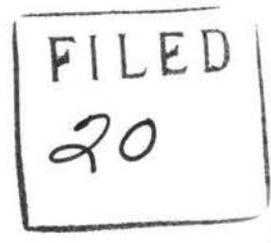


FICTITIOUS NAMES: It is proper and legal for James S. Kemper & Company to register as "Associated Mutuals,"  
CORPORATION: for the purpose of engaging in or transacting  
SECRETARY OF STATE: business in the State of Missouri, pursuant to Secs. 417.200 through 417.230, RSMo 1949, and Sec. 351.110, par. 2, RSMo 1949, does not vest the Secretary of State with such discretion which would permit him to refrain from registering James S. Kemper & Company as "Associated Mutuals" under the fictitious names laws.

July 13, 1960



Honorable Robert W. Crawford  
Secretary of State  
Capitol Building  
Jefferson City, Missouri

Dear Mr. Crawford:

This is in response to your letter of April 26, 1960, in which you state the following circumstances and question:

"James S. Kemper & Company is a business corporation organized in the State of Delaware and admitted to do business in Missouri on March 17, 1960. This corporation is an insurance broker, brokering primarily insurance contracts of four mutual insurance companies. The aforesaid corporation has now presented for filing to this department a Fictitious Name Registration whereby James S. Kemper & Company, a corporation, proposes to transact business in Missouri under the name 'Associated Mutuals'. In view of the fact that James S. Kemper & Company is a profit corporation and not a mutual company, and in view of the provisions of Section 351.110, paragraph (2), your opinion is respectfully requested as to the propriety and legality of the Fictitious Name Registration, whereby the business corporation would hold itself out to the public and do business as a mutual organization."

Sections 351.110, 417.200 and 417.230, RSMo 1949, read, respectively, as follows:

Section 351.110: "The corporate name  
"(1) Shall contain the word 'corporation,'  
'company,' incorporated,' or 'limited,'

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or shall end with an abbreviation of one of said words;

"(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than a purpose for which corporations may be organized under this chapter;

"(3) Shall not be same as, or deceptively similar to, the name of any domestic corporation existing under any law of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter."

Sec. 417.200.

"That every name under which any person shall do or transact any business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as herein required."

Sec. 417.230.

"Any person who shall engage in or transact any business in this state under a fictitious name, as in sections 417.200 to 417.230 defined, without registering such name as herein required, shall be deemed guilty of a misdemeanor."

In reaching our conclusion we would first bring to your attention the fact that Section 351.110, RSMo 1949, is a part of Chapter 351, which pertains to and authorizes the organization and existence of certain corporations in the State of Missouri. When referring to the "corporate name," it is our understanding that this reference is to the name of the corporation as it is originally organized or registered in the State of Missouri. This would not necessarily mean the name under or by which it conducts its business within the state. So it would appear to be the purpose of Section 351.110, paragraph 2, supra, to preclude the organizational name of a corporation from containing a name, word or phrase which indicates or implies that it is organized for any purpose other than a purpose for which corporation may be organized under Chapter 351. We feel that this has no connection with the fictitious names laws, which are found in Chapter 417, RSMo 1949.

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You will observe from Section 417.200, RSMo 1949, that it is every name under which any person shall do or transact any business in this state, other than the true name of such person, which is to be declared a fictitious name and which must be registered before business may be transacted in this state. This section would appear to be consistent with Section 351.110, in that Section 417.200 excepts to the requirement of registration the true name of the "person" involved.

Section 417.230, RSMo 1949, makes it a misdemeanor for any person to engage in or transact any business in this state under a fictitious name without registering that fictitious name as is required by these sections. Therefore, it would appear that there is no discretion vested in the Secretary of State which would permit him to refrain from registering a fictitious name if that fictitious name is tendered for registration. The registration of the fictitious name is permitted by law. Section 417.230, RSMo 1949, makes it unlawful to engage in or transact business in this state if the fictitious name of the business has not been registered.

From the facts which you set forth we would conclude that James S. Kemper & Company is a business corporation, organized in the State of Delaware, and admitted to do business here in Missouri pursuant to the laws set forth in Chapter 351, RSMo 1949. We would conclude that Section 351.110, paragraph 2, as set forth above would be applicable to the organizational name of "James S. Kemper & Company." We would also conclude that James S. Kemper & Company may register under the fictitious names sections as "Associated Mutuals," and so long as it complies with Sections 417.200 through 417.230, the Secretary of State has no discretion to prevent such registration of James S. Kemper & Company as "Associated Mutuals."

#### CONCLUSION

It is the conclusion of this office that it would be proper and legal for James S. Kemper & Company to register as "Associated Mutuals," for the purpose of engaging in or transacting business in the State of Missouri, pursuant to Sections 417.200 through 417.230, RSMo 1949, and that Section 351.110, paragraph 2, RSMo 1949, does not vest the Secretary of State with such discretion which would permit him to refrain from registering James S. Kemper & Company as "Associated Mutuals" under the fictitious names laws.

The foregoing opinion, which I hereby approve was prepared by my assistant, James B. Slusher.

Very truly yours,

JOHN M. DALTON  
Attorney General