

BANKS & BANKING: ) Court orders in sales of real estate of  
LIQUIDATIONS: ) banks in liquidation, need not be recorded  
in counties where liquidation is being had.

June 21, 1938

6-24



Mr. J. E. Felkins  
Circuit Clerk & Recorder of Deeds  
Taney County  
Forsyth, Missouri

Dear Sir:

This is to acknowledge your letter of June 18th, in which you request the opinion of this Department. Your letter is as follows:

"I wish to ask a little information for the benefit of this office and it relates to a matter of this nature as to who would be liable or if any one would be as to recording the following named instruments.

"There is on file in this office about 50 or more instruments which have not been recorded and which has to do with the sale of real estate in the liquidation of two banks in this County. The Deputy Finance Commissioner has in the last five years filed in this office a petition and Court Order in the sale of real estate in the liquidation of these two banks and they deal with real estate in this County and they have not been placed of record and different Attorneys and Abstracters contend that should be made a matter of record to connect the chain of title on these particular pieces of real estate.

"The Finance Department say that they do not care if they are recorded or not and do not want to pay for same out of the proceeds collected in liquidating the real estate in question and what this office desires to know if it would be allowed or lawful to have this recording done and present a bill for same to the Finance Deputy for payment under an Order signed by the Circuit Judge."

We have previously written an opinion on substantially the same question asked in your letter.

For answer to your question we refer you to Section 5330, R. S. Mo. 1929, which provides in part as follows:

"The commissioner is authorized, upon taking possession of the property and business of such corporation or private banker, to liquidate the affairs thereof \* \* \* \*. He may, upon an order of the circuit court or judge thereof in vacation \* \* \* \* sell or otherwise dispose of all or any of the real and personal property of such corporation or banker. In case any of the real property so sold is located in a county or city other than the county or city in which the application to the court or judge thereof in vacation for leave to sell the same is made, the commissioner shall cause a certified copy of such order and the application therefor to be filed in the office of the recorder of the county or city in which such real property is located." (Underscoring ours.)

We interpret this to mean that if the real estate is located in a county outside of the county where the liquidation is being had that in that event it is the duty of the Commissioner of Finance to file a certified copy of said order and the application therefor in the office of the recorder of the county or city where such real property is

located. However, if the real estate is located in the county where the liquidation is being had there is no duty on the commissioner to file the certified copies of the order and application in that county. If the certified copies of the petition and order are filed in the county outside the county where the liquidation is being had, we think it is the duty of the commissioner to pay the filing expenses. However, if the purchaser of real estate, sold by the special deputy, desires to have a certified copy of the application and order of sale filed and recorded in the office of the recorder of deeds, of the county where the liquidation is being had, he may do so but there is no obligation on the commissioner to pay such expenses.

It is, therefore, our opinion that the Commissioner of Finance should file a certified copy of the order and the application in the county where the real estate to be sold is located if same is outside the county where the liquidation is being had, and it is his duty to pay filing fees therefor, and if the real property is within the county or city wherein the liquidation is being had there is no obligation on the Commissioner of Finance to have same filed and pay the fees therefor.

Very truly yours

COVELL R. HEWITT  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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