

COMMISSIONER OF FINANCE--Authority to appoint special deputy
to supervise liquidation and pro rate
expense to defunct institutions.

July 24, 1935 7.24



Hon. O. H. Moberly
State Finance Commissioner
Capitol Building
Jefferson City, Missouri

Dear Mr. Moberly:

We acknowledge receipt of your request for an
opinion of this office, parts of which reads as follows:

"I am enclosing herewith copy of a letter written
on June 15th to Mr. W. F. Keyser, Secretary,
Missouri Bankers Association, Sedalia, requesting
that he give consideration to the matter of appoint-
ing a Deputy or an Assistant in this Department,
whose duties would be the supervision of the Closed
Bank Division, in which we have at the present time
about three hundred and fifty banks."

"In order that these closed banks may have proper
supervision, I feel it urgently important that an
Assistant be appointed and that his salary and
expenses, as well as the salary of the young lady
in the office who devotes her entire time to the
Closed Bank Division, be paid by the closed banks
that are benefitted by this supervision."

"I shall be pleased to have an opinion from your
office as to whether or not we can pro rate the
salary and expenses of this Assistant and the
salary of the stenographer in the Closed Bank Di-
vision among the banks that are benefitted. In
this connection I wish to state that I think
thousands of dollars a year can be saved these
unfortunate institutions through proper super-
vision."

We are of the opinion that you have the authority
to appoint such an assistant under the provisions of Section
5323 R. S. of Mo. 1929, portions of which read as follows:

"The Commissioner may by certificate,
under his hand and official seal, appoint
one or more special deputy commissioners
as agent or agents to assist him in li-
quidating the business and affairs of any
corporation or private banker in his
*****"

It is apparent that the Commissioner is not limited to but one deputy for any institution, as the statute plainly authorizes the appointment of "one or more" such deputies. We take it as a settled matter that a special deputy may assist in liquidating more than one institution, as there is nothing in the chapter contrary to such an appointment, and such has been the practice of the Department for many years. So, although a Special Deputy may be the liquidating agent of a particular institution, his capacity to act as such agent is only limited by the Commissioner in delegating matters to him.

We find that your suggestion is in accord with the Report of Defunct Banks and Trust Companies submitted to the 57th General Assembly by the Legislative Committee of the House of Representatives. (p.9)

"Fifth* * * that a special deputy be appointed in the office of the Finance Department in the State of Missouri, whose only duty it shall be to look after the matters pertaining to defunct banks and trust companies, looking towards a shorter period of liquidation at a minimum of expense and looking toward the curtailment of the current monthly expenses of liquidation."

Having determined that such an appointment is authorized by the Statutes, and undoubtedly expedient under present conditions, we shall next consider the method and manner of payment.

An examination of this Chapter shows that the Department of Finance is self-sustaining. In other words all expenditures shall be met from fees collected for services rendered. We find this clause in Section 5301 to the following effect:

"* * * * 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 employes, traveling expenses of the commissioner, his deputy and examiners, and the preparation of the reports and all other expenses made necessary by this chapter. * * *"

It is further apparent that it was the desire of Legislature to require these fees to be paid by those who received the benefit.

Insofar as the payment of fees by operating institutions is concerned, Section 5301 R. S. of Mo. 1929 provides as follows:

"Section 5301. * * * * 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." * * * *
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.
* * * *"

As the payment of fees or expenses by defunct or liquidating institutions is concerned, Section 5324, R. S. of Mo. 1929 provides as follows:

"Sec. 5324. PAYMENT BY COMMISSIONER OF EXPENSES OF LIQUIDATION.--The Commissioner shall pay out of the funds in his hands, of such corporation or private banker, all expenses of liquidation, subject to the approval of the circuit court, or judge thereof in vacation, in the county or city in which the principal office of such corporation or banker is located, and upon notice of the application for such approval to such corporation or banker. He shall, in like manner, fix and pay the compensation of special deputy commissioners, assistants, counsel and other employes appointed to assist him in such liquidation pursuant to the provisions of this article. * * * *"

July 24, 1933

From a reading of the foregoing, it is certain that there was not intention to limit the charges against defunct banks to the salary of the liquidating agent, expert assistants and counsel, for such expense is specifically provided for in the second sentence of the foregoing quotation.

We are of the opinion that the phrase "all expenses of liquidation" is sufficiently broad, and was meant and intended to include the expense of any and all appointees and employees made necessary by the liquidation of the institution by your department. There is no distinction to be made between those employees which are temporarily employed at the situs of the institution and those located at your office. Each is performing a service for the institution and the employment of each is necessitated by the liquidation. Such part of the salary of each employee as is properly chargeable to the defunct institution should be paid by such individual institution.

In your request, you did not definitely state in what manner you expected to pro rate these expenses. However, it is our opinion, that any expense which is charged to any defunct institution will be allowed by the judge of the Circuit Court of the county in which the institution is located, so long as the same is a reasonable charge for the services rendered or work done. We find nothing in Chapter 34 which would prohibit an equitable pro rating of these expenses, so long as such a pro rated charge could truly be included within the clause "all expenses of liquidation".

Respectfully submitted

HARRY G. WALTNER, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General