

BANKS - Restrictions on Loans: Under sub-section (e) of Section 7952, Laws of Missouri, 1943, page 995, such drafts or bills of exchange therein named are not exempted from the restrictions of sub-section 1 of said Section 7952, where such drafts are not drawn against "actually existing values" as contemplated by said sub-section (e) of said Section 7952. The

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drawing of such drafts due 30, 60 and 90 days from date would constitute a loan liability of the individual, partnership, corporation or body politic borrowing money from a bank and must be computed as such.

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

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Dear Commissioner Morris:

Your letter requesting an opinion with respect to the amount of money that may be loaned by a bank as a per centum of the capital stock of said bank, under the terms of Section 7952, Laws of Missouri, 1943, page 995, has been received.

Your letter containing pertinent features of your correspondence with Mr. Walker MacMillan, Vice-President of the Jefferson Bank and Trust Company of St. Louis, Missouri, regarding the subject matter to be considered, is as follows:

"Honorable J. E. Taylor
Attorney General
Supreme Court Building
Jefferson City, Missouri

"Dear General Taylor:

"On November 10th we received the following letter from the Jefferson Bank and Trust Company, St. Louis, Missouri:

"Mr. M. E. Morris
Commissioner of Finance
Jefferson City, Missouri

"Dear Mr. Morris:

"Reference is made to Section 7952, Banking Laws of State of Missouri - 1939.

"Restrictions on loans, purchase of securities and total liabilities to banks of any one person."

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"In our particular case, we have a paid in capital and surplus fund of \$300,000 and are located in a city having a population of over one hundred thousand.

"We interpret the provisions of Section 7952 to permit, among other things

"1) Our lending to a private corporation \$75,000 "upon commercial or business paper actually owned by the person negotiating the same and are endorsed by such person without limitation" or "are secured by collateral security having an ascertained market value of at least fifteen per centum more than the amount of the liabilities so secured."

"2) In computing total liabilities, the law provides that "The purchase or discount of drafts, or bills of exchange drawn in good faith against actually existing values, shall not be considered as money borrowed" and therefore such transactions need not be considered under the restrictions limiting the total liability of any one person.

"We further interpret drafts or bills of exchange to include Sight Drafts payable on presentation and/or Trade Acceptances payable in the normal course of self liquidation, thirty, sixty or ninety days from date. The transactions which give rise to the Trade Acceptances are the purchase of goods in car load lots to cover the buyers normal requirements over the current contractual period. Shipments are made against shippers order bills-of-lading and drafts are drawn for the full amount of the shipment, payable one-third or one-quarter at sight and the balance divided equally over

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the next thirty, sixty or ninety days, according to the basis of consumption. The drawer takes immediate credit at the bank and upon payment of the sight-draft and acceptance of the other drafts with fixed maturities, the bill-of-lading is released and the Trade Acceptances are then carried as an asset in loan account until maturity with recourse on the shipper.

"We have such a situation pending and will therefore appreciate a response from your office as quickly as possible and particularly as it relates to our interpretation of paragraph 2).

"Yours very truly

WALKER MacMILLAN /s/

"Walker MacMillan
Vice President."

"Below we quote from our answer to this letter:

"It is the opinion of this Department that time drafts, viz. those payable in 30, 60 or 90 days from date, are not included in the exemptions provided for in the paragraph referred to in your letter. We believe that such drafts, or trade acceptances, would necessarily be computed as a liability of the corporation involved."

"Mr. MacMillan does not agree with our conclusions and under date of November 15th writes as follows:

"Thank you for your letter of November 13th replying to ours of the 9th on the subject of total liability of any one person.

"Your interpretation of the acceptance drafts is not unlike the construction of one of my associate officers, however, I personally feel that the acceptance

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drafts fall within the exemption of paragraph (e) Section 7952 of the State law.

"Certainly the drafts are drawn in good faith and against actually existing values as evidenced by the contract of the drawer and the payment by the buyer of one third or one quarter at sight and his acceptance of the balance payable in installments 30, 60 or 90 days from date.

"Whether the words "actually existing values" was intended to imply as at time of shipment or against goods which may go into a warehouse or be released to the buyer upon his acceptance of drafts to be paid according to his basis of consumption, seems to be a question although this appears to me to be clearly a self liquidating transaction, and for that reason the law purposely avoids stating any exemptions to the kind of draft just so long as it is drawn in good faith against actually existing values.

"It would be very interesting to have an opinion from the Attorney General's office, and if you will pass this along, we shall be grateful to you."

"At your convenience we would appreciate an opinion in this connection".

Section 7952, R.S. Mo. 1939, was repealed by the Laws of Missouri, 1941, page 679, and a new Section was enacted in lieu thereof.

The Act of 1941, was in turn repealed, Laws of Missouri, 1943, page 994, and a new Section known as Section 7952, was enacted in place thereof, and the last named statute is now the law of the State on the subject. However, sub-section (e), l.c. 997, remains the same in

the present amendment of 1943, as it was in both Laws of Missouri, 1941, page 679, l.c. 681, and Section 7952, R.S. Mo. 1939.

We think it proper to quote sub-section (e) of Section 7952, Laws of Missouri, 1943, l.c. 997 here, but in order that its relationship and proper office may be understood we will quote the first paragraph of said Section 7952, Laws of Missouri, 1943, l.c. 995, so that when quoted both of said sub-sections of Section 7952 will read as follows:

"Section 7952. Restrictions on loans, purchase of securities and total liability to banks of any one person. A Bank subject to the provisions of this article:

"1. Shall not directly or indirectly lend to any individual, partnership, corporation, or body politic, either by means of letters or credit, by acceptance of drafts or by discount or purchase of notes, bills of exchange or other obligations of such individual, partnership, corporation or body politic an amount or amounts in the aggregate which will exceed fifteen (15) per centum of the capital stock actually paid in and surplus fund of such bank if located in a city having a population of one hundred thousand or over; twenty (20) per centum of the capital stock actually paid in and surplus fund of such bank if located in a city having a population of less than one hundred thousand and over seven thousand; and twenty-five (25) per centum of the capital stock actually paid in and surplus fund of such bank if located elsewhere in the state, with the following exceptions:

"(a) The restrictions in this subdivision shall not apply to,

* * * * *

"(e) The purchase or discount of drafts, or bills of exchange drawn in good faith against actually existing values, shall not be considered as money borrowed within the meaning of this section."

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The question you submit is, whether the value of acceptance drafts as mentioned and defined in said sub-section (e), page 997, Laws of Missouri, 1943, are excepted from the value given evidences of debt mentioned and defined in sub-section 1 of said new Section 7952, as paper not constituting any part of the percentage value a bank may lend any one person, when, for instance, a sight draft is issued along with a shipper's order bill of lading, and the draft for the full value of the amount of the shipment. Your letter then states:

"The drawer takes immediate credit at the bank and upon payment of the sight-draft and acceptance of the other drafts with fixed maturities, the bill-of-lading is released and the Trade Acceptances are then carried as an asset in loan account until maturity with recourse on the shipper."

It would thus appear that the intention of the parties would be, under the transaction in question, to treat the matter as a loan so that in case the consignee or buyer should fail to pay the trade acceptances when becoming due the bank would charge such delinquencies back against the account of the shipper on the basis of a straight loan.

From the statement made by Mr. MacMillan it would appear that the sight draft and the acceptance drafts to be issued in the transaction contemplated are not drawn against "actually existing values", within the meaning of said Section 7952, supra, but are drawn against the credit of the buyer or consignee, and upon payment of the sight draft and acceptance of the 30, 60 and 90 day drafts the bills-of-lading are released to the purchaser, leaving the bank with no actually existing values back of the acceptance drafts.

Under such conditions as are indicated, that is, that the acceptance drafts are to be paid in 30, 60 and 90 days, the transaction would not be a self liquidating transaction as the bank would have no claim or lien against the goods in the hands of the buyer.

We believe you were acting strictly within your administrative power in your Department and in the proper interpretation of the statute when you wrote to Mr. MacMillan:

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"It is the opinion of this Department that time drafts, viz. those payable in 30, 60 or 90 days from date, are not included in the exemptions provided for in the paragraph referred to in your letter. We believe that such drafts, or trade acceptances, would necessarily be computed as a liability of the corporation involved."

CONCLUSION.

It is, therefore, the opinion of this Department that the drafts mentioned and described in your letter concerning the proposed transaction would not be drawn against "actually existing values" as contemplated in sub-section (e) of said Section 7952, Laws of Missouri, 1943, page 997, and that such drafts or trade acceptances must be computed as a loan liability of the individual, partnership, corporation or body politic borrowing money from a bank, and that such drafts are not included in the exemptions provided for in sub-section (e) from the restrictions provided for in sub-section 1 of said Section 7952, Laws of Missouri, 1943, page 995.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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