

April 22, 1933



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

Dear Sir:

We are in receipt of your letter of April 19, 1933, which reads as follows:

"We are having many demands for release of funds in banks operating on a restricted basis, which funds would probably be classified as preferred claims in case the bank were being liquidated.

Heretofore we have refused to consider any preferences and I am wondering whether or not we are within our legal rights. I am enclosing herewith a letter that will give you some idea of the several demands made upon this department in this connection.

An early reply will oblige."

The enclosures show that a letter on April 7th was written to you telling the status of a deposit in the Sikeston Trust Company and that at the March term 1933, the Court ordered this sum paid to the receiver.

You answered this letter on April 11th telling him that the bank was on a restricted basis and that you could make no exception in this case.

Your letter was answered on April 15th wherein the writer, Ray B. Lucas, Attorney, disagreed with your position and filed a motion in the Circuit Court asking that said fund be turned over as the court previously ordered. The question presented being whether or not preferred claims of this claim, if it may so be classed, may be restricted by you.

Senate Bill 293 provides among other things the following:

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"\* \* \* and to authorize, direct and regulate the payment of any portion of the deposits in demand accounts as may be deemed necessary and expedient; ""\*

Senate Bill No. 293 gives you with the approval of the Governor, broad powers and it is a matter of discretion with you just so long as your discretion exercised is not unreasonable.

It is our opinion that you are within your legal rights to refuse to consider any preferences if you adopt that policy. Of course, if the court finds in this case that even though this bank is on a restricted basis that said fund should be paid, of course you will have to comply with its order, as said order would be authority for its payment.

We are returning enclosures forwarded in your letter.

Yours very truly,

JAMES L. HORNBOSTEL  
Assistant Attorney General.

APPROVED

ROY McKITTRICK  
Attorney General.

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