



**THE ATTORNEY GENERAL
OF TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN 11, TEXAS

March 9, 1948

Reconsideration of Opinion
No. V-419A

Hon. Paul H. Brown
Secretary of State
Austin, Texas

ATTN: Wm. E. Stapp
Chief, Charter Division

Dear Sir:

This Department has carefully considered your request of December 4, 1947, for a reconsideration of Opinion No. V-419, together with the briefs submitted by the attorneys for the United States Trust Company of New York and other similar corporations.

The entire opinion file, together with the briefs above referred to, have been carefully considered individually and in conference by various members of this Department; and in such consideration the intention of the Legislature and the equities governing the individual factual situations have been carefully weighed.

It is the view of this Department that prior to the enactment of the Texas Banking Code of 1943 (Title 16, Chapters 1-9, Arts. 342-101 to 342-911, inclusive, Vernon's Annotated Civil Statutes), the sole statutory authority concerning the use of the word "trust" by a corporation in its name, stationery, or advertising existed by virtue of Art. 491, Revised Civil Statutes of Texas, 1925, which is in part as follows:

"It shall be unlawful for any incorporated bank other than State banking corporations and national banks to advertise or put forth any sign as a bank, bank and trust company or savings bank, or in any way solicit or receive business as such or as any such, or to use as their name or part of their name, or in or upon any sign, advertising, letterhead or envelope the work 'bank', 'banker,' 'banking,' 'trust,' 'trust company,' 'savings bank,' 'savings,' or any other term which may be confused with the name of corporations organized under this title. Corporations heretofore organized under the general laws of this State, and foreign corporations heretofore or hereafter authorized to do business in this State, authorized by their charters to use such name or parts of names as are hereby prohibited, may continue to use the same by using thereafter the words 'without banking privileges.' Any corporation violating any provision of this article shall

forfeit its charter, or if a foreign corporation, its permit to do business within this State. . . ." (Emphasis ours).

It is manifest from a reading of the foregoing statute that from the time of the passage of this Act in 1905 no domestic corporation other than State banking corporations and national banks could be granted a charter in Texas if the corporate name contained any of the forbidden words named in the statute. However, it was possible for any foreign corporation, which was authorized by its charter provisions to use such prohibited name or part thereof, which had theretofore obtained a permit to do business in Texas or which might thereafter obtain such a permit to use the prohibited words as a part of its corporate name, provided that such name was followed by words "without banking privileges."

Although this article was a part of the general provisions of Title 16, Revised Civil Statutes of 1925, which dealt generally with the subject of banks and banking, nevertheless, it was a general statute affecting all corporations. Under the provisions of this law, permits were granted to foreign corporations which contained the forbidden words in their corporate names; and it is presumed that the terms of Art. 491 relating to the use of the words "without banking privileges" were complied with by such corporations.

However, 1943, when the Forty-eight Legislature enacted the Texas Banking Code of 1943, it specifically repealed Art. 491, Revised Civil Statutes of Texas, 1925, by the terms of Article 342-911, V.A.C.S., and enacted in lieu thereof Art. 342-902, V.A.C.S., quoted in Opinion No. V-419. Here there was a specific repeal of the only legislative authority for the use of the forbidden words in the corporate names of foreign corporations obtaining a permit in this State, and no such authority then existed for the granting of such permit. In fact it was specifically forbidden by the provisions of Article 342-902 above referred to.

That this was the intention of the Legislature was further evidenced by that part of Art. 342-902 which states as follows:

"This article shall not bar an individual from acting in any fiduciary capacity, if he does not hold out to the public that he is conducting any branch of the trust business." (Emphasis ours)

While it is true that there are many decisions to the effect that the word "individual" shall be construed to include the word "corporation" where the context clearly so indicates, nevertheless, such inclusion is not apparent when Art. 342-902 is read as a whole.

Hon. Paul H. Brown, Page 3, Reconsideration of V-419

In view of the foregoing, we are constrained to adhere to our original Opinion No. V-419.

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ C. K. Richards

By

C. K. Richards
Assistant

CKR/JCP/cg