

October 11, 1933.

10-13



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

Dear Mr. Moberly:

We are in receipt of your letter of September 20th, 1933, with request for an opinion from this Department, which letter is as follows:

"In some of the banks operating under restrictions a large percentage of the deposits represents public funds. In the particular cases brought to my attention these funds are secured by personal bonds of the directors.

Paragraph 3 of House Bill No. 91, found on page 405 of the Session Acts of 1933, reads in part as follows:

*** if said bank or trust company shall be permitted to continue in business, and, when said State Finance Commissioner shall approve a contract or plan whereby such bank or trust company is permitted to receive deposits, pay checks and continue to do a banking business, or reorganize, entered into between the depositors or (of) such institution, owning or controlling eighty-five percent or more of the deposits therein, which are not preferred claims, special deposits or deposits secured by bonds or collateral, on the one hand, and the bank or trust company or its board of directors on the other, then and in that event,

all other depositors and creditors shall be held to be bound by such contract or plan to the same extent and with the same effect as if they had joined in the execution thereof,
***.

In your opinion do public deposits, secured by personal bonds, come within the meaning of preferred claims, special deposits or deposits secured by bonds or collateral, and are they to be excluded from the eighty-five percent of deposits required to perfect the reorganization under said House Bill No. 91, the understanding being that these public deposits are to be paid in full."

Your request calls for a construction of the Laws of 1933, found at pages 404 to 406, inclusive, and particularly Section 3 of said statute. Replying to the question asked in the last paragraph of your letter will say that it is the opinion of this Department, assuming the constitutionality of said statute, that public deposits secured by personal bonds would, generally speaking, "come within the meaning of preferred claims, special deposits or deposits secured by bonds or collateral" found in said section 3, and should not be included in the eighty-five per cent of the deposits required to perfect the reorganization plan under this law, being House Bill No. 91, Laws of 1933, pages 404-406. Deposits secured by bonds or collateral mentioned in the statute we understand the word "bonds" refers to the personal bonds required to be given as security for public deposits in public depositories.

It is our opinion that it was the purpose and intention of the Legislature to permit a reorganization contract or plan whereby a bank or trust company is permitted to receive deposits, pay checks and continue to do a banking business when depositors of said institution owning or controlling eighty-five per cent or more of the deposits therein, excluding from this eighty-five per cent group those having preferred claims, special deposits or deposits secured by bonds or collateral, and when said plan is agreed to by the bank or trust company or its board of directors and approved by the Commissioner of Finance. The reason for excluding therefrom those which are

preferred claims, special deposits or deposits secured by bonds or collateral is that the claims being preferred and having preferences and security not possessed by the common depositors should not be permitted to hold up or block the common depositor, who is not so favored, in a reorganization plan.

Where the personal bonds securing the public deposits have been executed in a proper and statutory manner and approved by the proper public officials and complying with the statutes in every particular, they would not come within the eighty-five per cent group of depositors for the reason that their deposits are secured by a personal bond contemplated by the statute and if there was a non-compliance with the statute in the selection of the public depository the public funds would be within the term "preferred claims" as used in this statute for the reason that the public funds would be preferred on account of the non-compliance with the statute which, under the law, gives the county, city or school district, whichever the case might be, a preference. So, whichever way you take it, if the public deposits are properly secured by personal bonds they are excluded from the eighty-five per cent group and if they are not properly secured by personal bonds, executed and approved in the manner provided by the statute, they would have a preferred claim and therefore would be excluded from the eighty-five per cent group.

It is, therefore, our opinion that public deposits, secured by personal bonds, should not come within the eighty-five per cent group necessary in the reorganization plan or contract under said Section 3, Laws of 1933, at pages 404-406.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG