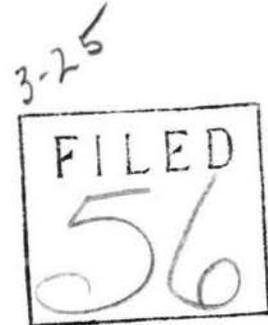


BANKS & BANKING: COURT ORDERS IN SALES OF REAL ESTATE OF
LIQUIDATIONS : BANKS IN LIQUIDATION NEED NOT BE RECORDED
IN COUNTIES WHERE LIQUIDATION IS BEING HAD.

March 24, 1938



Honorable Douglas Mahnkey
Prosecuting Attorney
Taney County
Forsyth, Missouri.

Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you request the opinion of this Department on the following questions:

- (1) Should petitions and court orders for sale of real estate in liquidation of banks be recorded?
- (2) If they are recorded who should pay the bill?

For the 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

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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.

Yours very truly,

COVELL R. HEWITT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

CRH:LB