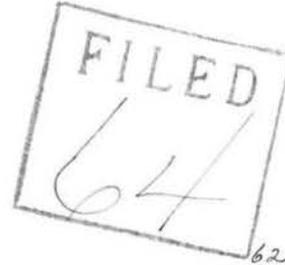


**BANKS & BANKING:**

May the capital of a new bank be provided by assignment of the assets of an old bank?

May the new bank adopt the name of the old bank?

December 4, 1933. 12-4



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

Dear Mr. Moberly:

This Department is in receipt of your letter of November 27th, 1933, with request for an opinion, which letter is as follows:

"The following facts concern a case which was brought to my attention recently:

Through oversight, a certain bank permitted its charter to expire and, as you know, the charter of a corporation must be extended during its life. The bank has been operating without a charter for several months and, since it cannot extend the corporate existence in the usual manner, the only recourse is to organize a new bank to continue the business of the expired corporation. Paragraph 3 of Section 5345, Revised Statutes of Missouri, 1929, states that the capital stock of a bank must 'actually be paid up in lawful money of the United States' but I am under the impression, since the new bank is to succeed the old bank, the articles of agreement may provide that instead of the capital stock being paid up in lawful money the same is being paid up by an assignment of the assets of the old bank. Of course, the incorporators must certify in the articles of agreement that the net value of such assigned assets is equal to at least the full amount of the stock of the new bank and this Department, as a result of an examination, must be satisfied that such assets are of such value.

I am also of the opinion, after reading Section 4589, Revised Statutes of Missouri, 1929, that the new bank may adopt the corporate name of

the old corporation, since it is organized to continue the business of the expired corporation.

I shall appreciate an opinion from you as to whether or not the capital stock of a bank organized to continue the business of an expired corporation may be paid up by an assignment of the assets of the old bank, as indicated above, and whether or not the new bank may adopt the corporate name of the old bank."

#### I.

Your letter of request is divisible into two questions, the first being whether or not the capital stock of a bank, organized to continue the business of a banking corporation whose charter has expired, may be paid up by an assignment of the assets of the old bank. It is our opinion that this question may be answered in the affirmative. In your letter you state that, "through an oversight, a certain bank permitted its charter to expire and, as you know, the charter of a corporation must be extended during its life." Upon the expiration of the charter of the bank in question the officers and directors of the bank became the trustees of the old bank and have by the assignment of said trustees and officers assigned all of the assets of the old bank to a newly created bank for the purposes of carrying on the business of this bank.

If the Commissioner is thoroughly satisfied of the solvency of the old bank, and that by the assignment of the assets of the old bank by the trustees of the old bank to the newly created bank, and the incorporators shall have certified in the articles of agreement that the net value of such assigned assets is equal to at least the full amount of the capital stock of such proposed bank, same may be approved by him. It is a matter largely within the discretion of the Commissioner of Finance and he should be satisfied beyond a reasonable doubt of the condition of the bank by an examination by himself, his deputies, or his examiners, that such assets are of such value and that the capital of said new bank is not impaired. It is our opinion that the assignment should be made not only with the approval of the officers and directors of the old bank but with the approval of all of the stockholders of the old bank.

#### II.

In the second question in your letter, that is, may the new bank adopt the corporate name of the old corporation, it is our

opinion that it may if some other corporation has not adopted the same since the expiration of the charter of the old bank, in which event, the corporate name would have been lost to the new bank. However, this is no doubt a remote possibility, and may be readily ascertained.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

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