

BANKS & BANKING:

Right of subrogation of Federal Deposit Insurance Corporation in event of failure of banks in Missouri.

5-14

May 12, 1934.



Hon. L. E. Birdzell  
General Counsel  
Federal Deposit Insurance Corporation  
Washington, D. C.

Dear Sir:

This Department is in receipt of your letter of recent date in which you requested an expression of our opinion relative to certain questions. For convenience, we are herewith setting forth a copy of your letter as follows:

"I write to solicit your cooperation in making more completely effective the provisions of the Banking Act of 1933, relating to the insurance of deposits. Adequate provision for the effective operation of the insurance requires definite answers from each State to the following questions:

1. Whether the laws of the State authorize or permit State banks, trust companies, or mutual savings banks, organized or doing business under the laws of the State, to purchase Class A Stock of the Federal Deposit Insurance Corporation and to assume the obligations incident to the ownership of such stock.

2. Whether the laws of the State authorize or permit this Corporation to be appointed Receiver of a State bank, trust company or mutual saving bank, organized or doing business under the laws of the State in the event the bank should be closed on account of inability to meet demands of its depositors.

3. In the event the law of the State does not permit the appointment of the Corporation as Receiver, how may the Corporation be assured of the enjoyment of its right to receive dividends on the same basis as in the case of a closed National bank? Will such recognition in your State: (a) be accorded by State law; (b) be evidenced by the allowance of claims by appropriate State authority; (c) be effected by assignment of claims by depositors; or (d) be accorded by some other method? Recognition in one or more of the forms indicated must be accorded before the amount of insured deposit liabilities so recognized can be made available in a new bank; hence the importance of knowing in advance which method may legally be sought and the most advantageous procedure for obtaining it.

For your convenience in considering these questions, as they may arise under the law of your State, I am enclosing a copy of the Banking Act of 1933 and will direct your attention particularly to subsections (d), (e), (f), (g), (h), (m), (n) and (y) of Section 12B of the said Act.

In the event any added legislation is required in your State to secure more effective operation of the insurance provisions of the Banking Act of 1933, I shall be very glad indeed if I may have an expression of your opinion to that effect, and as to how soon same may be secured. Also, if it should be necessary in your State to resort to one of the alternative modes of obtaining a recognition of the rights of this Corporation to receive dividends as indicated above, I shall very much appreciate an expression of your opinion as to which mode is the most practicable and desirable in view of the need that would exist for immediate recognition.

It will be evident to you, I am sure, that these questions are of the utmost importance, in that if and when occasion arises to pay losses, it will be immediately imperative that action be both expeditious and effective. "

\*\*\*\*\*

We wish to take up each of the questions asked in the same order as set forth in your letter and use the same subdivisions as you have used.

I.

Replying to your first question, will say that the Legislature at the 1933-1934, Extra Session, enacted legislation which provided for and authorized banks and trust companies to purchase stock of the Federal Deposit Insurance Corporation and to assume the obligations incident to the ownership of such stock.

Section 5354, of Article II, of Chapter 34 of the Revised Statutes of Missouri, 1929, relating to the rights and powers of banks, was amended at the 1933-1934, Extra Session of the Missouri General Assembly, in this particular as follows (Page 136, Laws of Mo., 1933-1934, Extra Session):

"3a. To subscribe for and purchase such stock in the Federal Deposit Insurance Corporation and to become a member of the Temporary Federal Deposit Insurance Fund and to make such payments to and to make such deposits with said Federal Deposit Insurance Corporation and to pay such assessments made by such corporation as will enable the bank to obtain the benefits of the insurance of deposits under the Act of Congress known as the 'Banking Act of 1933' and any amendments thereto."

Also, at the same session of the General Assembly, Section 5421 of Article II, Chapter 34 of the R. S. of Mo. 1929, and found at pages 140-141, Extra Session acts of 1933-1934, the law was amended as to trust companies purchasing stock in the Federal Deposit Insurance Corporation, and is as follows:

"15. Any trust company doing a banking business may subscribe for and purchase such stock in the Federal Deposit Insurance Corporation and may become a member of the Temporary Federal Deposit Insurance Fund and may make such payments to and make such deposits with said Federal Deposit Insurance Corporation and pay such assessments made by such corporation as will enable the trust company to obtain the benefits of the insurance of deposits under the Act of Congress known as the 'Banking Act of 1933' and any amendments thereto."

So, it will be seen that the Laws of Missouri have been amended to permit banks and trust companies to purchase stock in the Federal Deposit Insurance Corporation.

In your first question you inquire as to the authority of mutual savings banks in Missouri being authorized to purchase such stock.

Article V, Chapter 34, R. S. Mo. 1929, governing savings banks in this State, was not amended. But, upon inquiry at the Department of the State Finance Commissioner, we ascertained that there were no savings banks existing in Missouri chartered under Article V, supra; that all banks are chartered under Section 5354, and trust companies under Section 5421.

## II.

Replying to the second question asked in your letter, we do not think that under the Laws of Missouri the Federal Deposit Insurance Corporation may be appointed receiver, liquidator or

conservator of a state bank or trust company or mutual savings bank organized and doing business under the laws of this State in the event of a failure of such institution. Our State laws provide, under Section 5323, R. S. Mo. 1929, for the appointment of an individual, or individuals, as special deputy commissioners of finance, who under the law perform the functions of a receiver, liquidator, or conservator. This section further provides that a bank or trust company may be appointed special deputy commissioner of finance in charge of a failed bank and shall be fully authorized and empowered to do any and all acts and things which the Commissioner of Finance may deem necessary and advisable in liquidating the business and assets of a corporation or private banker in his possession.

We do not think that our statute authorizes the appointment of the Federal Deposit Insurance Corporation as receiver, liquidator or conservator of a bank or trust company or savings bank in Missouri in the event of failure.

### III.

Replying to your third question, will say that Section 5354, of Article II, Chapter 34, of R. S. Mo., 1929, relating to the rights and powers of banks, was amended, Laws of Missouri, 1933-1934, Extra Session, and found at page 136 thereof, and subdivision 3b was added thereto, which we hereafter set forth, viz.:

"3b. In order that banks organized under the Laws of the State of Missouri and the depositors thereof may have the same opportunity and enjoy the benefits of the Act of Congress known as the 'Banking Act of 1933' in relation to the insurance of deposits and all amendments thereto, as national banks, the Federal Deposit Insurance Corporation shall, with like force and effect as if the closed bank were a national bank, be subrogated to all the rights against a closed bank or private banker, of the owners of insured deposits therein and shall be entitled to receive such dividends from the process (proceeds)

of the assets of such closed bank as would have been payable to such depositor, until such dividends shall equal the insured deposit liability to such depositor; and the Federal Deposit Insurance Corporation may, if it shall deem it expedient or necessary so to do, present and procure the allowance of the claim or claims of any insured depositor or depositors, or may require insured depositors to make due proof of their claims or to assign their claims to said Federal Deposit Insurance Corporation, or to do any other act which may be deemed necessary or expedient to enable the Federal Deposit Insurance Corporation to fully avail itself of the above right to subrogation."

Also, Section 5421, Article II, Chapter 34, R. S. Mo. 1929, relating to the rights and powers of trust companies was further amended by adding thereto subdivision 16, Laws of Missouri, 1933-1934, Extra Session, found at page 143 thereof, which is as follows:

"In order that trust companies organized under the Laws of the State of Missouri and doing a banking business and the depositors thereof may have the same opportunity and enjoy the benefits of the Act of Congress known as the 'Banking Act of 1933' in relation to the insurance of deposits and all amendments thereto, as national banks, the Federal Deposit Insurance Corporation shall, with like force and effect as if the closed trust company were a national bank, be subrogated to all the rights against a closed trust company, of the owners of insured deposits therein and shall be entitled to receive such dividends from the proceeds of the assets of such closed trust company as would have been payable to such depositor, until such dividends shall equal the insured deposit liability to such depositor; and the Federal Deposit Insurance Corporation may,

if it shall deem it expedient or necessary so to do, present and procure the allowance of the claim or claims of any insured depositor or depositors, or may require insured depositors to make due proof of their claims or to assign their claims to said Federal Deposit Insurance Corporation, or to do any other act which may be deemed necessary or expedient to enable the Federal Deposit Insurance Corporation to fully avail itself of the above right of subrogation."

The above two subdivisions, 3b and 16, of Sections 5354 and 5421, respectively, provide fully that the Federal Deposit Insurance Corporation may be subrogated to all the rights against a closed bank or private banker or trust company of the owner or owners of insured deposits therein and shall be entitled to receive such dividends from the proceeds of the assets of such closed bank as would have been payable to such depositor; and the statutes further provide that the Federal Deposit Insurance Corporation may present and procure the allowance of claim or claims of insured depositor or depositors or the Federal Deposit Insurance Corporation may require the insured depositors to make due proof of their claims and to assign their claims to the Federal Deposit Insurance Corporation and do any other act which the Federal Deposit Insurance Corporation may deem necessary or expedient to enable it to fully avail itself of the rights of subrogation.

It will be seen that the above statutes afford ample machinery whereby the Federal Deposit Insurance Corporation may be protected. The corporation may require the insured depositor to assign his claim against the failed bank to the corporation before allowance or require the insured depositor to make due proof of his claim and have allowance made by the proper authorities and then assign the allowed claim to the corporation, in either event the assignee, Federal Deposit Insurance Corporation, would receive the dividends as they may become due and payable.

It would seem that the plan of having the insured depositor have his claim allowed by the proper authorities and then assign to the Federal Deposit Insurance Corporation the allowed claim might be preferable, the consideration for the assignment being

the payment to the insured depositor, the amount of his insured deposit by the Federal Deposit Insurance Corporation. However, there might be some minor complications where only a portion of the depositors deposit was insured, in that event the depositor would assign only a part of his deposit. This, we are sure can be taken care of by arrangement being made with special deputy commissioner of finance in charge of the failed bank permitting the depositor to assign a part of his deposit.

We think, under the above amendments of the Missouri statutes, that the insurance corporation is fully and amply protected in its rights of subrogation. We might add that in the event other legislation is necessary to make more effective the Federal Banking Act of 1933, and particularly Section 12B relating to the Federal Deposit Insurance Corporation, that the Missouri Legislature will meet in regular session in January, 1935.

If we have not made ourselves clear on any of the questions above discussed, we shall be glad to cooperate in any way possible to bring about effective administration of the laws concerning failed banks as it affects the Federal Deposit Insurance Corporation.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

---

ROY McKITTRICK  
Attorney-General.

CRH:EG