

BANKS AND BANKING: Preferred stock set out in articles of agreement must be subscribed and paid up before incorporation.

May 25, 1933 *AM*



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

Dear Sir:

We are in receipt of your letter of May 16th, 1933, which is as follows:

"An Attorney called at this office yesterday and submitted articles of incorporation for a trust company with a capital stock of \$100,000.00, represented by 1200 shares of common stock with a par value of \$50.00 per share, all subscribed for and paid up in cash, and 800 shares of preferred stock with a par value of \$50.00 per share, authorized but not issued and paid for in cash.

Paragraph 3 of Section 5412, Revised Statutes of Missouri, reads as follows:

"The amount of the capital stock of the corporation, the number of shares into which it is divided, and the par value thereof; that the same has been subscribed in good faith and all thereof actually paid up in lawful money of the United States and is in the custody of the persons named as the first board of directors or managers."

In view of the provision in Section 5412, Revised Statutes of Missouri, 1929, I will appreciate an opinion as to whether preferred stock can be authorized and not issued and paid for at the time a bank or trust company is incorporated.

Kindly give this matter your immediate attention

You ask if a trust company when it incorporates may authorize preferred stock and not have it issued or paid for at the time it is incorporated.

Section 5412 R. S. No. 1929, in part reads as follows:

"The articles of agreement mentioned in this article shall set out: * * *

3. The amount of the capital stock of the corporation, the number of shares into which it is divided, and the par value thereof; that the same has been subscribed in good faith and all thereof actually paid up in lawful money of the United States and is in the custody of the persons named as the first board of directors or managers." * * *

The words used in the above section are plain and unambiguous and should be given their usual and ordinary meaning. This section is likewise mandatory.

Thus a trust company seeking incorporation must set out the amount of its capital stock, how it is divided, the par value of the shares, and that such shares have been subscribed and all thereof actually paid up in lawful money of the United States.

Section 5414 R. S. No. 1929, provides in part the following:

"When any trust company shall have filed with the finance commissioner a certified copy of its articles of agreement and * * * the commissioner shall, before such trust company shall complete its incorporation, examine or cause an examination to be made, in order to ascertain whether the requisite capital of such trust company has been subscribed in good faith and paid in actual cash and is ready for use in the transaction of business of the proposed trust company." * * *

House Bill No. 653, a recently enacted law, provides for the issuance and sale of preferred stocks by banks, trust companies doing a banking business, and other financial institutions.

Section 3 of said Act (House Bill No. 653) reads as follows:

"Any bank, trust company, or other financial institution hereafter organized and incorporated under the laws of the State of Missouri for the purpose of doing a banking business, subject to control and supervision by the Finance Commissioner of the State of Missouri, may, in its articles of agreement for incorporation provide for the issuance and sale of its shares of preferred stock, subject to the provisions of this act."

Section 3 supra, uses this language:

"may, in its articles of agreement for incorporation provide for the issuance and sale of its shares of preferred stock, subject to the provisions of this act."

Therefore, if a trust company wishes it may provide for preferred stock in its articles of agreement, and if it does then such preferred stock would be subject to the provisions of Sections 5412 and 5414, supra, relative to being subscribed and paid for at time of incorporation. In other words, if the articles of agreement provide for preferred stock such stock must be subscribed for and paid up in lawful money of the United States before the completion of incorporation.

It is the opinion of this department that preferred stock cannot be authorized and not issued and paid for at the time a trust company is incorporated. But preferred stock if authorized or provided for must be issued or subscribed and paid for at the time a trust company is incorporated.

Yours very truly,

JAMES L. HORNBOSTEL,
Assistant Attorney General.

APPROVED

Attorney General.