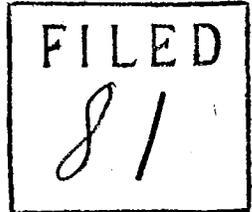


**BANKS--LIQUIDATIO.,
FIXING FEES AND
COMPENSATION OF
EMPLOYEES:**

It is the duty of the Commissioner of Finance to fix the fees and compensation of employees, in the first instance, in a bank liquidation. If this has not been done, the Circuit Court or the judge thereof in vacation, may fix such charges.

September 20, 1946



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Mr. H. G. Shaffner
Commissioner of Finance
Jefferson City, Missouri

Dear Commissioner Shaffner:

This will acknowledge your request for an opinion on the subject contained in your letter which is as follows:

"Honorable J. E. Taylor
Attorney General
Supreme Court Building
Jefferson City, Missouri

"Dear General Taylor:

"Prior to the time that the final liquidation of a bank is completed by the Special Deputy Commissioner, appointed by this Department, the writer is sometimes requested to approve the fees of the Special Deputy Commissioner and the attorney. In many cases these fees appear excessive. Since it is my desire to approve only such fees which, in my judgment, are fair, is it proper that I take such a stand?

Yours very truly,

H. G. Shaffner
Commissioner of Finance"

The request in your letter demands the consideration of the terms in Sections 7917 and 7918, R.S. Mo. 1939. Those sections were before our Springfield Court of Appeals in the case of Baynes v. Bank of Caruthersville, et. al., 118 S.W. 2, page 1051 on the question of the fixing and allowance of attorney's fees for counsel representing the Commissioner of Finance in the liquidation of a bank. Said sections were considered by the

St. Louis Court of Appeals in the case of Davis v. Knox County Savings Bank, 118 S.W. 2, 52, on the question of fixing the amount of compensation to be allowed a deputy commissioner in the liquidation of a bank.

The respective Courts of Appeals in each case, construed said sections on both of said questions, and the respective decisions rendered have made it clear and understandable what the intention of the Legislature was in enacting both of said sections. When the decisions hereinafter quoted were rendered, our present Sections 7917 and 7918 R.S. Mo. 1939, were Sections 5323 and 5324 R.S. Mo. 1929. In answer to the question of the fixing and allowance of attorney's fees we quote from the decision of the Springfield Court of Appeals in the Bank of Caruthersville case, 118 S.W. 2, 1.c. 1052 and 1053 as follows:

"That part of Sections 5323 and 5324, R.S. Mo. 1929 (Mo. St. Ann. Sec's. 5323, 5324 pp. 7552, 7553) applicable to the question is as follows:

'He (the Commissioner of Finance) may employ such expert assistants and counsel * * * as he may deem necessary in the liquidation. * * * Provided however, that no salaries or attorneys fees shall be paid unless approved by the circuit court, or judge thereof in vacation, which circuit court, or judge thereof in vacation, may refuse to approve any salaries or attorney's fees that he may deem exorbitant, and set a less fee or salary, which fee or salary shall be the amount paid.'

'The commissioner shall pay out of the funds in his hands * * * all expenses of liquidation, subject to the approval of the circuit court, or judge thereof in vacation. * * * He shall, in like manner, fix and pay the compensation of special deputy commissioners, assistants, counsel and other employes appointed to assist him in such liquidation pursuant to the provisions of this article.'

"(1) Admittedly, under this statute, the Circuit Court does not have jurisdiction to fix the fees of a deputy or lawyer in the first instance but it is the duty of the Commissioner of Finance to act on such matters

first, then the application or proposed payment must be submitted to the Circuit Court for its approval. Farmers' & Merchants' Bank v. Coleman, Mo. App., 9 S.W. 2d 549."

* * * * *

"Arkansas has similar statutory provisions (Pope's Digest of St. of Ark. 1937, Vol. I, Sec. 768) and that statute has been interpreted to mean that the Commissioner's employment of counsel is not binding without the court's approval and the trial court may reject a contract providing for a stipulated fee. Taylor, Bank Com'r v. Moose, 185 Ark. 856, 49 S.W. 2d 1043; Wasson, Bank Com'r v. Hunter et al., 187 Ark. 1071, 63 S.W. 2d 836. So, also, in the event that a Commissioner arbitrarily refuses to fix the compensation of his employees the court having jurisdiction of the liquidation may fix and approve the fees to be paid for services rendered. Oakley v. Davis et al., 142 Wash. 432, 253 P. 648."

In deciding the Knox County Savings Bank Case our St. Louis Court of Appeals, 118 S.W. 2, 52, in holding that the fixing of the compensation of a Deputy Commissioner for his services for liquidating a bank was, under the statutes, the original duty of Commissioner of Finance, l.c. 58, said:

"It has been held in Farmers' & Merchants' Bank v. Coleman, Mo. App., 9 S.W. 2d 549, that the circuit court has not the right to determine in the first instance the amount which deputy commissioners and assistants may receive for their services, but the Commissioner has the original right to set the compensation and it is then within the power of the circuit court to determine whether it is excessive or otherwise. In other words, the circuit court has not the original right to fix the compensation, but it will be noted that the circuit court undertook to do so in the instant case."

Following the authority of said Sections 9717 and 9718 and of the two cases cited, we believe it is clear that it is the duty

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of the Commissioner to fix the attorney's fees of counsel representing the Finance Department in the liquidation of a bank, in the first instance. The Circuit Court may only fix such fees and compensation, under the above cited cases, where the Commissioner and counsel, or the Commissioner and the Deputy Commissioner, as the case may be, do not agree upon such fees and compensation or where, from any cause, there have been no fees or compensation fixed by the Commissioner.

It is also quite clear that such fees and compensation shall not be paid by the Commissioner until the same have been approved by the Circuit Court, or the Judge thereof, having jurisdiction of the liquidation of a bank, in vacation.

CONCLUSION

It is, therefore, the opinion of this department that the Commissioner of Finance may fix and agree upon the fees and compensation to be paid to persons aiding him in the liquidation of a bank, under the terms of said Sections 7917 and 7918, R. S. Mo. 1939, and under the decisions of our Courts of Appeals, above cited and quoted. When such fees and compensation are fixed and agreed upon they must be submitted to the Circuit Court, or the Judge thereof in vacation, having jurisdiction of the liquidation of the bank for approval or disapproval.

It is further the opinion of this department that in the event there is no agreement made between the interested parties fixing the amount of such fees and compensation, or either of them, or if the Commissioner should refuse to fix such fees and compensation for his employees, then the party should present his claims before the Circuit Court, or the Judge thereof in vacation, and support the same with proof of the services performed and proof of what should be reasonable compensation therefor.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

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