

9-3-1914

Regulating Investment Companies

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File 1914 - R - 1

1914
No 9.
Petition by to
County of Walker
Initiator Petition
Regulating Investment
Companies

[Handwritten initials]

Filed in the office of the
SECRETARY OF STATE

the 10th day of
September A. D. 1914.

Frank C. Jordan,

SECRETARY OF STATE

By *Frank C. Jordan*
DIRECTOR

Page

9 REGULATING INVESTMENT COMPANIES. Initiative act authorizing
governor to appoint auditor of investments empowered to employ
deputies and fix their compensation, defining investment
companies, authorizing examination thereof by auditor and
judicial investigation of their practices, defining securities
and prohibiting sale thereof to public, or taking subscriptions
therefor, by such companies before filing with auditor their
financial statement and description of security, excepting
from act certain companies and individuals, securities thereof
and certain installment securities, regulating advertisements
and circulars regarding securities, creating fund from official
fees for salaries and expenses under act; repeals all laws on
subject adopted heretofore or concurrently herewith.

Copy

CERTIFICATE OF SECRETARY OF STATE

DEPARTMENT OF STATE,
SACRAMENTO, CALIFORNIA, August 15, 1914.

To the County Clerk of ALL Counties County, California.

I, FRANK C. JORDAN, Secretary of State, do hereby certify that heretofore, to wit, on the third day of August, 1914, there was presented to, received by, and filed in the office of the Secretary of State, an initiative petition, in due form, in accordance with the provisions of Section 1 of Article IV of the Constitution of the State of California, said petition being duly certified as in said Constitution provided.

That attached to said petition and to each section thereof there was a certificate of each of the County Clerks and of the Registrar of Voters, in whose respective counties said petition was circulated and who had respectively transmitted the same to the Secretary of State, properly dated, showing that he had examined such petition and the sections thereof and the signatures thereto and had determined from said examination and from the records of registration in his office the number of qualified electors who had signed the same, and showing the result of his said examination;

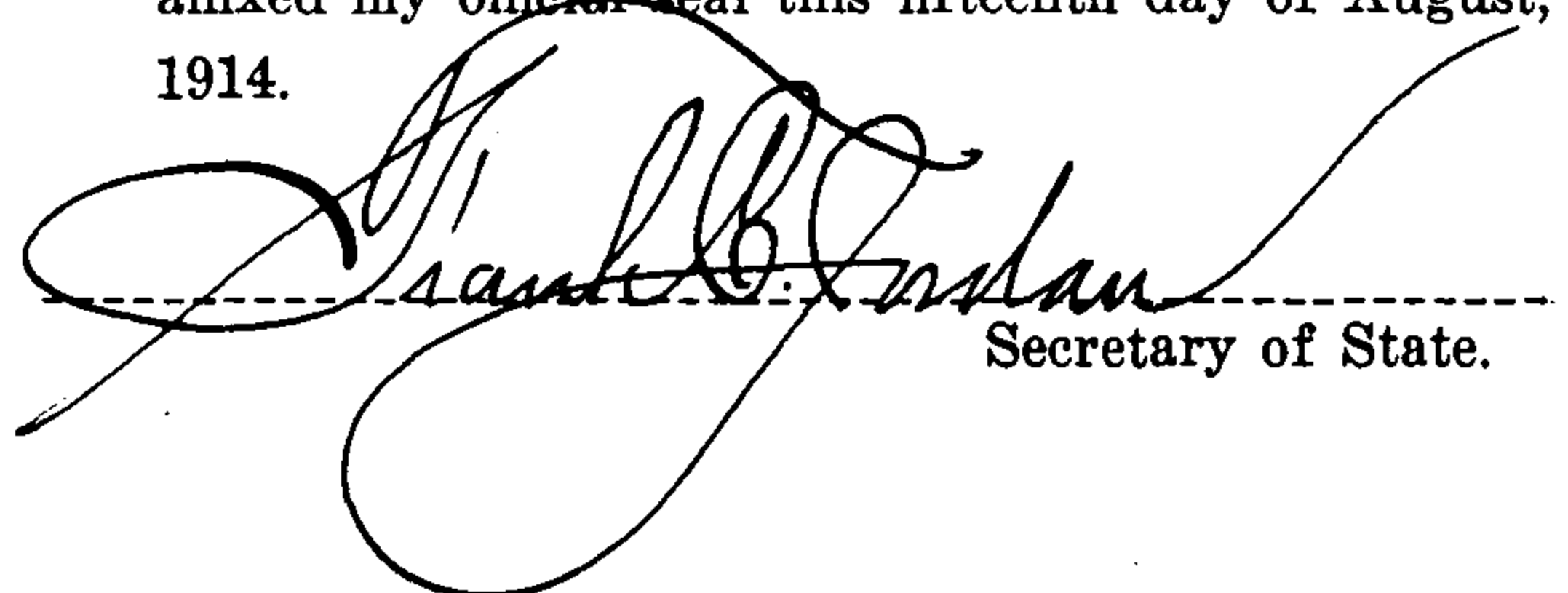
And I further certify that the number of qualified electors so certified as having signed the said petition or sections thereof is equal in number to at least eight per cent of all the votes cast for all candidates for Governor at the last preceding general election prior to the filing of said petition as aforesaid at which a Governor was elected.

That the said initiative petition, so filed as aforesaid, is entitled as follows, to wit:

An act to define Investment Companies, Investment Brokers, and Agents; to provide for the regulation and supervision thereof; to provide penalties for the violation thereof; to create the office of Auditor of Investments, and to make an appropriation therefor; and to provide that the provisions of this act shall constitute the entire and only law of this state upon or relating to the subject matter or matters dealt with in or by this act, and that it shall operate as a complete substitute for, and shall be deemed to be amendatory of all other provisions of or in any and all other laws of this state relating to such subject matter or matters, whether heretofore existing, or approved or adopted prior to or concurrently with the adoption or approval of this act, and that the office of Commissioner of Corporations shall not exist in this state.

Attached hereto, marked Exhibit "O" and made a part hereof, is a full, true, and correct copy of the initiative petition and proposed law above referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this fifteenth day of August, 1914.


Secretary of State.

[SEAL.]

EXHIBIT "O."

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE ELECTORS

(Constitution, Art. IV, Section 1, as amended October 10, 1911.)

The undersigned, duly qualified electors and residents of _____, County of _____, State of California, hereby present this petition to the Secretary of State of said State, and hereby propose for submission to, and for approval of or rejection by, the qualified voters of said State, the following proposed law for said State, which proposed law is hereby and herein set forth in full in this petition, and the following is the full title and text of the said proposed measure:

An act to define Investment Companies, Investment Brokers, and Agents; to provide for the regulation and supervision thereof; to provide penalties for the violation thereof; to create the office of Auditor of Investments, and to make an appropriation therefor; and to provide that the provisions of this act shall constitute the entire and only law of this State upon or relating to the subject matter or matters dealt with in or by this act, and that it shall operate as a complete substitute for, and shall be deemed to be amendatory of all other provisions of or in any and all other laws of this State relating to such subject matter or matters, whether heretofore existing, or approved or adopted prior to or concurrently with the adoption or approval of this act, and that the office of Commissioner of Corporations shall not exist in this State.

The people of the State of California do enact as follows:

Section 1. This act shall be known as the Investors' Protective Act of California.

Sec. 2. (a) The term Investment Company, when used in this act, includes every corporation, association, copartnership and company, which shall, within this State, sell, offer for sale, negotiate for the sale of, or take subscriptions for any stock, stock certificate, bond or other evidence of indebtedness of any kind or character, issued or to be issued by itself, other than promissory notes not offered to the public by the maker thereof.

(b) The term security, when used in this act, includes the stock, stock certificates, bonds, and other evidences of indebtedness, other than promissory notes not offered to the public by the maker thereof, of an Investment Company.

(c) The term Investment Broker, when used in this act, includes every corporation, association, copartnership, company and person who shall, within this State, engage in the business of selling, offering for sale or negotiating for the sale of, the securities of Investment Companies.

(d) The term Agent, when used in this act, includes every corporation, association, copartnership, company and person who shall, within this State, sell, offer for sale, negotiate for the sale of, or take subscriptions for any security of an Investment Company, as an employee on a salaried basis or for a commission, if acting either for an Investment Company or for an Investment Broker.

(e) The term sale, when used in this act, means the original transfer of title of its own securities from an Investment Company for a valuable consideration.

Sec. 3. This act shall not apply to corporations, associations, copartnerships, companies, firms or individuals when they are subject to the jurisdiction or authority of the Railroad Commission, nor to corporations, associations, copartnerships, companies, firms or individuals after they have secured from the State Banking Department, the Insurance Commissioner or the Bureau of Building and Loan Supervision a certificate of authority or license to do business within this State, nor to corporations, associations, copartnerships or companies, subject to federal regulation, nor to those not organized for profit, nor to mutual water companies, nor to irrigation districts, nor to municipal corporations, nor to the stocks, stock certificates, bonds or other evidences of indebtedness of such corporations, associations, copartnerships, companies, firms or individuals, nor to the securities described or referred to in section 635-A of the Political Code.

Sec. 4. (a) Before selling, offering for sale, negotiating for the sale of, or taking subscriptions for any security defined in this act, each Investment Company shall file in the office of the Auditor of Investments of this State, together with a filing fee, as hereinafter provided, an itemized statement setting forth the name of the Investment Company; its principal place of business; the amount and character of its assets; the amount and character of its obligations; and the names of its officers and of its directors or trustees, or the names of its partners, if it be a copartnership. The above described statements shall be verified by the oath of a member of the copartnership or company if it be a copartnership or company, or by the oath of a duly authorized officer thereof, if it be an incorporated or an unincorporated association. Also, there shall be filed, together with said statement, a copy of all forms of securities which such Investment Company proposes to sell to the public, a certified copy of its charter, articles of incorporation or articles of association and all amendments thereto, and a certified copy of its by-laws and all amendments thereto. Said filing fee shall be five dollars, if the par or face value of said securities amount to twenty-five thousand dollars or less; ten dollars if the par or face value of said securities amount to over twenty-five thousand dollars and not over fifty thousand dollars; fifteen dollars if the par or face value of said securities amount to over fifty thousand dollars and not over seventy-five thousand dollars; twenty dollars if the par or face value of said securities amount to over seventy-five thousand dollars and not over one hundred thousand dollars; and twenty-five dollars if the par or face value of said securities amount to over one hundred thousand dollars.

(b) If an Investment Company desire not to sell its securities to the public the Auditor of Investments shall file a written finding to that effect. Upon the filing of said finding the Investment Company and its securities shall be exempt from the provisions of this act unless said Investment Company shall sell

its securities to the public, whereupon the Auditor of Investments shall make and file an order setting aside said finding.

(c) Also, if such Investment Company be organized or created under or by virtue of the laws of any other state, territory or government, it shall file in the office of the Auditor of Investments, a certified copy of the statute or statutes or legislative or executive or governmental act or acts creating it, in cases where it has been created by statute or legislative or executive or governmental act, said copy to be duly certified by the official authorized by the law of the jurisdiction under which said corporation is formed to certify such copy; also such Investment Company shall file in the office of the Auditor of Investments its written instrument, irrevocable, appointing the Auditor of Investments its true and lawful attorney, upon whom all process in any action or proceeding against it may be served with the same effect as if said company were organized or created under the laws of this State and had been lawfully served with process therein. Service upon said attorney shall be deemed personal service upon such company. The Auditor of Investments shall forthwith forward by mail, postage prepaid, to the person designated by such company by written instrument filed with the Auditor of Investments, to the address given in said instrument, or, in case no such instrument has been filed, to the secretary of such company at its latest known post office address, a copy of every process served upon him under the provisions of this section. For each copy of process, the Auditor of Investments shall collect the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of such service, to be recovered by him as part of his costs, if he succeed in the suit or proceeding. Service shall be deemed not complete until said fee has been paid, and said copy of process mailed as hereinbefore directed.

Sec. 5. It shall be the duty of the Auditor of Investments to examine the statement and other information so filed, and, if it appear to said Auditor of Investments from said statements that said company be in an unsafe or in an insolvent condition, to make, or to have made, at the cost of said company as hereinafter provided, a detailed examination, audit and investigation of the Investment Company's affairs. Such Investment Company shall pay to the Auditor of Investments, for each examination, traveling expenses, and a fee of ten dollars for each day or fraction thereof that he or his deputy shall necessarily be absent from his office for the purpose of making such examination, and failure or refusal of any Investment Company to pay such fee upon demand of the Auditor of Investments shall work a forfeiture of its rights to sell any further securities in this State until such fee shall have been paid to the Auditor of Investments, with interest at the rate of seven per cent per annum from the time of the demand of the Auditor of Investments and an additional twenty-five per cent of such fee by way of penalty. If the Auditor of Investments, upon such examination, finds said Investment Company to be violating the provisions of its charter or of the laws of this State provided for its government, or to be conducting its business in an unsafe or in an unauthorized manner, he may, by an order addressed to the said Investment Company so offending, direct a discontinuance of such violations or unsafe practices and a conformity with all the requirements of law; and if such Investment Company refuse or neglect to comply with such order within the time specified therein; or if it appear to the Auditor of Investments, at any time, that any such Investment Company is in an unsafe condition, or is conducting its business in an unsafe manner, so as to render its further proceeding hazardous to the public or to those having funds in its custody, he shall notify the Attorney General of the State of California of such facts and shall furnish to him a statement showing the condition of such Investment Company, as the same may have been found by him to exist; at the same time he shall notify the officers of such Investment Company of the fact of such notification having been given and of such statement having been furnished and direct them to cease the transaction of new business, and to hold all moneys, securities and property intact, pending the action of the Attorney General on such report. The Attorney General shall thereupon apply to the superior court of the county in which said Investment Company has its principal place of business to issue a mandamus pending such action on his part requiring compliance with said instructions of said Auditor or to issue an injunction restraining it, in whole or in part, from further proceeding with its business until a hearing shall be had. Such court may, upon such application, issue such mandamus or injunction in whole or in part, and after a full hearing, it may dissolve it or it may modify it, or it may make it perpetual, and it may make such orders and such decrees according to the course of proceedings in equity to restrain or to prohibit the further prosecution of business by such Investment Company as may be needful in the premises; and it may appoint one or more receivers to take possession of the property and of the effects of such Investment Company, subject to such directions as may from time to time be prescribed by the court; or it may, by its decree, order and direct that, in lieu of the appointment of a receiver, the business and affairs of such Investment Company be liquidated by a board of trustees equal in number to its board of directors, or partners, if it be a copartnership, said board of trustees to be elected by the stockholders, or partners, if it be a copartnership, at a meeting thereof, to be called for such purpose and to be held within two weeks after the first Monday succeeding the date of such order and decree; such meeting to be called and to be held on the order of the Auditor of Investments, who shall be present and who shall preside thereat until such election shall be had; whereupon he shall report the result to the proper court, and thereupon the term of office of the existing board of directors and of all the officers, or partners, if it be a copartnership, of such Investment Company shall cease and shall determine.

Sec. 6. The provisions of sections four and five of this act, in so far as applicable, shall apply to Investment Brokers.

Sec. 7. It shall be unlawful for any Investment Company, Investment Broker or Agent to issue, to circulate or to deliver any advertisement, pamphlet, prospectus, circular or statement or other similar document in regard to securities which are to be sold in this State unless the same shall be signed with the name of the Investment Company or of the Investment Broker and shall bear a serial number, and a copy thereof first shall have been filed with the Auditor of Investments. The Auditor of Investments may for cause object to any such advertisement, pamphlet, prospectus, circular, statement or other similar document, whereupon it shall be unlawful for any such Investment Company, Investment Broker or Agent further to circulate or to deliver such advertisement, pamphlet, prospectus, circular, statement or other similar document.

Sec. 8. (a) Every Investment Company shall file in the office of the Auditor of Investments, under date of December 31st and of June 30th of each year, and within fifteen days after said dates, respectively, a report setting forth the name of the company; its principal place of business; the amount and character of its assets; the amount and character of its obligations; and the names of its officers and of its directors or trustees or partners, if it be a copartnership, together with a copy of all amendments to its charter, articles of incorporation, or articles of association, or by-laws which may have been made subsequent to the filing of its latest prior statement. The above described statements shall be verified by the oath of a member of the copartnership or company, if it be a copartnership or company, or by the oath of a duly authorized officer thereof, if it be an incorporated or an unincorporated association.

(b) Also, at the time of filing such statement every Investment Company shall publish a condensed statement of its financial condition, at least once, in a newspaper of general circulation, published in the city or town where the principal place of business of such Investment Company is located, and if no newspaper be published in the place designated as the principal place of business of such Investment Company then the publication may be made in some other newspaper published in the county, if there be one, and if there be none, then in a newspaper published in an adjoining county of this State. Said statement shall contain such items as shall show the actual financial condition of such Investment Company, and shall be verified.

Sec. 9. All papers, documents, reports and other instruments in writing filed with the Auditor of Investments under this act shall be open to public inspection; provided that, if in his judgment the public welfare or the welfare of any Investment Company demand that any portion of such information be not made public the Auditor of Investments may withhold such information from public inspection for such time as in his judgment be wise.

Sec. 10. Any person who knowingly or wilfully shall subscribe to or shall make or shall cause to be made any false statement or false entry in any book of any Investment Company or of any Investment Broker, or who shall exhibit any false paper with the intention of deceiving any person authorized to examine into such affairs, or who knowingly or wilfully shall make or publish any false or any misleading statement of financial conditions or concerning securities offered for sale, shall be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars or by imprisonment in a county jail not to exceed one year or by both such fine and by such imprisonment.

Sec. 11. Any person, corporation, association, copartnership or company which shall violate or which shall fail to comply with any of the provisions of this act shall be subject to a penalty of not less than five hundred dollars nor more than two thousand dollars for each and every offense, which penalty if unpaid after demand by the Auditor of Investments shall be recovered in an action brought in the name of the people of the State of California by the Attorney General of said state.

Sec. 12. There is hereby created the office of Auditor of Investments. The Auditor of Investments shall be appointed by the governor and he shall hold office at the pleasure of the governor. He shall receive a monthly salary at the rate of six thousand dollars a year to be paid from the state treasury upon a warrant of the Controller. He shall within fifteen days from the time of notice of his appointment take and subscribe to the constitutional oath of office and file the same in the office of the Secretary of State and he shall execute to the people of the state

a bond in the penal sum of twelve thousand dollars with corporate security or two or more sureties, to be approved by the governor of the state, for the faithful discharge of the duties of his office.

Sec. 13. The Auditor of Investments shall employ such clerks and such deputies as he may need to discharge in proper manner the duties imposed upon him by law. Neither the Auditor of Investments nor any of his clerks nor deputies shall be interested in any Investment Company, or Investment Broker, as director, stockholder, officer, member, agent or employee. Such clerks and deputies shall perform such duties as the Auditor of Investments shall assign to them. The Auditor of Investments shall fix the compensation of such clerks and deputies; which compensation shall be paid monthly from the treasury of the state upon the certificates of the Auditor of Investments and upon the warrants of the Controller; provided, however, that the total expenditure provided for in this act shall not exceed the sum of thirty thousand dollars a year. Each deputy within fifteen days after his appointment shall take and shall subscribe to the constitutional oath of office and shall file the same in the office of the Secretary of State.

Sec. 14. The Auditor of Investments shall have his office in the city of Sacramento and he shall from time to time obtain the necessary furniture, stationery, fuel, light and other proper conveniences for the transaction of his business, the expenses of which shall be paid out of the state treasury on the certificate of the Auditor of Investments and the warrant of the Controller.

Sec. 15. A fund is hereby created to be known as the Investment Auditor's fund and out of said fund shall be paid all the expenses incurred in and about the conduct of the business of the Auditor of Investments, including the salary of the Auditor of Investments and of his clerks and of his deputies, traveling expenses, furniture and rent. All moneys collected or received by the Auditor of Investments under and by virtue of the provisions of this act shall be delivered by him to the Treasurer of the State, who shall deposit the same to the credit of said Investment Auditor's fund. All such fund so deposited or such part thereof as may be necessary for the purposes of this act hereby are appropriated to the use of the Auditor of Investments for the purposes of this act. It shall be the duty of the Auditor of Investments semi-annually to certify under oath to the State Treasurer and to the Secretary of State the total amount of receipts and of expenditures of the Auditor's Investment fund for the six months preceding. All fees and payments of every description required by this act to be paid to the Auditor of Investments shall be paid by him to the State Treasurer on the first day of each month following their receipt by the Auditor of Investments.

Sec. 16. The Auditor of Investments shall adopt a seal bearing the words Auditor of Investments, State of California, and such other device as the Auditor of Investments may desire, by which he shall authenticate the proceedings of his office. Certified copies of all records and papers in the office of the Auditor of Investments shall be received as evidence in all cases equally and with like effect as originals.

The Auditor of Investments shall charge customary fees for certifying to copies of papers filed in his office.

Sec. 17. Any Investment Company, Investment Broker or Agent complying with the requirements of this act may sell securities or perform any other act permitted under the provisions hereof.

Sec. 18. The office of Commissioner of Corporations shall not exist in this state.

Sec. 19. If any section, sub-section, sentence, clause or phrase of this act be, for any reason, held unconstitutional, such decision shall not affect the validity of the remaining parts of this act.

Sec. 20. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 21. The sum of ten thousand dollars is hereby appropriated from any moneys in the state treasury not otherwise appropriated for the purpose of putting this act into effect.

Sec. 22. The provisions of this act shall constitute the entire and only law of this state upon or relating to the subject matter or matters dealt with in or by this act, and they shall operate as a complete substitute for, and shall be deemed to be amendatory of all other provisions of or in any and all other laws of this state relating to such subject matter or matters, whether heretofore existing, or approved or adopted prior to or concurrently with the adoption or approval of this act.

SIGNATURE OF ELECTOR	RESIDENCE Street and Number	Town or City	Precinct	District
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File: 1914-5-2