

BANKS:

Commissioner of Division of Finance not authorized to issue license to mutual savings bank organized in the state of New York to conduct its business in this state.

July 31, 1950

Honorable H. G. Shaffner
Commissioner, Division of Finance
Department of Business and Administration
Jefferson City, Missouri



Dear Mr. Shaffner:

The following opinion is rendered in reply to your inquiry reading as follows:

"A savings bank organized and chartered in the State of New York proposes to buy G. I. and other Federally guaranteed loans in this State and to secure a person or firm in this State to service those loans.

"In buying and servicing those loans, they desire to have their action approved and are of the opinion that this Division is the one to issue such permit. In this connection they maintain Sections 7893 and 7992, Banking Laws, Missouri, 1939, would apply.

"May I be favored with an opinion which will state whether or not this Division has any responsibility and to what extent?

"For your information there is attached a statement showing corporate structure of such a savings bank."

Facts appearing in your request for an opinion disclose that a mutual savings bank organized and operating under the laws of the state of New York seeks to obtain a license from the Division of Finance permitting it to conduct a portion of its mortgage loan business in Missouri through an appointed resident agent in this state.

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Prior to the establishment of the state banking department as a separate administrative department of government in Missouri in 1907 (Laws of Missouri, 1907, page 124), Section 1025, R. S. Missouri, 1899, as amended in 1903 (Laws of Missouri, 1903, page 123) included the following provision: "* * * No corporation organized under the laws of a foreign state shall be licensed to engage in the banking business in any manner in this state."

The above-quoted portion of Section 1025, R. S. Missouri, 1899, as amended in 1903, has been brought forward through the intervening years in each revision of our state statutes and was included in the 1939 revision at Section 5074 of Article I, Chapter 33, R. S. Missouri, 1939, said article containing the general provisions of our laws relating to corporations. This particular prohibition has remained as a part of the corporation code of this state since 1903, and it has been changed, in its form only, as late as 1943 when this state adopted the General and Business Corporation Act of 1943 (Laws of Missouri, 1943, page 410.) For the purpose of this opinion it is not necessary to discuss the prohibition in its present form as directed to the Secretary of State as he administers the General and Business Corporation Act of 1943.

Section 7949, Article 2, Chapter 39, R. S. Missouri, 1939, has been a part of the code applicable to banks in this state since its enactment in 1915 (Laws of Missouri, 1915, page 113). So much of the section as is germane to the present inquiry reads as follows:

"Every corporation shall be authorized and empowered:

"1. To conduct the business of receiving money on deposit and allowing interest thereon not exceeding the legal rate or without allowing interest thereon, and of buying and selling exchange, gold, silver, coin of all kinds, uncurrent money, of loaning money upon real estate or personal property, and upon collateral or personal security at a rate of interest not exceeding that allowed by law, and also of buying, investing in, selling and discounting negotiable and non-negotiable paper of all kinds, including bonds as well as all kinds of commercial paper; and for all loans and discounts made, such corporation may receive and retain in advance the interest: Provided, however, that no bank shall maintain in this state a branch bank, or receive deposits or pay checks except in its own banking house." (Underscoring ours.)

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The prohibition contained in Section 7949, supra, against establishing branch banks in Missouri was reviewed by the Supreme Court of Missouri in 1923 in the case of State ex rel. Barrett v. First National Bank, 297 Mo. 397, wherein the attorney general of this state successfully resisted the efforts of a national bank to establish branches in this state. In the course of the opinion the court spoke as follows at 297 Mo. 1. c. 413:

"V. In this State the banking business can be conducted only by a corporation. Thus organized, the extent of its powers must, as we have said, be determined by the statute of its creation. The state banking act gives express recognition to this rule in providing that banks, whether incorporated under Federal or State law, can transact only such business as is permitted by the laws of the United States or of the State. (Sec. 11684, R. S. 1919.) Branch banks, not having been permitted by the state law either by express terms or necessary implication, the well recognized canon of construction will authorize the exclusion of this power from those granted. Reliance upon this rule is, however, unnecessary in the presence of a subsequent section (Sec. 11737, R. S. 1919) in which it is provided 'that no bank shall maintain in this State a branch bank or receive deposits or pay checks except in its own banking house.' The attempt, therefore, of the respondent to establish a branch bank is not only an act in excess of its corporate powers, but in violation of an express statute."

Considering that during a period covering forty-seven years no foreign banking corporation has been licensed to conduct its business in the State of Missouri, we conclude that the long-continued interpretation of Section 5074 and Section 7949, R. S. Missouri, 1939, as quoted supra, is in itself justification for denying a license to the mutual savings bank which has its corporate domicile in the state of New York. However, we need not rest our conclusion on this fact alone. Under the banking laws of Missouri it is mandatory that all banks and trust companies have a capital stock structure. A New York mutual savings bank operates without capital stock structure, and it is readily apparent that if it were licensed to do business in this state it would be unable to comply with the express provision of Section 7992, R. S. Missouri, 1939, with respect to stating in its application for a license "the amount of its capital actually paid in cash and the amount subscribed for and unpaid." We deem it necessary to set forth additional reasons for the conclusion hereinafter stated.

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CONCLUSION

It is the opinion of this department that the Commissioner of the Division of Finance is not authorized under the banking laws of Missouri to issue a license to a mutual savings bank organized under the laws of the state of New York to conduct its business in Missouri.

Respectfully submitted,

JULIAN L. O'MALLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General