

BANKS: Administrator holding shares of capital stock of bank in his official capacity as administrator does not own said stock "in his own right" so as to permit him to become a director of said bank under qualifications set forth in Section 362.245, RSMo 1949.



August 6, 1953

Honorable J. A. Rouveyrol
Commissioner of the Division of Finance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Rouveyrol:

The following opinion is rendered in reply to your recent request posing a question which may be restated as follows: May ownership of shares of a bank's capital stock, acquired by one who is an administrator of an estate, qualify such administrator to become a director of said bank in view of the requirements of Section 362.245, RSMo 1949?

Section 362.245, RSMo 1949, sets forth qualifications to be met by those who would become directors of banks. Such statute provides, in part, as follows:

"4. Every director of a bank having a capital of twenty-five thousand dollars or over shall be a stockholder of the bank owning in his own right an amount equal to at least five shares, * *."

The words "owning in his own right" appearing in the quoted portion of the above statute are not ambiguous and seem to connote a definite and well recognized meaning, to-wit, absolute ownership. The word "owner" is treated in Ballentine's Law Dictionary, 1948 Edition, page 923, in the following language:

"Owner: When used alone, the word imports an absolute owner or one who has complete dominion of the property owned, as the owner in fee of real property. There may be a legal and an equitable estate; the trustee and the cestui que trust are both owners. He is the owner of property who, in case of its destruction, must sustain the loss of it."

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In the case of Byers et al. v. Weeks, 79 S.W. 485, 105 Mo. App. 72, l.c. 77, we find the rule touching the character of title an administrator acquires to personalty of an estate, as follows:

"The rule that personalty descends to the administrator is but a fiction of law invented for convenience and the benefit of creditors. His title is not absolute, it is a qualified one. He holds as trustee merely for creditors and distributees. And when the debts of the estate are paid, the residue by law descends to the heir at law. The heir at all times has an equity in such property subject to the trust title of the administrator."

From the foregoing definition of "owner" and in light of the rule relative to an administrator's title to personalty of an estate, the conclusion may properly follow that an administrator holding shares of capital stock of a bank in his capacity as administrator, does not own such stock "in his own right" as such term is used in Section 362.245, RSMo 1949.

CONCLUSION

It is the opinion of this office that an administrator who holds shares of stock of a bank in his capacity as administrator does not own such stock "in his own right" so as to qualify him to be a bank director under the qualifications set forth in Section 362.245, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON
Attorney General

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