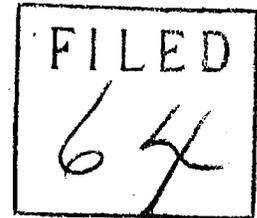


BANKS -Liability of endorsement  
under Section 7952, Laws of Missouri,  
1943, page 995.

: A bank and an endorser may not  
: by contract fix or limit the  
: liability of an endorsement  
: contrary to the terms of Sec-  
: tion 7952, Laws of Missouri, 1943.

March 28, 1946



Honorable M. E. Morris  
Commissioner of Finance  
State of Missouri  
Jefferson City, Missouri

Dear Commissioner Morris:

Your letter, requesting the opinion of this Department, respecting the endorsement of liability in excess of the provisions of Section 7952, Laws of Missouri, 1943, page 995, has been received.

Your letter states the following:

"Re: Sec. 7952, R.S. Mo. 1939, as amended, Laws Missouri, 1943.

"A partnership has an endorsed liability in a bank aggregating \$86,886.72, on which the partnership endorses by straight endorsement. The amount involved is excessive under the statute referred to. The legal limit to one individual or partnership in the bank involved is \$40,000.

"In order to avoid the excessive feature of the law, the bank and the endorser have entered into a contract which, in substance, is as follows:

"It is hereby agreed that the total liability under endorsement on notes sold to the bank shall be limited to \$20,000 at any one time, regardless of the total of such notes, and the bank reserves the right to allocate the liability to such notes as it may deem proper."

"This agreement is signed by the bank and the borrower. We understand that this procedure was recommended by the city correspondent but this Department

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has taken the position that the contract is not valid, and that the endorsement with recourse on a negotiable instrument could not be limited in this manner.

"We will appreciate your opinion in this connection as speedily as possible, and will be glad to furnish any further information which is necessary in connection with this situation."

It is not indicated in your letter what the capitalization is of the bank interested in this transaction. Neither, is it stated what the population of the city is in which the bank is located. However, your letter does state that the legal limit to one individual or partnership in the bank involved is \$40,000. You state that the endorsed liability of this partnership to the bank involved is actually \$86,886.72.

The quoted agreement as a part of the contract between the bank and the endorser as you give it, and which is quoted in your letter, is, we think, wholly inadequate and powerless to avoid or abridge the terms of said Section 7952. Such a contract, undertaking to fix the liability of the endorser according to the judgment and assumed right of the bank to allocate the liability to such notes as the bank may deem proper, has no foundation in said Section 7952, or elsewhere, in the banking code of this State. The statute fixes the liability of an individual, a co-partnership, corporation, or body politic as to the percentage of the capitalization of a bank which may become a loan by endorsement, discount or otherwise. We do not think it within the power, privilege or right of the partnership or the bank, or both of them, in the present case to effect a valid transaction in violation of the statute.

We believe your Department has taken the correct position that the contract is not valid, and that the endorsement with recourse on a negotiable instrument could not be limited by a contract between the endorser and the bank in plain violation of said Section 7952.

#### CONCLUSION

It is, the opinion of this Department that, under the statement of facts indicated in your letter, the contract

Honorable M. E. Morris

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made between the bank and the endorser is invalid, and in violation of said Section 7952, and that the endorsement with recourse on a negotiable instrument cannot be limited in liability in such manner, but on the contrary, the liability of the endorser is fixed and determined by the terms of said Section 7952.

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

GWC:ir