

COMMISSIONER OF FINANCE:

Expenses of Department
chargeable to closed institutions

5301-27-24 RS Mo 1929 ✓

March 10, 1933

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Honorable O. H. Moberly
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Moberly:

We acknowledge receipt of your letter dated
March 10, 1933, as follows:

"The enclosed copy of my letter of March 2nd,
addressed to Mr. W. F. Keyser, Secretary of
the Missouri Bankers Association, his reply
thereto and the opinion of the Attorneys for
the Association are largely explanatory.

The last paragraph of my letter to Mr. Keyser
I am sure explains why I asked for an opinion
from the Attorneys for the Association prior
to seeking an opinion from you. The fact is
that, before taking any action whatever in this
matter, I wanted to be sure of the cooperation
of the Missouri Bankers Association. I make
this statement in the form of an explanation
as well as an apology for my action in seeking
the opinion herein referred to prior to requesting
an opinion from you.

The only source of revenue of any consequence
for the benefit of the office expenses of this
Department has heretofore been the fees derived
from bank examinations. Under present
conditions and the conditions that have existed
for some time past the attention of practically
our entire force of Examiners is required in
matters of bank liquidation. It seems only
proper that such institutions should bear their
proportionate part of the expenses of the office
and, having the approval of the Missouri Bankers
Association and the opinion of its Attorneys, I
hope I may also receive the approval of your Department
to this action, which seems necessary if the Department
of Finance is to properly function in the future.

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Your immediate attention to this matter will be greatly appreciated".

Section 5301, Revised Statutes Missouri, 1929, requiring the examination of banks and trust companies in this state by the Commissioner of Finance, provides that the Commissioner shall at least once in each and every year, in person or by deputy or by examiners appointed by him, examine every bank and trust company organized and doing business in this state, as well as every private banker who is required to report to the Commissioner and every other corporation required to report to you; also, the Commissioner through his deputies or examiners, has the power to examine banks, savings and deposit institutions, trust companies, private bankers and other corporations, whenever, in the judgment of the Commissioner it may be deemed necessary or expedient so to do. The above section further empowers the Commissioner to make such special investigations as he may deem necessary to determine whether any individual or corporation has violated any of the provisions of Chapter 34. Section 5301 further providing:

"Such examination may be made and such inquiry instituted or continued in the discretion of the commissioner after he has taken possession of the property and business of any such corporation or banker, until it shall resume business or its affairs shall be finally liquidated in accordance with the provisions of this article. The expense of every annual or special examination shall be paid by the bank, private banker, savings and safe deposit institution, trust company or such other corporation examined in such amount as the commissioner shall certify to be just and reasonable, and for the purpose of this section such institutions are hereby denominated banks".

The above quoted part of Section 5301 clearly authorizes the commissioner to continue the examination of the affairs of any institution entitled to be examined by him, after he has taken possession of the property and business of such institution and which examination may continue until such institution shall resume business or until its affairs are finally liquidated, which expressly authorizes the commissioner to remain in charge of a closed bank and continue his investigation and examination until the liquidation thereof has been completed. The authority above referred to precedes the provisions in Section 5301 for the payment to the commissioner of his expenses and fees. It is further provided in Section 5301:

"The aggregate sum collected from the banks, private bankers, savings and safe deposit institutions, trust companies and other corporations shall be reckoned upon a basis sufficient to cover the entire expenses of the department of banking, including salaries of officers and employees, traveling expenses of the commissioner, his deputy and examiners, and the preparation of the reports and all other expenses made necessary by this chapter. Any special expenses incurred and services performed on account of any such corporation or banker, or on account of any foreign corporation or its agency to which this chapter is applicable, outside of the expense of any annual or special examination shall be charged to and paid by the corporation or banker for whom they were incurred or performed".

We think the last quoted part of Section 5301, taken in connection with the first quoted part thereof, authorizes the Commissioner of Finance to charge against and collect from a bank in liquidation the charges provided for in the last quoted part of Section 5301.

Section 5323 Revised Statutes 1929, authorizes the commissioner to appoint one or more special deputy commissioners as agent or agents to assist him in liquidating the business and affairs of closed banks or trust companies and that the commissioner may delegate such special deputy commissioners to perform such duties connected with such liquidation as the commissioner may deem proper and the commissioner may employ such expert assistants and counsel as he may deem necessary in the liquidation and distribution of the assets of the closed institutions. No reference is made in Section 5301 to special deputies, the evident purpose in authorizing the commissioner to appoint a special deputy was to enable the commissioner to delegate to some other person such duties as it was not practical for the commissioner or his regular office force to perform in connection with the liquidation of a closed bank or trust company.

Section 5324 authorizes the commissioner to pay out of the funds of a closed bank or trust company being liquidated by him the expenses of liquidation. There is no reason to say or believe that this expense would be limited to the expense of the special deputy or such force as he might necessarily employ in the bank, because it is further provided in Section 5323 that the Commissioner shall fix and pay the compensation of special deputy commissioners, assistants and counsel and other employees appointed to assist him in such liquidation, which

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doubtless refers to the appointments entitled to be made under Section 5323, and further, the provision for the payment of such special deputies, assistants and counsel is in addition to the expenses of liquidation theretofore provided for in Section 5324.

We are of the opinion you have the authority to pay out of the assets of a closed institution, being liquidated by you, its fair proportion of the expense of your office and appointees made necessary by the liquidation of such institution.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

Attorney General

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