

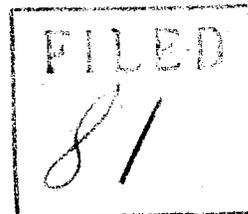
BANKING BUSINESS:

An express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a telegraph or telephone company, as exceptions to corporations prohibited from doing any acts of banking under Sec. 7890, R.S. Mo. 1939, possess the power of receiving for transmission or of transmitting the same,

February 20, 1947

by draft, traveler's check, money order, or otherwise, without any authority or supervision of the Department of Finance of this State whatsoever.

Honorable H. G. Shaffner
Commissioner of Finance
Jefferson City, Missouri



Dear Commissioner Shaffner:

This will acknowledge your letter of recent date, which is as follows:

"This office is in receipt of the following letter dated September 4th from Cunard White Star, Ltd., St. Louis office:

"Department of Finance
State of Missouri
Jefferson City, Missouri

"Dear Sirs:

"We are about to reengage in the business of transmitting moneys to foreign countries and in due course we shall authorize our regularly appointed agencies in the State of Missouri to receive moneys for transmission.

"This business will be conducted by us subject to all the restrictions and limitations set forth by the United States Treasury Office pursuant to the Executive Orders and Regulations relating to Foreign Fund Control, under a license to be granted us by the Secretary of the Treasury through the Federal Reserve Bank, New York.

"We would esteem highly an acknowledgment of this letter with particulars as to the

requirements with which we should comply to operate under the existing regulations of the State of Missouri affecting the business of receiving moneys for transmission abroad.'

"In this connection, it appears Sec. 7890-7891, R.S. Mo. 1939, indicate this Department is in a position to grant such a request. Since there is no evidence in this office that such permission has previously been authorized, there are apparently other banking laws which supersede those sections mentioned.

"May we be favored with your opinion at your convenience?"

Sections 7890 and 7891, Article 1, Chapter 39, R.S. Mo. 1939, respectively, are as follow:

"Sec. 7890. Prohibition of banking business.--No corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this state or of the United States, except as permitted by such laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, or receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt for circulation as money, or of engaging in any other form of banking; nor shall any such corporation, except an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a telegraph or telephone company, possess the power of receiving money for transmission or of transmitting the same, by

draft, traveler's check, money order or otherwise."

"Sec. 7891. Licenses to foreign corporations--renewal.--Upon receipt by the commissioner from any foreign corporation of an application in proper form for leave to do business in this state under the provisions of this chapter, he shall, by such investigation as he may deem necessary, satisfy himself whether the applicant may safely be permitted to do business in this state. If from such investigation he shall be satisfied that it is safe and expedient to grant such application and it shall have been shown to his satisfaction that such applicant may be authorized to engage in business in this state pursuant to the provisions of this chapter and has complied with all the requirements of this chapter, he shall issue a license under his hand and official seal authorizing such applicant to carry on such business at the place designated in the license and, if such license is for a limited time, specifying the date upon which it shall expire. Such license shall be executed in triplicate and the commissioner shall transmit one copy to the applicant, file another in his own office and file the third in the office of the recorder of the county or city in which is located the place designated in such license. Whenever any such license is issued for one year or less, the commissioner may, at the expiration thereof, renew such license for one year."

We believe the last part of said Section 7890, beginning with the word "nor" in the fourteenth line of said section, and including the word "otherwise" at the end of said section indicates that your Department has

Honorable H. G. Shaffner -4-

no duties to perform respecting the issuing of licenses or permits to any of the companies named in said Section 7890.

There is no other section of the Banking Code which either supersedes, as you suggest in your letter might be the case, said Sections 7890 and 7891, or refers to them.

Section 7890, R.S. Mo. 1939, is designed as a statute to prohibit all corporations, domestic and foreign, other than corporations formed under or subject to the Banking Laws of this State or the United States from performing any of the acts exclusively belonging to banking business. Said Section 7890 identifies many of the acts which are prohibited from being performed by corporations other than those formed under and subject to the Banking Laws of this State, or the United States, except as permitted by such laws, which are by the terms of Section 7949, R.S. Mo. 1939, exclusively within the power and authority of banks to perform.

However, said Section 7890, in the part thereof hereinabove quoted, identifies certain corporations as exceptions to such corporations, domestic or foreign, other than corporations formed under or subject to the Banking Laws of this State or the United States, as corporations which are privileged to perform some of the acts which are mentioned in said Section 7890, as being so prohibited as aforesaid, and also mentioned in said Section 7949 as being exclusively privileged to banks. Such corporations so constituting such exceptions are: 1) an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or, 2) a transatlantic steamship company, or, 3) a telegraph or telephone company. Said Section 7890 proceeds and states that such corporations so excepted from the corporations, domestic or foreign, which are prohibited from performing any of such acts of banking shall "possess the power of receiving money for transmission or of transmitting the same, by draft, traveler's check, money order or otherwise."

Section 7890 is positive, clear and certain in its direction that the said corporations so named as such

exceptions may perform such acts as named in said section, and which are otherwise exclusive acts of banking, without limitation or condition. Said section does not provide for any license, certificate or authority to be procured from any public official in order to do and perform such acts as are privileged to them by said section to perform.

Section 7891 is, as we view it, not sufficiently clear in itself to authorize your Department to grant a written license or permit of any kind thereunder. Certainly, said Section 7891 does not circumscribe or limit the powers of the corporations named as exceptions in said Section 7890 from performing such acts they are permitted to perform without any authority from any public administrative office including your Department.

We believe the corporations named in said Section 7890 as possessing the power of receiving money for transmission or of transmitting the same by draft, traveler's check, money order or otherwise, may proceed to the performance of such acts, even though such acts may be business transactions exclusively assigned to banks, except for such exceptions as are stated in said Section 7890, without interference or supervision from any person or authority in this State.

CONCLUSION.

It is, therefore, the opinion of this Department that your Department has no duty to perform with respect to licensing, granting a certificate of authority or other consent for an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a telegraph or telephone company in order for any such company to possess the power of receiving money for transmission or of transmitting the same by draft, traveler's check, money order, or otherwise. Such companies possess such power independently by reason of Section 7890, and your Department has no duty to perform in such matters.

Respectfully submitted,

APPROVED:

J. E. TAYLOR
Attorney General

GEORGE W. CROWLEY
Assistant Attorney General

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