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January 27, 2000

VIA FACSIMILE 573-526-7341 and 573-751-1847

FILED

JAN 27 2000

Mr. Kevin Thompson
Deputy Chief Regulatory Law Judge
Missouri Public Service Commission
Truman State Office Building, Room 530
301 West High Street
Jefferson City, Missouri 65101

**Missouri Public
Service Commission**

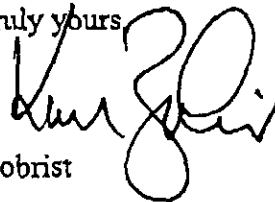
Re: GST Steel Company v. Kansas City Power & Light Company
Case No. EC-99-553
Our File: 100-9.1

Dear Judge Thompson:

In light of the citation submitted to you by counsel for GST from Fletcher Cyclopedia of the Law of Private Corporations, as counsel for respondent Kansas City Power & Light Company I would like to refer you to Section 4233 of that same work regarding unincorporated associations.

Section 4233 provides in part: "An unincorporated operating division of a corporate business is not a recognized legal entity and cannot sue or be sued in its own name;"

Very truly yours,



Karl Zobrist

KZ/csk

Attachment

cc: Mr. James W. Brew (via facsimile 202-342-0807) w/attachment
Mr. Paul S. DeFord (via facsimile 816-292-2001) w/attachment
Mr. Kurt U. Schaefer (via facsimile 573-893-5398) w/attachment
Ms. Lera Shemwell (via facsimile 573-751-9285) w/attachment
Mr. John B. Coffman (via facsimile 573-751-5562) w/attachment
Mr. James M. Fischer (via facsimile 573-636-0383) w/attachment
Mr. Gerald A. Reynolds (via facsimile 556-2787) w/attachment

KC-722539-1

§ 4233 Unincorporated association.

A corporation cannot take any action until it has acquired a corporate existence by grant and acceptance of its charter, or an equivalent procedure.¹ If the corporate entity has not acquired corporate existence, it can neither sue nor be sued.² However, a corporation may maintain a previously filed suit, even though the corporation's failure to comply with statutory incorporation procedures requires dissolution of the corporation.³ Formerly, a judgment entered against a corporation in an action in quo warranto neither operated retroactively so as to affect rights and liabilities previously accrued by the corporation and third parties, nor acted as a determination that there had never been a corporation de facto.⁴

An unincorporated operating division of a corporate business is not a recognized legal entity and cannot sue or be sued in its own name;⁵ however, when the appropriate delegation of authority has

(judgment against de facto corporation good from time of its rendition).

Ohio. Corporation that continued business operations after its charter had been cancelled was corporation de facto; accordingly, those who contracted with it were precluded from questioning its capacity to sue. *GMS Management Co. v. Axe*, 5 Ohio Misc 2d 1, 449 NE2d 43.

See ch 45.

[Section 4233]

¹ See ch 49.

² *U.S. Int'l Sports Divers Assoc., Inc. v. Marine Midland Bank, N.A.*, 25 F Supp 2d 101 (ED NY 1998) (applying Connecticut law).

Conn. Int'l Sports Divers Assoc., Inc. v. Marine Midland Bank, N.A., 25 F Supp 2d 101 (ED NY 1998).

Ga. Hendrix & Co. v. Collins Mfg. Co., 69 Ga 751 (summons and judgment pending application for charter void).

Mass. Boston Five Cents Sav. Bank v. Trustees of Methodist Religious Soc. in Boston, 295 Mass 480, 4 NE2d 315 (religious society).

N.J. St. John the Baptist Greek Catholic Church of Perth Amboy, Inc. v. Gengor, 118 NJ Eq 467, 180 A 379.

Vt. Lawrie v. Silsby, 76 Vt 240, 56 A 1106 (members may sue if corporation never completed).

³ *Ohio. State v. Montgomery County Residential Development, Inc.*, 40 Ohio St 3d 71, 531 NE2d 68 (articles of incorporation defective). See §§ 8144 and 8145.

⁴ *Ohio. State v. Montgomery County Residential Development, Inc.*, 40 Ohio St 3d 71, 531 NE2d 68 (articles of incorporation defective). See § 2325.

⁵ *U.S. Grimandi v. Beech Aircraft Corp.*, 512 F Supp 764 (D Kan 1981) (applying Kansas law).

An unincorporated division of a corporation is not a separate legal entity. *United States v. Computer Sciences Corp.*, 511 F Supp 112 (ED Va 1981).

If a plaintiff unnecessarily confuses the jury by improperly naming one of the defendant's unincorporated divisions as a defendant,

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rater, or an
acquired cor-
However, a
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occurred, a corporate division may sue on behalf of the corporate entity of which it is a part.⁶

An unincorporated voluntary association ordinarily cannot sue or be sued,⁷ except by making its individual members parties,⁸ but in some jurisdictions actions by or against such associations are authorized by statutes.⁹

§ 4234 Government-owned or controlled corporation—
General rule.

The long-held doctrine that the sovereign cannot be sued without its consent¹ does not prevent an action from being maintained

rated divisions as an additional defendant, the plaintiff has no right to relief if the confusion results in an adverse decision. *Albers v. Church of Nazarene*, 698 F2d 852 (CA7 1983).

Kan. Kansas Private Club Ass'n v. Londerholm, 196 Kan 1, 408 P2d 891.

Crimandi v. Beech Aircraft Corp., 512 F Supp 764 (D Kan 1981).

⁶ *N.Y. Maranatha Associates Inc. v. Titan Group Inc.*, 609 NYS2d 368, 202 AD2d 846 (NYAD 3 Dept 1994).

⁷ *Ark. Bunch v. Launius*, 222 Ark 760, 262 SW2d 461.

Ga. Embassy Row Associates v. Rawlins, 162 Ga App 669, 292 SE2d 541.

Mo. Forest City Mfg. Co. v. International Ladies' Garment Workers' Union, Local No. 104, 233 Mo App 935, 111 SW2d 934.

Societies, fraternities, clubs and exchanges, see § 22.

⁸ See §§ 21, 22.

Liability and rights of members where neither de jure nor de facto corporation, see § 6646 et seq.

⁹ *Cal. Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union*, 119 Cal App 2d 144, 259 P2d 23; *Athens Lodge No. 70 v. Wilson*, 117 Cal App 2d 322, 255 P2d 482.

III. Unincorporated association has standing to sue in its own name through representative of association. *Local 144, American Federation of Technical Engineers v. La Jeunesse*, 25 Ill App 3d 765, 324 NE2d 23.

N.Y. Thomann v. Flynn, 251 App Div 322, 295 NYS 577; *Ayew v. Willard Hawes & Co.*, 250 App Div 322, 295 NYS 49; *John's, Inc. v. Island Garden Center of Nassau, Inc.*, 49 Misc 2d 1086, 269 NYS2d 231 (corporation may sue and be sued as partners).

Ohio. Ohio Rev Code Ann § 1745.01 (unincorporated association can sue or be sued).

R.I. United Master Plumbers Ass'n of Rhode Island, Inc. v. Bookbinder Plumbing & Heating Co., Inc., 99 RI 683, 210 A2d 573 (association not acquiring right to bring action by adoption of bylaws).

See also § 22.

Actions by and against joint stock companies, see §§ 21, 4226.

[Section 4234]

¹ *N.C. Vinson v. O'Berry*, 209 NC 287, 183 SE 423.

W. Va. Stewart v. State Road Commission of West Virginia, 117 W Va 352, 185 SE 567; *Watts v. State Road Commission of West Virginia*, 117 W Va 398, 185 SE 570.