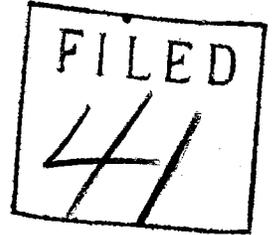


TRUST COMPANIES: Trust companies are not authorized
INVESTING IN STOCK: to invest in the stock of small loan
OF SMALL LOAN : companies.
COMPANIES. :

May 16, 1941.

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Mr. R. W. Holt
Commissioner of Finance
Jefferson City, Mo.



Dear Mr. Holt:

This in reply to yours of recent date, wherein you request an opinion from this department on the following question which was submitted to you by Mr. Joseph Boxerman of St. Louis, Missouri. Mr. Boxerman's statement and request is as follows:

"I represent a bank which has under consideration to change to a Trust Company, and would like to have the interpretation of your department of Section 5429 R. S. Mo. 1929, Paragraph 9, which provides that a Trust Company shall not invest or keep invested in stock of any private corporation an amount in excess of 15% of the capital and surplus fund of such Trust Company, but, that this limitation shall not apply among other things to the ownership by such Trust Company of a part or all of the capital stock of a corporation, organized under the laws of this State, for the principal purpose of issuing debentures or loaning money on real estate or dealing in or guaranteeing the payment of real estate securities, or investing in other securities in which Trust Companies may invest under the Chapter pertaining to Trust Companies.

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"Particularly, I am interested to know whether a Trust Company can own a part or all of the capital of a loan company, organized under the Loan and Investment Act. I believe that the Industrial Loan Company and the Industrial Bank and Trust Company, located at 901 Washington Avenue, this City, has a somewhat similar arrangement to which I make reference."

The answer to your request will depend on the statutes under which trust companies act in this state. Section 8024, Article 3, Chapter 39, R. S. Mo. 1939, states the powers and purposes of trust companies organized in this state.

Subsection 1 of this section, authorizes such companies to receive money in trust and to pay interest thereon.

Subsection 2, authorizes them to receive for and hold on deposit personal property for safekeeping.

Subsection 3, authorizes them to execute trusts.

Subsection 4, authorizes them to accept and hold, by order, judgment or decree of any court gifts, grants, assignments, transfers, devises or bequests and to execute trust agreements.

Subsection 5, authorizes them to execute bonds.

Subsection 6, authorizes them to act as agencies and authorities for persons or corporations in the management, or control of real or personal property.

Subsection 7, authorizes them to act as fiscal or transfer agent of the United States, or any state or subdivision thereof to receive and disburse money, to transfer, register and countersign certificates of stock, etc.

Subsection 8, authorizes them to execute trusts for married women in respect to their separate property, and to act as agent.

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Subsection 9, authorizes them to act as executor and trustee under a will, or as administrator with or without the will annexed, of the estate of deceased persons, or as guardians or curators of disabled persons.

Subsection 10, authorizes them to discount and negotiate promissory notes, drafts, etc; to buy and sell coin and bullion; to loan money on real estate and personal property; to execute and issue its notes; to pledge its mortgages on real estate held on its real estate subject to certain limitations.

Subsection 11, authorizes them to buy, invest in and sell bonds, and all kinds of negotiable paper issued by governmental agencies.

Subsection 12, authorizes them to accept for payment, at future dates, drafts drawn upon them by customers and to issue letters of credit subject to certain limitations.

Subsection 13, authorizes them to purchase and hold, for the purpose of becoming members of federal reserve banks, so much of the capital stock thereof as will qualify them for membership in such bank.

Subsection 14, authorizes them to purchase and hold real estate for certain purposes therein mentioned.

Subsection 15, authorizes them to purchase and subscribe for stock in the Federal Deposit Insurance Corporation.

Subsection 16, provides for the rights and liabilities of such trust companies, in case they do hold stock in a Federal Deposit Insurance Corporation.

We have particularly set out the provisions of said Section 8024, supra, and from these provisions it will be seen that the trust company does not have authority to invest in the stock of a small loan company. Section 8032 of Article 3 of Chapter 39, R. S. No. 1939, sets out the restrictions, on loans, purchases of securities and

liabilities to trust companies, of any persons. The only portion of this section, under which a trust company might make the investments inquired about in your request, is set out in Subsection 9 of said section. This reads as follows:

"Shall not invest or keep invested in the stock of any private corporation an amount in excess of fifteen per centum of the capital and surplus fund of such trust company; nor shall it purchase or continue to hold stock of another bank or trust company if by such purchase or continued investment the total stock of such other bank or trust company owned and held by it as collateral will exceed fifteen per centum of the stock of such other bank or trust company: Provided, however, that this limitation shall not apply to the ownership of the capital stock of a safe deposit company, the vaults of which are connected with or adjacent to an office of such trust company, nor to the ownership by such trust company or its stockholders of a part or all of the capital stock of one bank organized under the laws of the United States or of this state, nor to the ownership of a part or all of the capital of one corporation, organized under the laws of this state, for the principal purpose of receiving savings deposits or issuing debentures or loaning money on real estate or dealing in or guaranteeing the payment of real estate securities, or investing in other securities in which trust companies may invest under this chapter, nor to the continued ownership of stocks lawfully acquired prior to the first day of January, A. D. 1915."

The first part of this subdivision prohibits the trust company from owning stock of any private corporation in excess of fifteen (15%) per cent of the capital and surplus fund of such trust company. The proviso clause, at the end of Subsection 9 provides that the limitation in said Subsection 9 shall not prevent such trust company "from investing in other securities in which trust companies may invest under this chapter" (Chapter 39).

The only securities which trust companies may invest in under Chapter 39 are those mentioned in Section 8024, hereinbefore cited, and in Section 8032. Reviewing the provisions of Section 8032, we fail to find where a trust company would be authorized to invest in the capital stock of a small loan.

We refer you to our opinion, dated April 3rd, on the question of banks and banking and small loan business. In that opinion we refer to the Hadley case cited in 157 Mo. App. 557. That was a case in which a trust company was attempting to engage in the banking business. At l. c. 564 the court, in speaking of the powers of the trust company to engage in banking business, said:

"The ninth clause of section 1124, Revised Statutes 1909, authorizes trust companies 'to buy and sell all kinds of government, state, municipal and other bonds, and all kinds of negotiable and non-negotiable paper, stocks, and other investment securities.' The grant of authority to buy and sell stocks and other investment securities as commercial commodities carries with it neither the express nor implied authority to purchase the stock of other corporations for the purpose of controlling their management. (DeLavergne Co. v. German Savings Inst., 175 U. S. 40.) Nor to use the power conferred by law for the

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purpose of indirectly engaging in business activities forbidden to the corporation by the express provisions of the statute. The act of the Bankers Trust Company in controlling the management of the Kansas bank through the ownership of a large majority of the stock of the bank was not buying and selling stocks within the meaning of the statute, but was a clear and flagrant evasion and violation of the law. * * * * *

We think the authorities and reasoning used in the opinion, dated April 3rd, are applicable here and especially that portion of the opinion appearing on page 5, 6 and 7 thereof, and we respectfully refer you thereto. We are enclosing a copy of the opinion of April 3rd, with this opinion, in order that you may forward a copy of it to the attorney who made the request for this opinion.

CONCLUSION

From the foregoing, it is the opinion of this department that trust companies are not authorized to invest in and own any part of the capital stock of a loan company organized under the Loan and Investment Act of this state.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

TWB:LB
Encl.