

**BANKS AND BANKING:** Proper parties to distribute special deposits in restricted banks.

September 28, 1933.



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

Dear Mr. Moberly:

Your letter of September 20th, received, in which you enclose a copy of a letter of date of March 14th, 1933, directed to all State banks which were put under restrictions in accordance with Laws of 1933, at pages 402 to 406, inclusive, and, to get the matter clearly outlined, both of your letters, March 14th, 1933 and September 20th, 1933, are herewith set forth:

"I am sorry to advise you that the condition of your bank, as we find it, does not appear to justify permitting you to open upon a normal basis and you will, therefore, be guided by the following restrictions:

1. Depositors, including demand, savings and time, may, for a period of six months, beginning with the date of opening, withdraw not to exceed five per cent of their deposits as at close of business March 3, 1933, provided that, if conditions justify, additional withdrawals may be permitted upon prior written consent from the Commissioner of Finance. In the case of time deposits, not exceeding five per cent may be paid upon maturity but not before maturity if maturity comes within the six months' period mentioned above. No time deposits are to be paid before maturity and the balance of ninety-five per cent may be renewed on the basis as heretofore, but, if the holders of time deposits do not wish to renew, they may deposit same as demand deposits, without interest, subject to restrictions for withdrawals as provided above.

2. During the period that the bank is operating under these restrictions, it is to create no additional bills payable without the prior written consent of the Commissioner of Finance.

3. The present outstanding bills payable should be liquidated as rapidly as possible from the collection or sale of collateral pledged as security therefor.

4. No amount is to be paid on bills payable out of new deposits coming into the bank after its opening under these restrictions.

5. Upon opening the bank new deposits may be received only from your present customers. Such new deposits shall be kept separate from the old or frozen deposits and shall be kept in cash or with some State Bank, approved by this Department as a reserve depository, and no part of such funds so deposited shall be loaned, except upon United States Bonds or other securities of the Government of the United States or upon the bonds of the State of Missouri as collateral, allowing a safe margin to meet fluctuations in the market price of such collateral. Such funds shall be considered trust funds and not an asset of the bank and shall be paid out on the check of such customers drawn against their respective balances.

6. Until further authorized, in writing, by the Commissioner of Finance, you shall make no new loans from old deposits or from collections on old loans made prior to March 4, 1933, but this shall not prohibit renewal of loans made prior to March 4, 1933, although it is strictly understood that all collections possible will be made on such loans and renewals accepted only where necessary.

7. These rules and regulations may be changed from time to time by the Commissioner of Finance or may be extended not beyond February 1, 1935.

8. These restrictions and regulations are made in accordance with the provisions of Senate Bill No. 293, of the General Assembly of the State of Missouri of 1933. Penalties provided in said Bill shall apply if any of the regulations or requirements therein set out are violated."

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"I am enclosing herewith a copy of a letter which was sent to all banks that were permitted to open under restrictions after the banking holiday in March, and wish to call your attention to paragraph 5 thereof, relative to the new deposits which these banks were permitted to accept as trust funds.

The question now arises as to how these new deposits or trust funds shall be paid to the depositors in case the bank passes into liquidation. In your opinion would the Special Deputy Commissioner appointed to liquidate the bank be permitted to pay out these funds immediately or would he be obliged to wait until the four months' period for filing claims had elapsed and these claims declared preferred claims by the Court? These funds, of course, were deposited with the understanding that they were not to be considered as assets in these banks.

In the event the Special Deputy Commissioner is not permitted to pay out these funds immediately, it will be necessary for the officers of the bank to pay out these deposits before the bank is placed in the hands of this Department for liquidation."

You ask for our opinion as to who should distribute the new special deposits or trust funds deposited in restricted banks under Section 5 of your official letter of March 14th, which is hereinbefore set forth.

For one to get a proper understanding of the matter and a fair interpretation one must have some knowledge of the trying times the financial institutions were going through with at that time and the unrest among the people relative to financial matters and moneys on deposit in our banking institutions. It was to the interest of all of the people that the confidence of the people in our banking institutions be restored. At the time your letter of March 14th was issued, as an official promulgation of the Commissioner of Finance of the State of Missouri, the restoration of the confidence of the people in our banking institutions was one of the guiding influences and the thing aimed at when said Section 5 of your letter was written.

Your request for an opinion as to whether these special or trust funds should be paid out by a special deputy commissioner of finance appointed to liquidate the bank, immediately, or would the depositors of these new deposits be obliged to wait until the four-months period, as required by statute for filing claims against closed banks, had elapsed and then these claims be declared preferences by a court of competent jurisdiction.

Of course, as stated in your letter, these funds were deposited with the understanding and agreement with the people so depositing said moneys that they were not to be considered as assets of these restricted banks and, with this distinct understanding, they deposited their moneys in these banks, thereby putting their moneys in the channels of trade and back into circulation, which was essential at that time.

It is the opinion of this Department that these special deposits, and they are in truth and in fact trust funds, should be paid out by the present officers of the bank before the bank is placed in the hands of the Commissioner of Finance for liquidation, and thereby not compel the depositors to wait four months time before receiving their moneys. However, in the event that all of these moneys had not been returned to the depositors at the time that the bank is placed in the hands of the Commissioner of Finance, and it is desirable that they should be paid out before that time, in our opinion, it would be proper and right for you to designate some person, and this might be the special deputy commissioner in charge of that particular bank,

to distribute these deposits to the rightful owners thereof, and in this way these funds would not be involved or commingled with the assets of the bank before the new deposits were taken.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK  
Attorney-General.

CRH:EG