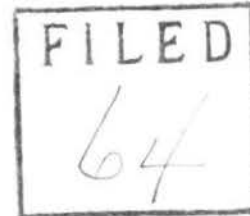


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BANKS & BANKING: Sec. 5312 R.S. of Mo. 1929 and subsequent sections thereto provide that the Commissioner of Finance must consider certificates of indebtedness issued in pursuance to said sections of the statutes as restoration of capital for the purpose of determining whether banks should be closed or not in the interest of creditors.

May 27, 1933. ⁵²¹



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

Dear Sir:

This department acknowledges receipt of a request for an opinion of even date herewith, which is as follows:

"I shall appreciate an opinion from you regarding the issuance and sale of Certificates of Indebtedness in accordance with Section 5312, Revised Statutes of Missouri, 1929.

Under Section 5312 Revised Statutes of Missouri, 1929, is this department required to consider the proceeds from the sale of certificates issued thereunder as capital of the bank or trust company, when the capital of such bank or trust company had become impaired?

For your information I am enclosing herewith a letter received from Honorable W.T. Jones, Attorney, St. Louis, Missouri, and desire to refer you to paragraph 3 on page 2 thereof. I also desire to refer you to copy of my reply to this letter under date of May 3, 1933.

Please return the enclosures with your opinion."

In reply thereto it is the opinion of this department that when the capital of a bank or trust company has become impaired and the amount of this impairment has been covered by proceeds from the sale of certificates of indebtedness issued under the provision of Sec. 5312 R.S. of Mo. 1929 and subsequent provisions, your department shall treat the capital of the bank or trust company as having been restored and the impairment made good.

The above in our opinion conforms to the intention of the Legislature as expressed in said section of the statutes of Missouri, as well as Secs. 5313 and 5314 R.S. of Mo. 1929. We believe that the purpose of said sections of the statutes of this state was to provide a method whereby banks with impaired capital could by protecting its creditors, remain in business through the sale of such certificates, and if that were the purpose, it appears to us that the only possible way such intention could be effectuated would be through the construction which has been adopted above.

In other words, if you are not under the above sections of the statutes to treat the capital of the bank or trust company as having been restored and the impairment made good, then it would be your duty in a case where such impairment had reached an unlawful point to close the bank, and we do not believe that that was the intention of the Legislature, but instead, that the intention of the Legislature is clearly to the effect that under such circumstances the bank is to remain open and hence, you will consider the funds received from such certificates as capital of the bank or trust company.

The above opinion is based upon principles announced in the following cases, among many other cases in Missouri, announcing like principle:

In STATE v. HACKMANN, 258 S.W. 1011, 302 Mo. 558, the following rule as quoted from 36 Cyc. 1128 is approved:

"In construing a statute, the legislative intent is to be determined from a general view of the whole act, with reference to the subject matter to which it applies, and the particular topic under which the language in question is found."

And in DODD v. INDEPENDENCE STOVE & FURNACE CO., 51 S.W. (2d), l.c. 118, the Supreme Court of Missouri said:

"In construing a statute, the evil sought to be remedied and the benefit intended to be conferred thereby should be considered. It is plain from the whole scope and tenor of the statutory provisions, of which the section in question forms a part, that the legislative purpose was to provide regulations for safeguarding the lives and health of laborers in occupations in which, without such safety regulations, they would be liable to injury or disease. Such statutes should be construed, so far as their language permits, with the view of effectuating their beneficent purpose."

Respectfully submitted,

POWELL B. McHANEY,
Assistant Attorney General.

APPROVED:

Attorney General

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