

STATE TREASURER:) Depository of State funds.
) State Treasurer without authority to settle
BANKS & BANKING:) and compromise State's claim against
) failed bank.

October 14, 1938

10-20



Honorable Robert W. Winn
State Treasurer
Jefferson City, Missouri

Dear Mr. Winn:

This is to acknowledge your letter of recent date relative to the State Treasurer's deposit in the Wells-Hine Trust Company, Savannah, Andrew County, Missouri, in which you request the opinion of this Department. Your letter is as follows:

"Enclosed please find a copy of a release given me by the Commissioner of Finance for the State of Missouri in which he asks me to accept deeds for five farms from the Wells-Hine Trust Company.

"The Wells-Hine Trust Company of Savannah, Andrew County, failed and turned all their affairs over to the Commissioner of Finance on November 13, 1929 for the purpose of liquidation. At that time the State of Missouri had on deposit \$125,000.00, taking as collateral certain bonds, real estate mortgages and other securities.

"The \$125,000.00 has been liquidated down to \$41,946.51. Mr. R. W. Holt, Commissioner of Finance for the State of Missouri is asking me to

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accept deeds for five farms now owned by the bank on which the State of Missouri holds mortgages and is also asking me to sign a release in full for all claims against said bank.

"I am asking your opinion as to whether or not I, Robert W. Winn, State Treasurer, have a right to sign this said release and accept the deed for each of the five farms from the Commissioner of Finance."

We note fully what you say in your letter relative to the deposit of \$41,946.51, now remaining in said trust company. Our information is that to secure the deposits made by the State Treasurer you have notes secured by deeds of trust on real estate aggregating \$57,000, which were pledged with the state treasurer prior to the failure of said bank, namely, November 13, 1929.

Your question is, whether or not you may compromise and settle with the Commissioner of Finance in Charge of the Wells-Hine Trust Company, said claim of \$41,946.51, by accepting deeds from the Wells-Hine Trust Company to the State of Missouri as grantee. The Wells-Hine Trust Company, as we are informed, is the holder of the title to all of this real estate, subject to the notes secured by deeds of trust which you hold as collateral to secure the deposit as aforesaid.

Section 11469, R. S. Mo. 1929, provided at the time these particular real estate notes were pledged to secure the state deposits, which were made prior to November 13, 1929, that notes held by said banks or banking institutions, secured by first mortgages or deeds of trust on Missouri real estate, could be pledged to secure the deposits aforesaid in lieu of bonds mentioned in the preceding part of Section 11469, supra. This section further provides the procedure that shall be taken by the State Treasurer in the event that such bank or banks or banking institutions of

deposit shall fail to pay such deposits, or any part thereof, on the check or checks of the State Treasurer. In this particular case the depository failed and closed its doors and was taken over for the purpose of liquidation by the Commissioner of Finance, and thereby necessarily was unable to pay checks drawn by the State Treasurer upon demand. Upon such failure to pay said checks upon demand, the statute provides as follows:

"* * *, then it shall be the duty of the state treasurer to forthwith convert such bonds into money and disburse the same according to law, upon the warrants drawn by the State Auditor upon the funds for which said bonds are security. * *"

The same procedure under the statute shall be taken in the event real estate notes shall have been pledged, as in the case of bonds. Therefore, you would have authority to convert such real estate notes into money and disburse the same according to law.

We are of the opinion that this statute should be followed by you and the securities held by you sold and applied on the debt due the State of Missouri from the Wells-Hine Trust Company. However, since we understand the title to all of the real estate, on which you have a first lien by reason of the real estate notes secured by deeds of trust, is in the Wells-Hine Trust Company, as a practicable matter we think that you would be authorized to accept these deeds and sell the real estate and account for the proceeds, giving the Wells-Hine Trust Company credit for the amounts received. Of course, at the time you sell the real estate in question, you would in effect and for all practicable purposes be selling the real estate notes which were pledged to you as aforesaid as security. We are informed that the notes and interest thereon, which you hold on the particular farms, far exceed the value of the farms.

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It is our further opinion that you would be without authority to cancel the entire indebtedness due from the Wells-Hine Trust Company to the State of Missouri in consideration of the Commissioner of Finance delivering to and conveying to you the title to this real estate. Since the State of Missouri is the owner of the securities and their face value far exceeds the value of the farms, we do not think there would be any consideration for the compromise under these circumstances. Your duty is outlined by the statute and you have no greater authority than is given you by Section 11469, supra, and you, as State Treasurer, would be without authority to compromise and settle the State's claim in any such manner.

Very truly yours

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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