BANKS AND BANKING: Re withdrawal of securities by trust companies under Section 5463.

5-31

May 29, 1934.

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

Dear Mr. Moberly:

This department is in receipt of your letter of May 28, 1934, which letter is as follows:

> "The attached letter written by Mr. Herbert W. Ziercher, addressed to you and dated May 23rd, is self-explanatory.
>
> I shall appreciate an opinion from you, setting out whether or not I am authorized to permit the withdrawal of the securities referred to and, if so, the requirements to be met by the trust company and the procedure to be followed by me."

Said request for an opinion is based on a letter from Herbert W. Ziercher, attorney for the Trust Company of St. Louis County, of Clayton, Missouri, directed to Roy McKittrick, Attorney General of Missouri, a copy of which is hereto attached, which letter calls for a construction and interpretation of Section 5463 R. S. 1929.

The question submitted is whether or not the Trust Company of St. Louis County has a right and may withdraw $200,000 of securities heretofore deposited with the Commissioner of Finance of the State of Missouri, under provisions of Section 5463, supra.

Section 5463, R. S. 1929, is found in Article 3 of the Revised Statutes, under the title of Trust Companies, provides in part as follows:

> "Any company now doing business in this state or which may hereafter be organized under the provisions of this article to do business in this state, which shall make with the finance commissioner a deposit of two hundred thousand dollars, consisting of cash, or United States, state, county, municipal or other bond, or bonds, notes, or debentures secured by first mortgages or deeds of trust on unencumbered real estate in the state of Missouri, worth at least double the amount loaned thereon, or such other first-class securities as the said commissioner may approve, said

bonds or securities not to be received or held at a rate above par, but if their market value is less than par, they shall not be held above their actual market value, and which shall satisfy said commissioner of its solvency, and shall have received the certificate of said commissioner that such company has made said deposit and has satisfied him of its solvency, it being hereby made the duty of said commissioner to issue such certificate in accordance with the facts, shall be permitted to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee, or in any other fiduciary capacity, by appointment of any court, or under will, or depository of money in court, without giving bond as such, and become sole guarantor or surety in or upon any bond required by law to be given in any proceeding in law or equity in any of the courts of this state or other states or of the United States, any other statute to the contrary notwithstanding; and whenever such company shall exhibit to the court, judge, clerk or other officer, making such appointment, or whose duty it is to approve such bond, the certificate of the finance commissioner of the state of Missouri that such company has complied with the provisions of this section with respect to said deposit and proof of solvency, the court, or officer making such appointment, or whose duty it is to approve such bond, may appoint such company to such office or trust, and permit it to qualify as such without giving any bond, and permit such company to become sole guarantor or surety upon any such bond, without requiring any other surety therefor.* * * *"

Under the provisions of this section, a trust company, when it has satisfied the Commissioner of Finance of its solvency and deposited with the Commissioner of Finance $200,000, consisting of cash, or United States, state, county, municipal or other bond, or bonds, notes, or debentures, secured by first mortgages or deeds of trust on unencumbered real estate in the state of Missouri, worth at least double the amount loaned thereon, or such other first class securities as the said Commissioner may approve, said bonds or securities not to be received or held at a rate above par, and said Trust Company shall have received the certificate of said Commissioner that it has made said deposit, it shall then be permitted to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee, or in any other fiduciary capacity, by appointment of any court, or under will, or depository of money in court, without giving bond as such, and become sole guarantor or surety upon any such bond required by law to be given in any proceeding in law or in equity in any courts of this state, or other states, or of the United States.

When such Trust Companies are appointed and selected, as aforesaid, they may exhibit to the court, judge, clerk, or other officer making such appointment, or whose duty it is to approve such bond, the certificate of the Finance Commissioner of the state of Missouri that such trust company has complied with the provisions of this section, with respect to said deposit and of its solvency, and the court may make such appointment to such office or trust and permit it to qualify as such without giving any bond.

It is our opinion that a Trust Company desiring to withdraw such securities must first apply to the courts making such appointment, and under whose jurisdiction it is acting in its trust capacity, and substitute for the security so deposited with the Commissioner of Finance, and which is primarily liable for the obligations of such company as such, and then execute bond which should be approved by the respective courts having jurisdiction of the particular trust involved.

The Trust Company then should furnish satisfactory evidence to the Commissioner of Finance that each of the courts having jurisdiction of the particular trust has accepted said bond, in lieu of the deposit made with the Commissioner of Finance, and same have been substituted instead of the $200,000 worth of securities deposited with the Commissioner of Finance; and that said Trust Company is not guarantor or surety in or upon any bond in any proceeding in law or in equity in any of the courts of this state, or other states, or of the United States, who are protected by such deposit, and when the Trust Company has so satisfied the Commissioner of Finance, it may be permitted to withdraw the $200,000 so deposited as aforesaid.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

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