

BANKS AND BANKING : National Banks in Missouri have authority to pledge their assets to secure deposits of public funds to Secretary of State under Section 7784 R.S.1929.

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March 19, 1934



Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:

This department acknowledges receipt of your letter of February 12, requesting an opinion upon the questions set forth therein, which reads as follows:

"Some days ago, our Mr. Buschmann, who is in charge of bank relations, was in an interview with General Hewitt, of your office, at which time the decision in the case of Ray C. Carroll, Treasurer of Marion, Illinois vs. City National Bank of Herrin, Illinois, was discussed. The court in this case required the surrender of collateral and made the claim of the Treasurer an ordinary or common claim. The question arose as to the right of this department, when dealing with National Banks, to demand collateral security for deposits.

Section 5153 of the National Bank Act, as amended June 25, 1930, sets out the authority of National banks to pledge their assets in states where the State Banks have such authority, placing the National Bank in identical status with the State Bank, the state law being made the governing rule in these matters. Section 7784 of the Revised Statutes of Missouri, 1929, deals with this subject matter and authorizes Missouri banks to pledge security to this department.

Justice Brandeis in the Treasury vs. the National Bank case held, that law with regard to National Banks, was determined by state law provisions as to State Banks. The National Banks' authority, under the National Bank Act, depends upon privileges extended to State Banks. The decision came down Feb. 5, 1934.

In view of the United States Supreme Court decision, we believe we are safe in proceeding as in the past. If you hold to a contrary view, please advise at once."

The part of Section 7784, R. S. Mo. 1929, pertinent to the question submitted in your letter is as follows:

"Sec. 7784. Fees collected to be deposited in bank where branch office making collection is located.

All fees for the registration of motor vehicles, trailers, chauffeurs, operators, certificates of title and motorcycles provided for herein shall be collected by the secretary of state and deposited in a bank where the branch office collecting same is located. Such depositories shall be required by the secretary of state to give a good and sufficient bond or other legal security in an amount equaling or exceeding any sum that may be deposited therein. Such bond or securities shall be payable to the secretary of state and state of Missouri and shall be deposited in the office of the secretary of state."

The question is whether or not national banks, located in Missouri, have the authority to pledge their assets or securities to the Secretary of State to guarantee moneys deposited in the national banks which may be designated by the Secretary of State as a depository of moneys collected under Section 7784 R. S. 1929.

On March 6, 1934, this office rendered an opinion to Honorable Richard R. Nacy, State Treasurer, in which we discussed the question as to whether national banks in Missouri had the authority to pledge their assets to secure deposits of state funds, in which the case of City of Marion, Illinois v. Sneedam, et al., decided February 5, 1934, by the Supreme Court of the United States - Sup. Ct. Reports, Vol. 54 at page 421, was discussed.

The amendment of June 25, 1930, Section 5153 of The National Banking Act, as shown at 12 U. S. C. A. Section 90, page 30, and referred to in your letter, provides as follows:

"Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safe-keeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State. (As amended June 25, 1930, c. 604, 46 Stat. 809.) "

In the State of Missouri, the power of banks to pledge their assets to secure public deposits has had legislative approval and sanction for a great many years, since 1879, and it is the policy adopted in this State for the safeguarding of public funds, and we cite as evidence of this, Section 12187, R. S. Mo. 1929, wherein County Depositories are permitted to pledge their assets to secure county funds deposited in said banks and Section 11469, R. S. Mo. 1929, as amended by the Acts of 1931, at page 378, wherein banks are permitted to pledge their assets and securities to secure deposits made by the State Treasurer in said banks,

In the case of Huntsville Trust Company v. Noel, 12 S. W. (2d) 751, l. c. 754, in construing the statute, Section 9585, R. S. Mo. 1919 (now Section 12187 R. S. 1929), the Supreme Court said that a trust company seeking to qualify under the above section had authority to pledge United States bonds constituting part of its assets to secure the performance of its obligations as a depository.

Honorable Dwight H. Brown

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It is our opinion that national banks in Missouri have authority to pledge their assets to secure deposits made by the Secretary of State of automobile registration licenses and fees as provided for in Section 7784, R. S. Mo. 1929, to secure said deposits under the amendment of June 25, 1930, Section 5153 supra, the same as state banks have under the Statutes of Missouri.

We are herewith enclosing to you a copy of our opinion rendered to the Honorable R. R. Nacy, State Treasurer, delivered March 6, 1934, which discusses the subject more fully.

Yours very truly,

COVELL R. HEWITT
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

CRH:LC

Inclosure