

BANKS & BANKING:) Safe Deposit Companies may be incorporated
CORPORATIONS:) under the provisions of Article 7,
SAFE DEPOSIT COMPANIES:) Chapter 32, R. S. Mo. 1929.

June 3, 1938.

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Honorable Russell Maloney
Corporation Supervisor
Office of Secretary of State
Jefferson City, Missouri

Dear Mr. Maloney:

We have an oral request for an opinion based on the following:

The _____ Safety Box Company has presented proposed Articles of Association drawn under the provisions of Article 7, Chapter 32, Revised Statutes of Missouri, 1929, governing manufacturing and business companies, and particularly under the thirteenth subdivision of Section 4940 thereof. The question to be determined is whether a company may be incorporated under this article for the purpose of conducting a safe or safety deposit company business. Said section provides in part as follows:

"Corporations may be created under this Article for any of the following purposes:

* * * * *

"Thirteenth--For any other purpose intended for pecuniary profit, or gain not otherwise especially provided for, and not inconsistent with the Constitution and laws of this state: Provided, that nothing in this section shall be construed to authorize the incorporation of a bond investment company or association to issue bonds or debentures based upon payments upon the installment plan, nor any company which savors of the character of a trust

company, bank, saving fund, building and loan or fiduciary company."

It has been contended that the following language of the thirteenth subdivision above precludes such corporations from being formed under Article 7, Chapter 32, R. S. Mo. 1929:

"nor any company which savors of the character of a trust company, bank, saving fund, building and loan or fiduciary company,"

for the reason that a safe deposit company savors of the above named companies.

It might be well in arriving at an opinion on this matter to trace somewhat the history of the laws pertaining to safe deposit companies in the State of Missouri and elsewhere.

According to Harvard Law Review, Vol. 9, published in 1895 (p. 131) it is said:

"The business of conducting public safe-deposit vaults is a comparatively new one in this country, the first of these institutions having been established but about thirty years ago. It was a natural development of the custom that formerly existed among banks of gratuitously according space in their vaults to customers having valuables for which they desired unusual protection.

"As soon as vaults were established by incorporated companies as separate institutions, the companies, in offering to the public the protection to be obtained from them, assumed toward their patrons distinct relations and liabilities peculiar to the business from its nature."

In 54 Corpus Juris, p. 1116, a safe deposit company is defined as follows:

"A company which maintains vaults for the deposit and safekeeping of valuables in which compartments or boxes are rented to customers who have exclusive access thereto, subject to the oversight and under the rules and regulations of the company; one whose purposes are to keep and maintain safe deposit vaults and safes and strong boxes for the safe-keeping of valuable articles and property of all kinds." Bouvier Law Dict. Vol. 3, p. 2979.

In Laws of Missouri, 1891, p. 100, trust companies were given the power to maintain safe deposit boxes, and the language therein used was carried through the various revisions of the statutes and now is found in Article 3, Chapter 34, R. S. Mo. 1929, Section 5421, subdivision 2, as follows:

"To receive upon deposit for safe-keeping personal property of every description; to guarantee special deposits, and to own or control a safety vault and rent the boxes therein." (Underscoring ours.)

Banks were given this power by Laws of Missouri, 1915, Section 66, page 134, subdivision 6, and the language therein used has been carried through the revisions and now is found in Article 2, Chapter 34, Section 5354, subdivision 6, R. S. Mo. 1929, as follows:

"To receive, upon terms and conditions to be prescribed by the bank, upon deposit for safe-keeping, bonds, mortgages, jewelry, plate, stocks, securities and valuable papers of any kind, and

other personal property, for hire, and to let out receptacles for safe deposit of personal property." (Underscoring ours.)

Under Article 5, Chapter 34, Revised Statutes of Missouri, 1929, it is provided for the incorporation of savings banks and safe deposit institutions, which article in the main provides for the creation of savings banks, and said article further gives the power to such institution to let out its vaults, boxes or other receptacles therein to others for the use and benefit of the bank. Incidentally, no institutions are incorporated under this article in this State.

In each of these articles, namely, relating to banks, trust companies and savings banks, the power is given to each of such institutions to conduct a safe deposit business but it is only a permissive right given to conduct such business and it is not an exclusive right. It was a right granted to banks and trust companies long after they had been given authority to conduct a pure banking and trust company business. Safe deposit companies in Missouri were incorporated and could be incorporated for that purpose under what is now Section 4940, supra, long before that power was given to banks and trust companies. The safe deposit business is a separate and distinct business and does not in any way savor of the character of a trust company, bank or saving fund, as provided in the thirteenth subdivision of Section 4940, supra. The fact that said banking institutions are given that right and power under their charters does not preclude separate institutions to be incorporated as separate corporations. And the further fact that these additional powers to maintain vaults for the deposit and safe-keeping of valuables in safe deposit boxes and compartments are given to banking institutions, is sufficient argument that they do not inherently belong to such institutions.

A bank is defined generally as "a moneyed institution, generally incorporated and of a quasi-public character, whose business it is to receive money on deposit,

cash checks or drafts, discount commercial paper, make loans, and issue bank notes." Corpus Juris S., Vol. 9, p. 28.

Webster's Dictionary defines "bank" as "an establishment for the custody, loan, exchange or use of money, and for the transmission of funds by drafts or bills of exchange."

Section 5402, R. S. Mo. 1929, says,

"The term 'bank' shall include any person, firm, association or corporation soliciting, receiving or accepting money or its equivalent, on deposit as a business, whether such deposit is made subject to check, or is evidenced by a certificate of deposit, a pass book, a note, a receipt, or other writing."

We are unable to see how a safe deposit company, formed for the purpose of renting out boxes in its vaults to persons in which to keep their especially valuable property and papers, savors in any way to a bank or trust company. We know of no rule of law or principle of public policy, either announced by the courts or the Legislature, that would prevent a company organized and incorporated under the provisions of Article 7, Chapter 32 and particularly under Section 4940 thereof, from conducting a safe deposit business. The administrative policy of the Corporation Department for a long period of time has been to permit safe deposit companies to be organized under the provisions of Article 7, Chapter 32, supra, relating to "manufacturing and business companies."

From the above and foregoing we are of the opinion that a corporation may be formed for the purpose

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of conducting a safe deposit business under the provisions of Article 7, Chapter 32, R. S. Mo. 1929, and amendments thereto, governing manufacturing and business companies, notwithstanding any opinion which may have been rendered by this Department contrary thereto.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

Attorney-General

CRH:EG