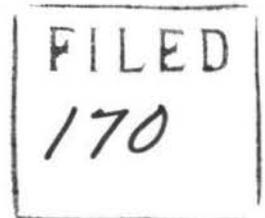


March 27, 1974

OPINION LETTER NO. 170  
Answer by letter-Klaffenbach

Honorable Keith Barbero  
Representative, District 54  
Room 101D, Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Barbero:

This letter is in answer to your question asking whether Section 5 of House Bill No. 1798, which is presently pending in the Second Regular Session of the 77th General Assembly, is constitutional. Such section provides:

"5. No bank, trust company or bank holding company organized or based in any other state or county [sic] shall operate any business of any kind from an office in this state, directly or indirectly, unless the office was in operation on January 1, 1973, or unless it is proved affirmatively that such operation supplies a function or service not furnished by any company or other supplier located within this state and its application to operate in this state has been approved by the commissioner of finance."

It is a well-settled principle of constitutional construction that only when there is a clear conflict between a legislative enactment and the Constitution are the courts warranted in declaring the law to be void. In the Matter of Burris, 66 Mo. 442, 450 (1877); Borden Company v. Thomason, 353 S.W.2d 735, 743 (Mo. 1962).

Although the bill is pending and is not law, we believe that this general principle of construction is applicable. In addition,

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bearing in mind that you require an immediate response to your question, we have narrowed our analysis of the constitutional considerations involved to the prohibition against retrospective legislation which is found in Section 13, Article I of the Missouri Constitution.

In Graham Paper Co. v. Gehner, 59 S.W.2d 49, 50 (Mo. Banc 1933), the Missouri Supreme Court stated that:

"In Bartlett v. Ball, 142 Mo. 28, 36, 43 S.W. 783, 785, this Court said: 'Nor is it to be forgotten that retrospective laws are forbidden, eo nomine, by our state constitution; and when this is the case it is immaterial whether or not the act interferes with vested rights. Colley, Const. Lim. (6th Ed.) pp. 454, 455; Black, Const. Law, par. 197, p. 543. . . .'"

However, other Missouri decisions such as State v. Nolte, 165 S.W.2d 632, 638 (Mo. Banc 1942) have held that:

". . . The term retrospective law, however, in the State Constitution has a wider significance and the provision last cited is closely analogous to the obligation of contracts clause of §10, Art. I of the Constitution of the United States. Both of these provisions apply to laws which take away the vested rights of individuals after those rights have been acquired. McManus v. Park, 287 Mo. 109, 229 S.W. 211; Gibson v. Chicago, Great Western R. Co., 225 Mo. 473, 125 S.W. 453; Clark v. Kansas City, St. L. & C. R. Co., 219 Mo. 524, 118 S.W. 40. It is impossible to see how any vested rights were impaired by this Liquidator Act. . . ."

Thus, it appears that, despite the apparent holding in the Graham Paper case, quoted above, a statute is not retrospective in its operation within the terms of the Constitution unless it impairs some vested right. See Annotations, V.A.M.S. "Bill of Rights," Article I, Section 13, pages 595-596.

Viewing the provision in question on its face, it is difficult for us to understand the significance of the date of January 1, 1973, and its apparent exclusion of the operation of ". . . any business of any kind from an office in this state, directly or indirectly, unless the office was in operation on January 1, 1973, or . . ." Therefore, we view such legislation as questionable.

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Since this bill is still pending legislation and inasmuch as this office may be required to defend such provisions, if enacted into law, we believe it would be inappropriate for this office to arrive at a general conclusion with respect to the constitutional questions. We assume in the premises that the General Assembly, being knowledgeable of the constitutional limitations placed upon it, will act accordingly.

Yours very truly,

JOHN C. DANFORTH  
Attorney General