

BANKS & BANKING:

Assignment executed by depositors of the
Bank of Clark, legal and binding on them.

February 6, 1935.



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

Dear Mr. Moberly:

This is to acknowledge receipt of your letter of February 5th, 1935, with request for an opinion relative to the legality and binding effect of an assignment signed by certain depositors of the Bank of Clark. The copy of your letter is as follows:

"I am enclosing herewith a copy of a letter written by Mr. C. M. Hulen, Attorney at Law, Moberly, Missouri, to the Reconstruction Finance Corporation, under date of February 4th, 1935, which letter contains a history of the operations of the Bank of Clark, Clark, Missouri, particularly in connection with the closing of the bank in December, 1930, procuring assignments from its depositors and reopening subsequent thereto; all of which information is essential to the consummation of a loan applied for by the Bank of Clark to the Reconstruction Finance Corporation.

Will you please render an opinion as to whether or not the assignment of deposits, referred to above, a copy of which is contained in the copy of letter hereto attached, is valid and binding upon the depositors executing the same, and if I would be justified in giving my approval to the pledging of the assets of the bank for a loan to pay the present deposits in the bank, which deposits were received subsequent to the execution of the assignments."

Attached to your letter of request is a copy of an opinion dated February 4, 1935, written by Mr. C. M. Hulen, Attorney at Law, Moberly, Missouri, addressed to the Reconstruction Finance Corporation, St. Louis, Missouri, in which he sets forth a history of the closing of the Bank of Clark by its Board of Directors and surrendering same to the Commissioner of Finance for the purpose of liquidation, and in which letter he sets forth the assignment about which you request an opinion in your letter.

Also accompanying your letter of request we find a certified copy of a decree of the Circuit Court of Randolph County, dated January 16, 1931, in the case of State of Missouri ex rel. et al, Plaintiff, vs. S. L. Cantley et al, Defendant, by which judgment and decree of said court the Commissioner of Finance was compelled to relinquish his possession of the Bank of Clark to the officers of said Bank under the provisions of Section 11702, R. S. Mo. 1919, and especially under Paragraph 1 thereof (now Section 5319, 1929), in which said decree and judgment the assignments executed by the depositors of the Bank of Clark were recognized as legal and binding by the court and ordered to be posted upon the records of the Bank.

You request specially an opinion as to whether the assignment, a copy of which is hereinafter set forth, is binding on the depositors executing the same, and if you would be justified in giving your approval to the pledging of the assets of the Bank for a loan to pay the present depositors in the bank, which deposits were received subsequent to the execution of the assignment. Said assignment is as follows:

"ASSIGNMENT

"Whereas, the Bank of Clark of Clark, Missouri, was closed by order of its Board of Directors on the 26th day of December, 1930, and the said bank is now in the hands of the Department of Finance of the State of Missouri, and, whereas, I desire that said bank be not liquidated by the said department but reopened for business.

"I hereby agree that in consideration of the said reopening of the said Bank of Clark to relinquish, release and set aside to the aforesaid bank all of my deposit of _____ dollars, standing in my name on the books of said bank on the day it was closed, whether said deposit be in the form of a checking account, savings account or certificate of deposit, and I hereby authorize the representative of the Department of Finance in charge of said bank to charge my deposit with and deduct therefrom when said bank is reopened all of my deposit hereby relinquished, released and set aside to said bank.

If said deposit be in the form of a savings account, or certificate of deposit, I agree to present to the representative, the Department of Finance, my savings account book or certificate of deposit that an endorsement consistent with this agreement be made thereon.

IN WITNESS WHEREOF I have hereunto set my hand this _____ day of _____, 19____.

"State of Missouri)
 County of Randolph) SS.

On this _____ day of _____, 19____, before me personally appeared _____ and acknowledged the execution of the foregoing to be her or his free act and deed.

Witness my hand and official seal hereunto. My commission expires _____.

 Notary Public."

Feb. 6, 1935.

We are informed by your Department that the Bank of Clark was reopened by its officers and continued to operate as a normal unrestricted bank from January, 1931, to March, 1933, and has been operating since such latter date as a restricted bank, and the reopening of said bank was the stated consideration in the assignment in question. The assignment as set forth above, therefore, in our opinion, is legal and binding upon all depositors so signing same and those depositors who executed same would have no legal claim or lien upon the assets of the Bank of Clark and that said assets could be pledged to the Reconstruction Finance Corporation free and clear from all legal liability as a result of said assignment.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

CRH:EG