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January 16, 1935.



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

Dear Mr. Moberly:

This is to acknowledge receipt of your letter of January 14, 1935, relative to House Bill 91, found at pages 404, 405 and 406, Laws of Missouri, 1933, and Senate Bill 293, found at pages 402, 403 and 404; which letter is as follows:

"House Bill No. 293, pages 402, 403, and 404, Session Acts, 1933, permitting banks in this state to operate under restrictions, will expire on February 1, 1935, and there are still twenty-three banks operating under the provisions of this Act, several of which have approved plans for reorganization that may not be consummated by February 1, 1935.

In the event certain of these banks fail to consummate their plans by that date, in your opinion can the boards of directors of such banks take advantage of the provisions of House Bill No. 91, pages 404, 405 and 406, Session Acts, 1933, and continue to operate for an additional period of sixty days to perfect plans for reorganization? It is very probable that it may be of utmost importance that certain of the restricted banks take advantage of the provisions of House Bill No. 91, if consistent under the provisions thereof, and I shall appreciate an early opinion on this question.

"In my opinion it would not be proper to restrict withdrawals of trust funds deposited in these banks, and that the restrictions contained in House Bill No. 91 would apply only to present restricted deposits."

House Bill 91 had an emergency clause attached and became effective upon its approval February 22, 1933; and Senate Bill 293 had an emergency clause attached and was approved and became effective March 11, 1933, and is to become inoperative after February 1, 1935.

House Bill 91 provides that whenever, in the judgment of the president and secretary of any bank or trust company and/or the board of directors thereof, unusual withdrawals are being made, or about to be made, may suspend the payment of checks of depositors and any and all other withdrawals of assets of such bank or trust company for a period of six banking days. During this suspension period of six days, after notice to the Commissioner of Finance of the State, it becomes the duty of the Commissioner of Finance to take charge of said bank or trust company and to supervise the receipt of the deposits and payment of checks and for all other assets during the period of sixty days next following the taking charge thereof, and he shall during that time limit upon a basis of equality, prorate or prohibit entirely, all withdrawal deposits of assets from said bank or trust company during which time no preferences shall be allowed.

During this sixty day period the Commissioner of Finance shall make an audit and inventory of the assets and liabilities of said bank or trust company for the purpose of determining whether said bank or trust company shall be permitted to continue in business and if satisfactory plans of reorganization are perfected, and approved by him, then such bank or trust company may open on a normal basis.

In any plan of reorganization which does not contemplate the payment in full of all deposits such plan must have the consent of those owning or controlling 85% of the deposits

therein, which are not preferred claims, special deposits or deposits secured by bonds or collateral. If within such sixty day period said bank does not submit a plan which is approved by the Commissioner of Finance he shall proceed to liquidate the bank in accordance with the law. During this sixty day period deposits may be received from the customers of said bank or trust company and others as special deposits and may be paid out on the check of such depositors and the bank must have on hands at all times amounts of money sufficient to meet such checks on such special deposits.

Senate Bill 293 permits the Governor or the Commissioner of Finance, with the approval of the Governor to restrict and regulate the right of any bank or trust company or other institutions doing a banking business in this State to withdraw assets or to pay checks or other orders drawn upon or against deposits for such time and in such manner as to him or them may appear necessary for the protection of depositors or other creditors, and may impose such restrictions as is deemed necessary for the protection of the depositors and others interested; permitting, however, such bank or trust company or other institution to receive special deposits which at all times are to be treated as trust funds and may be withdrawn at any time by the depositor.

Certain banks and trust companies in Missouri are now operating on a restricted basis under Senate Bill 293 and are now attempting to perfect reorganization plans while operating under such restricted basis, but since Senate Bill 293 will cease to be a law and become inoperative after February 1st, 1935, the question arises as to whether or not the designated officers of restricted banks may suspend operation under House Bill 91 and the Commissioner of Finance, upon notice, may suspend the operation of said bank for sixty days after suspension of business under Senate Bill 91 to permit reorganization plans to be carried forward. Of course, any bank attempting to reorganize during this sixty day period must comply strictly with all of the provisions of Senate Bill 91 and must secure the consent of the owners of 85% or more of the deposits therein. Necessarily the special deposits will not be restricted in any event.

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It is our opinion, therefore, that banks now under restriction and attempting to reorganize may do so during the sixty day period under House Bill 91 by complying strictly with the requirements therein. However, there may be certain banks or trust companies attempting to reorganize under Senate Bill 293, supra, who might not be able to submit a plan as required in House Bill 91, supra.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG