

BANKS & BANKING:

Unanimous consent of all stockholders, preferred and common, required of altered Articles of Agreement; Section 10, Article XII, Missouri Constitution; Laws of Mo. 1933, pp. 406-408.

2-10

February 8, 1936.



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

Dear Mr. Moberly:

This is to acknowledge your letter of January 27, 1936, in which you request the opinion of this Department, which letter is as follows:

"I am enclosing herewith a copy of a letter received under date of January 20th from the Iron County Security Bank, Ironton, Missouri, which is self-explanatory.

"For your information the amendments to the articles of agreement referred to in the copy of the letter enclosed provide for striking out certain sections of the original articles adopted at the time of issuing preferred stock under the provisions of Section 10 of Article XII of the Constitution of Missouri. For your further information I quote from the statement containing the amendments to the articles of agreement, as follows:

"The foregoing resolution was adopted at the Annual Stockholders' meeting of the Iron County Security Bank, Ironton, Missouri, held on the 14th day of January, 1936, by a vote representing all of the Preferred Stock of the Corporation, and in excess of two-thirds of the Common Stock of the Corporation."

"The question upon which I desire an opinion is whether or not less than unanimous consent of all stockholders can amend any of the provisions pertaining to the issue of preferred stock after the preferred stock has been originally issued with the consent of all common stockholders, as provided for in the section of the Constitution above referred to."

The question which you ask is whether or not the original articles of agreement of a banking corporation at the time of issuing preferred stock therein under the provisions of Section 10, Article 12, may be altered and changed by a vote representing all of the preferred stock of the banking corporation, and in excess of two-thirds of the common stock of said corporation.

By the Laws of Missouri, shown at page 406-408, Laws of 1933, Section 1, "banks, trust companies doing a banking business, and other financial institutions organized, incorporated, and existing, under the laws of this State and subject to the jurisdiction of, and control by, the Finance Commissioner of the State of Missouri, any such corporation may, with the consent of all its stockholders, issue and sell its shares of preferred stock, of one or more classes, subject to the provisions of this act and the approval of the Finance Commissioner of the State of Missouri."

And Section 5 of said act provides as follows:

"The preferences and priorities, and the terms and conditions governing the call, redemption, and retirement, of each class of the preferred shares issued by any corporation under authority of this act shall be clearly set forth in the amendment to its charter authorizing the issuance and sale of such preferred shares, in the case of all such corporations organized and existing prior to the effective date of this act and in the

articles of agreement for the incorporation of all such corporations hereafter organized and incorporated, all of which shall be approved by the Finance Commissioner of the State of Missouri."

This amendment of the statutes of Missouri authorized banks and trust companies to issue and sell preferred stocks in their institutions and were governed and subject to the general corporation laws of Missouri relating thereto, insofar as they may be applicable to banks and trust companies.

Section 10, Article XII of the Missouri Constitution, mentioned in your letter, provides as follows:

"No corporation shall issue preferred stock without the consent of all the stockholders."

This provision of the Constitution does not mean that the original articles of agreement cannot be changed by agreement of the stockholders of the corporation, but it may be done so long as it does not contravene or violate the laws of the State.

Your question narrowed down, then, means: May this change be made without the unanimous consent of all of the common stockholders of the bank.

Fletcher on Corporations, Vol. 11, Section 5296, says the following:

"The contract between a corporation and the holders of its preferred stock cannot be changed, or their rights in any way impaired, without their consent, by any subsequent action of the corporation, if the certificate or articles of incorporation are amended so as to be prejudicial to the rights of pre-existing preferred stockholders, their rights will not be affected thereby or, under the terms of some statutes, they may demand payment for their shares."

The rule is announced in Clark & Marshall, Private Corporations, Vol. 2, page 1312, sub-division "B", in identically the same language as is used in Fletcher on Corporations, above quoted.

In Thompson on Corporations, 3d Edition, Vol. 5, Section 3611, the following is said:

"As suggested in the preceding section the relation between the preferred stockholder and the corporation, as well as between the stockholders themselves, is contractual, and the contract measuring the relation may embody any ordinary conditions not opposed to the articles of association or by-laws, and not contrary to law or public policy. The terms of the contract and the conditions on which preferred stock are issued and held, are usually but not necessarily set out in the certificate. The contract is to be construed in the light of the general law, the charter, the by-laws and the vote and proceedings authorizing the issuing of the stock."

We are of the opinion that, in view of the fact that the original articles of agreement, which are attached to your letter of request, are changed and altered in many respects, you should require the bank in question to have the unanimous consent of all of the stockholders of said bank to make such changes.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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