

BANKS & BANKING: National Bank not permitted to pledge its assets to secure deposits of Northeast Missouri State Teachers College.

5-10
May 9, 1934.



Mr. Byron Cosby,
Business Administrator,
Northeast Missouri State
Teachers College,
Kirksville, Missouri.

Dear Mr. Cosby:

This Department is in receipt of your letter of recent date in which you enclosed a letter from Mr. J. P. T. O'Connor, Comptroller of the Currency, and also in receipt of your supplementary letter of April 28th; which three letters are as follows, respectively:

"I am enclosing a copy of a letter sent out from the office of Comptroller of the Currency of the United States.

The Treasurer of the Northeast Missouri State Teachers College is cashier of the Citizens National Bank, Kirksville, Missouri, and his bank, the Citizens National Bank deposited \$30,000.00 in United States Government securities to protect the college funds while they are being collected, and waiting transmission to the State Treasurer. The Comptroller has ordered that we release these securities now held in escrow.

In order to comply with Sec. 9611 of Missouri Revised Statutes 1929 just what shall we do? The treasurer is willing to give personal bond as security that he will discharge his duties, but how can we protect ourselves in the depository?"

"COMPTROLLER OF THE CURRENCY

To the Cashier:

The Supreme Court of the United States on February 5, 1934, rendered two decisions of the utmost importance to national banking associations.

In Texas & Pacific Railway Company vs. S. O. Pottorff, Receiver, it was held that 'national banks lack power to pledge their assets to secure a PRIVATE deposit.'

In City of Marion vs. Ben Sneed, Receiver, it was held that a 'national bank could not legally pledge assets to secure funds of a State, or of a political subdivision thereof, prior to the 1930 amendment; (Act June 25, 1930) and since then it can do so legally ONLY IF IT IS LOCATED IN A STATE IN WHICH STATE BANKS ARE SO AUTHORIZED.

You are accordingly expected to ascertain immediately whether or not state banks in your state could lawfully pledge assets to secure such deposits of public funds of the state or a political subdivision thereof which you may have and for which you have pledged assets as security. It will be advisable to obtain the opinion of your bank attorney in this connection and retain same on file for inspection by the bank examiner.

Any existing pledges of assets to secure private deposits must be immediately terminated.

Any pledges of assets to secure deposits of the state or political subdivision thereof, which pledges are determined to be beyond the power of the state banks must likewise be promptly terminated.

Respectfully,

J. F. T. O'CONNOR,
Comptroller."

"Mr. Ethel Conner, Cashier of the Citizens National Bank of Kirksville, Missouri, is Treasurer of the Board of Regents of the Northeast Missouri State Teachers College, Kirksville, Missouri. As treasurer, he gives a surety bond of \$10,000. He deposits the college money as it is received and holds same in the Citizens National Bank until such a time as this money is remitted to the State Treasurer. In the past and at the present time the Citizens National Bank deposits with one of the St. Louis banks \$30,000 of government bonds as a surety to protect the deposits of the treasurer. Mr. Ethel Conner believes that the letter of Mr. J. P. T. O'Connor, Comptroller of Currency, demands that the bank recall these securities. If that is done, then we have no security against a depository. We would like to ask if it is possible under existing laws for the bank to make the deposit of these securities in order to protect our deposits. "

The question asked in your letter is whether or not the Citizens National Bank of Kirksville, Missouri, has the power and authority to pledge its assets and securities to the treasurer of the Board of Regents of the Northeast Missouri State Teachers' College, Kirksville, Missouri, to secure funds deposited in said bank for said college.

Your request for an opinion calls for a construction of the amendment of June 25, 1930, Section 5153, of The National Banking Act, as shown at 12 USCA, Section 90, page 30, which is 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.)",

and the application of same that may be made to the Laws of Missouri. Prior to the Federal Act of June 25, 1930, National Banking Associations could not pledge their assets to secure funds deposited in their bank, except public deposits made under Section 45 by the Secretary of the Treasurer of the United States.

Justice Brandeis stated the rule in the case of City of Marion, Illinois vs. Sneed, 54 Sup. Ct. Rep. 421:

"For the reasons stated in Texas & Pacific Railway Co. v. Pottorff, 290 U. S. _____, 54 S. Ct. 416, 78 L. Ed. _____, decided this day, we are of opinion that the Act of 1864 did not confer the power to pledge assets to secure any public deposits except those made under section 45 by the Secretary of the Treasury of the United States. The power conferred by each later act, except that of 1930, was limited to securing specific federal funds. A national bank could not legally pledge assets to secure funds of a state, or of a political subdivision thereof, prior to the 1930 amendment; and since then it can do so legally only if it is located in a state in which state banks are so authorized. In some states national banks had, prior to the 1930 amendment, frequently pledged assets to secure public deposits of the state or of a political subdivision thereof; comptrollers of the currency knew that this was being done; and they assumed that the banks had the power so to do.; But the assumption was erroneous. The contention that such power is generally necessary in the business of deposit banking has not been sustained."

Since the rendering of the decisions of the United States Supreme Court in the above case, and the case of Texas & Pacific Railway Co. v. Pottorff, 54 Sup. Ct. Rep. 416, National Banking Associations have been restricted in their powers to pledge their assets to secure deposits although it had been done with the knowledge and consent of the Comptrollers of Currency; which such

pledging of assets was unauthorized. The Federal Act of 1930, supra, gives power to National Banking Associations to pledge their assets to secure deposits of public money of a state or political subdivision thereof 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.

Now, the question is: Is the money deposited with the Citizens National Bank of Kirksville, Kirksville, Missouri, public money of a state, or a political subdivision thereof, within the meaning of the Federal statutes? We think not. This question in the last analysis would be determined, in our opinion, by the Federal courts as to whether National Banks have such powers.

The State of Missouri is divided into five districts for the purpose of establishing five Teachers Colleges, and the Northeast Missouri State Teachers College, located at Kirksville is the college for one of these districts and said college is under the control of "the Board of Regents for the Northeast Missouri State Teachers College." It is one of the duties of the Board of Regents to appoint a treasurer for such college, and to determine the amount of his bond, which shall be in amount not less than \$10,000.00. The statutes governing the money in the hands of the treasurer of said college do not provide for a depository bond to be given by the bank to secure the funds deposited by said treasurer, nor is provision made for the depositing of assets or securities of said bank to secure said deposits.

The statutes of Missouri have provided in many instances for the giving of depository bonds by banks to secure public funds deposited therein, also the pledging of assets is provided for by law in a great many cases to secure said funds so deposited, and we note a few of said provisions of the statute as follows:

The state funds - under Section 11469, R. S. Mo. 1929, as amended by Laws of 1931, page 378;

County funds - under Section 12188, R. S. Mo. 1929;

The funds of cities of the first, second, third and fourth class - under specific sections of the statute;

School funds of schools of cities, towns and consolidated schools - under Section 9362 R. S. Mo. 1929; and School funds in towns over 500,000

inhabitants - under Section 9580, R. S. Mo. 1929; and
State eleemosynary institutions - under Section
8679, R. S. Mo. 1929;

all of which provide for the giving of depository bonds or the pledging of assets, and it is significant that no statute has been enacted whereby a depository may be selected by the Board of Regents and a depository bond required or the pledging of assets and securities required by the bank to secure said funds so deposited.

Since no provision is made for a depository bond or the pledging of assets to secure the funds of your institution under the statutes of Missouri, we do not think that the National Bank in question could legally do so.

The Supreme Court of Missouri in the case of State ex rel. Thompson v. Board of Regents for Northeast Missouri State Teachers College, 264 S. W. 698, decided that the money received by the college from certain fees from students and other work did not become State funds. In the above case the Board of Regents of the College in question had insured the buildings of the institution and the premiums had been paid out of unappropriated money in its hands, derived from student fees from Junior High School extension and other work. Two of the buildings burned, and the insurance companies paid the sum of \$110,000 to the Board of Regents; the state treasurer in an original proceeding for mandamus sought to compel the Board of Regents to pay this money into the State treasury, contending that under the Constitution and the statutes this money was state money and should be payable into the state treasury. The Supreme Court denied the writ and held in effect that it was not state money and should not go into the state treasury to be appropriated by the State Legislature at its will and pleasure.

We think that the money in the hands of your treasurer is not State money within the term "public money of the state" under the Federal Act of 1930, supra. We do not think that the counties comprising the district known as the Northeast Missouri State Teachers College is a political subdivision of the State of Missouri

for the reason that it does not possess any of the attributes of a political subdivision and no functions of local government have been delegated to it. The Board of Regents possess no authority, neither does it exercise any jurisdiction over the counties of the district which we think is necessary to make the district a political subdivision of the State.

CONCLUSION.

It is, therefore, our opinion that the Citizens National Bank of Kirksville, Missouri, cannot pledge its assets and securities to the Board of Regents or the treasurer of said college to secure deposits made by them in said bank, and in event that it did so pledge its assets and securities, said acts would be ultra vires and would be no protection to the college in case of the failure of said bank and could be recovered by the receiver of said bank, as was done in the case of City of Marion, Illinois v. Sneed, supra.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG