

BANKS AND BANKING: The secrecy section of the banking
code does not apply to the annual
SMALL LOAN COMPANIES: reports required to be filed by Small
Loan companies under Section 7885, R.
S. Mo. 1939.

February 16, 1943

Hon. D. R. Harrison, Commissioner
Department of Finance
Jefferson City, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of February 10, 1943, in which you request the opinion of this department. Your letter reads as follows:

"You will note from Section 8159 of the Revised Statutes of Missouri, 1939, that

"Every licensee under this article shall at such time each year as shall be designated by the licensing official, and upon a form to be prescribed by said licensing official, file with such official an annual report which shall include: * * *."

"You will also note by reading Section 7885 of the Revised Statutes of Missouri, 1939, that

"The commissioner of finance, his deputies, clerk, stenographer, each examiner and every employee shall be bound, under oath, to keep secret all facts and information obtained in the course of all examinations * * *."

"A request has been made to review the annual reports of the licensees under the Small Loan Law on file in this office and

I have taken the position that such reports contain confidential information and are not open to public inspection.

"Will you please furnish me with an opinion as to whether or not the information contained in the annual reports of licensees under the Small Loan Law to be filed in this office should be regarded as secret by the employees of this Department and furnished only when an employee is called as a witness in any proceeding in a court of justice, as provided in Section 7885 of the Revised Statutes of Missouri, 1939."

The question is stated in the last paragraph of your letter. The Small Loan Act was enacted in this state in 1927, and is found at pages 252-258, Laws of Missouri 1927. The Small Loan Act now is Article 7, Chapter 39, Revised Statutes of Missouri, 1939, Sections 8150-8171, inclusive.

Under this law, a licensee may charge interest at a rate not to exceed three per cent per month on loans of \$100 or less, and two and one-half per cent per month on loans of more than \$100 and less than \$300 in principal amount. It further provides that no person, co-partnership or corporation shall engage in the Small Loan business without obtaining a license so to do from the Commissioner of Finance and must give bond in the amount of \$1,000.00, that the licensee will conform to and abide by each and every provision of the Small Loan Act.

The duty of supervising the small loan companies licensed under this act devolves upon the Commissioner of Finance of the state and he is designated as the licensing official.

Section 8159, R. S. Mo. 1939, authorizes the Commissioner of Finance, as the licensing official, to investigate the business and loans of every licensee under this act and

every licensee under this act shall, at such time each year as shall be designated by the licensing official and upon a form to be prescribed by said licensing official, file with such official an annual report which shall include:

1. The total aggregate capital employed by such licensee;
2. The total aggregate number and amount of loans made by such licensee during the year;
3. The total amount of interest collected by such licensee during the year;
4. An itemized statement of expenses incurred in the operation of the business during the year, including the amount and rate of interest paid by such licensee on money borrowed;
5. The number of attachments sued out by such licensee during the year against the salary or wages of borrowers;
6. The number of chattel mortgages foreclosed and the amount received for property sold thereunder by such licensee during the year;
7. Such other and additional information as may be prescribed by the licensing official.

And, with certain penalties to be imposed on the licensee if he does not file such reports with the Commissioner of Finance.

Section 8160, R. S. Mo. 1939, provides that the licensee shall keep such books and records in his place of business as in the opinion of the licensing official will enable the licensing official to determine whether the provisions of this article are being observed.

You desire to know in your request whether the annual reports required to be filed by the small loan companies under Section 8159, must be kept secret by the Commissioner of Finance and the employees of that department, as provided by Section 7885, R. S. Mo. 1939.

There is no special provision in the Small Loan Act itself which provides that the Commissioner of Finance shall not permit the reports filed by each licensed small loan company to be examined by persons other than the Commissioner of Finance and the employees of that office.

In your letter of request you have referred us to Section 7885, R. S. Mo. 1939, which furnishes the basis for your position that the annual reports filed by the small loan companies in compliance with Section 8159, R. S. Mo. 1939, are confidential reports and cannot be examined by persons other than the Commissioner of Finance and the employees of that department. The pertinent parts of Section 7885, R. S. Mo. 1939, provides as follows:

"The commissioner of finance, his deputies, clerk, stenographer, each examiner and every employee shall be bound, under oath, to keep secret all facts and information obtained in the course of all examinations, except so far as the public duty of such officer requires to report upon or take special action regarding the affairs of any bank, savings and safe deposit company or trust company, and except when he is called as a witness in any proceeding in a court of justice.
* * * * *

Said section provides penalties for violation of its provisions.

That part of Section 7885, R. S. Mo. 1939, quoted above has been a part of the banking code of this state since 1907 (Laws of Missouri 1907, Article XX, Section 8, page 157) and requires that the Commissioner of Finance, his deputies, clerks, stenographers or examiners shall be bound under oath to keep secret all facts and information obtained in the course of all examinations except so far as the public duty of such officer requires a report upon or to take special action regarding the affairs of any bank, savings and deposit company or trust company.

Since the above secrecy section was enacted in 1907 and the Small Loan Act was enacted in 1927, same could not in any way have referred to the Small Loan Law. The inhibition against the disclosing of confidential information specifically refers to banks, savings and deposit companies and trust companies and it will be noted that even after the passage of the Small Loan Law in 1927 there has been no amendment of Section 7885, bringing small loan companies under the provisions of Section 7885, supra.

We have various provisions in our statutes which require the various officers of the state to keep secret confidential matters and records which the law requires shall be filed in their respective offices, and it is significant that no provision of the law requires that the Commissioner of Finance shall keep secret the annual reports required to be filed by the Small Loan companies. In the absence of any statute denying the public the right to inspect public records we must look to ascertain what the rule was at common law.

In 53 C. J. page 624, Section 40, in discussing the rules relative to the inspection of public records, the text says:

"* * * However, there is also authority that the contents of a public record office are always at the service of a person desiring to examine the same on due application to the official in charge, that under the common law in this country every person is entitled to free access and public inspection of public records without any showing of special interest, and that in the absence of a statute public records are open to inspection by the public. * * * * *"

This states briefly the rule as we understand it. There is no question in our opinion, but that there is a common law right of interested persons to inspect public documents and records. This right is based on the interest which the citizen may necessarily have in the matter to which the records relate, and unless the legislature has restricted that right, by statute, the right in the people still remains.

CONCLUSION

It is, therefore, our opinion that an interested citizen has a right at reasonable times to inspect the public records, namely, the annual reports required by law to be filed by the Small Loan companies, under the provisions of Section 8159, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney-General

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