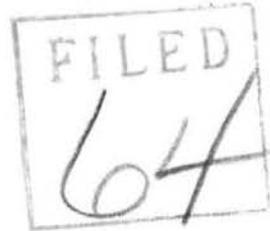


BANKS & BANKING: (1. Corporation automatically dissolved by
expiration of charter.
CORPORATIONS: (2. President and directors of dissolved corporation
under Sec. 4561, R. S. 1929, became trustees
for winding up affairs.

February 19, 1935.

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

Dear Mr. Moberly:

This is to acknowledge receipt of your letter of
February 12, 1935, in which you request an opinion.
Your letter of request is as follows:

"A bank, operating under restrictions,
the charter of which expired by limita-
tion on September 27, 1932, is
attempting to effect a plan for reorgan-
ization providing for the sale of its
assets under House Bill No. 125, and I
am now in receipt of a letter from
Mr. Vance L. Sailor, Supervising Exam-
iner, Federal Deposit Insurance Corpora-
tion, St. Louis, Missouri, requesting
that I furnish him with an opinion
from the Attorney General of the State
of Missouri stating upon whom devolves
the authority to act for this bank the
charter of which has expired; and also
with an opinion of the Attorney General
concerning the authority of the trustees
to enter into an agreement on behalf of
the bank for the sale of its assets to
another bank under the provisions of
House Bill No. 125.

For your information, the tentative con-
tract submitted provides that the pur-
chasing bank will assume the full de-
posit liability of the selling bank.

I shall appreciate it if you will supply
me with the opinions mentioned above at
your early convenience."

Your letter of request is divisible into two parts and calls for two opinions, and we shall reply to same in the order submitted.

I.

First, you ask upon whom devolves the authority to act for a bank, the charter of which has expired?

Section 4561, R. S. Mo. 1929, provides that, "Upon the dissolution of any corporation already created, or which may hereafter be created by the laws of this state, the president and directors or managers of the affairs of said corporation at the time of its dissolution, * * * shall be trustees of such corporation, with full powers to settle the affairs, collect the outstanding debts and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them etc.," and they shall generally have control of all of the assets of the corporation for the purpose of winding it up and distributing the money and property to those to whom it is rightfully due.

After the period of the existence of a corporation has expired by force of the expressed provision in its charter, it no longer has any existence at all, either de jure or de facto, for there is no law under which it can longer exist, and it is automatically dissolved.

The charter of the bank in question having expired September 27, 1932, the corporation was thereby dissolved, and the president and directors at the time of the expiration of the charter became by operation of law trustees of such corporation for the purpose of winding up its affairs.

II.

Second, you ask our opinion as to the authority of the trustees to enter into an agreement on behalf of the bank whose charter has expired, for the sale of its assets

to another bank under the provisions of House Bill 125, viz., Section 5379, R. S. 1929, as amended by Laws of Missouri, Extra Session, 1933-34, pages 148-149.

We do not think that the trustees of a banking corporation whose charter has expired, would have any authority whatever to sell the whole or any part of the assets or business of such dissolved corporation under the provisions of the above section for the reason that this section provides that any bank may sell the whole or any part of its assets or business, or the whole or any part of the business of any of its departments to any other bank or trust company etc. And the word "bank" as used in this section means a corporation whose charter has not expired and not dissolved. The president and directors of the bank, who became trustees by operation of the statutes, could perform no corporate functions for a non-existing corporation.

However, it is our opinion that the trustees, under the circumstances which you state, would have a right to sell all of the assets of the dissolved corporation in a manner that would be advantageous to the depositors, creditors and stockholders of such corporation and in that way wind up its affairs. And if in the sale of the assets and business and property, a fair and reasonable price was received for same and was the best price obtainable under all the circumstances, they would be justified under the broad powers which they have, in entering into such contract. Of course, it must be kept in mind that the depositors and other creditors must be paid in full before the stockholders would receive anything on their shares of stock.

Section 4561 further provides that "such trustees shall be jointly and severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands." We, therefore, are of the opinion that the trustees have the general and broad power, acting for the best interests of all the creditors, to make a sale of all of the assets

Hon. O. H. Moberly

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Feb. 19, 1935.

and business of a dissolved corporation for the purpose
of winding up the affairs of the dissolved corporation.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG