 to be subscribed and paid up in cash and be deposited with some bank or banks in this State when the application to the Superintendent of Banks is made. You question whether the applicant has in excess of \$50,000 paid up capital.

Paragraph 2 of Section "C" of the amended articles of incorporation provides:

"To issue in different denominations for sale and sell for cash or under contract to make stated deposits, Investments Certificates, Savings Certificates, Installment Certificates, Coupon Certificates and certificates of other kinds and forms that may be issued under conditions and on terms that secure the purchasers thereof."

Subdivision (a) of Article XI of the By-laws provides for the issuance and sale of different forms of savings certificates.

Subdivision "T" of the amended articles of incorporation provides for the following powers:

"To purchase, hold, sell, assign, pledge, transfer, mortgage or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or executed by any other association or corporation of the State of Nevada, or any other State, District, Territory or County."

Other powers provided for in Subdivision "G" of the amended articles of incorporation are:

"To purchase, hold, sell, assign, pledge, or otherwise dispose of the shares of the capital stock of any other association or corporation," etc.

Section 2 of Chapter 89, Session Laws of 1915, divides banks in the following classes:

- (a) Commercial banks;
- (b) Savings banks;
- (c) Trust companies;
- (d) Investment companies;

while Section 7 of this Chapter defines investment companies as follows:

"The term 'investment company,' when used in this Act, means any corporation incorporated under the laws of this State for any one or more of the following purposes:

"1. To receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest as may be agreed upon, and to issue and sell its contracts or certificates of indebtedness, bearing fixed rates of interest, in whole or in part, with participation or non-participation in the profits of the corporation, and maturing at fixed periods of time, or otherwise, as may be fully set forth in said contracts or certificates.

"2. To buy and sell government, state, county, municipal, and other bonds, and all kinds of negotiable and non-negotiable and commercial paper, stocks and other investment securities."

There is little doubt that this corporation is an investment company under the foregoing provisions of law and under its powers as enumerated in its articles of incorporation.

Section 24 of said Chapter 89 provides, in part, as follows:

"No person, firm, company, co-partnership, or corporation, either domestic or foreign, not subject to the supervision of the Superintendent of Banks, and not required by the provisions of this Act, to report to him, and which has not received a certificate to do a banking business from the Superintendent of Banks, shall advertise that he or it is receiving or accepting money or savings for deposit, investment or otherwise, and issuing notes or certificates of deposit therefor, or shall make use of any office sign, * * * having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, * * * or any other form of banking business (is) transacted, nor * * * make use of or circulate any letter heads, bill heads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper, whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank * * * or trust or investment company; nor * * * hereafter transact business under any name or title which contains the word, 'bank,' 'banker,' 'banking,' 'savings bank,' 'savings,' 'trust,' 'trustee,' 'trust company,' or 'investment company.'"

Section 26 of the Act provides:

"Any corporation organized under the laws of any country or state other than this State, which has complied with all of the laws of this State pertaining to foreign corporations, and is not engaged in the business of banking or receiving money on deposit in this State, may lend money in this State and, for that purpose, may maintain offices in this

State, and sue and be sued in this State under its proper corporate name, notwithstanding any prohibitions contained in this Act as to the use of any words in the name, signs, or advertising matter of corporations not under the supervision of the Superintendent of Banks."

This provision would seem to entitle any concern, having a name prohibited under Section 24, to transact a loan business in this State.

I am, therefore, of the opinion that this institution should make application to your office on the form provided in such cases, and that you should then make such examination as is required under the provisions of Subdivision 7 of Section 8 of the Act and ascertain whether the required capital has been paid up in cash, and whether the corporation is otherwise entitled to receive your certificate before issuing the same.

Should you find that it is not entitled to your certificate, you should so advise them, and at the same time call to their attention Section 26, which permits them to do business in the State as a loan company.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.