

BANKS--TRUST COMPANIES holding  
real estate.

: The Division of Finance may demand,  
: under the terms of sub-section (2)  
: of Sec. 7904, R.S. Mo. 1939, that  
: banks or trust companies holding real  
: estate contrary to Secs. 7951 & 8031,  
: R.S. Mo. 1939, cease and desist from  
: such practice. The Division has no  
: power to compel such corporations to  
: dispose of real estate unlaw-  
: fully held by them. The State  
: by the Attorney General alone  
: may proceed in such cases.

April 18, 1950

Honorable Harry G. Shaffner  
Commissioner  
Division of Finance  
Department of Business and Administration  
State of Missouri  
Jefferson City, Missouri



Dear Commissioner Shaffner:

Your letter of recent date requesting an opinion  
from this Department reads as follows:

"In Banking Laws, Missouri, 1939, there  
is contained Section 7951, as applied to  
banks, and Section 8031, as applied to  
trust companies, which refer to the re-  
strictions on taking and holding other  
real estate by banks and trust companies.

"In the past in the case of this Division,  
all banks and trust companies, with one ex-  
ception, have disposed of real estate as re-  
ferred to in these sections by the time of  
the expiration of the six year period. The  
one exception is a trust company which con-  
tinues to carry on its books a parcel of  
real estate which is not occupied as its  
business quarters.

"What recourse has this Division in enforc-  
ing the requirement that the real estate be  
disposed of whether that real estate has been  
taken in settlement of a debt due it or as a  
result of consolidation with another institu-  
tion which resulted in its moving from the pre-  
viously occupied quarters?"

The particular question submitted in your letter for  
our consideration and upon which you request an opinion is,

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what recourse does your Division have to compel banks, or trust companies doing a banking business, to dispose of real estate held by them in violation of the terms of Sections 7951 or 8031, R.S. Mo. 1939. Sub-section (2) of Section 7904, R.S. Mo. 1939, reads as follows:

"Whenever it shall appear to the commissioner, from any examination made by him or his examiners, that any corporation subject to the provisions of this chapter, or any foreign corporation licensed by the commissioner to do business under this chapter, has violated its charter or any law, or is conducting its business in an unsafe or unauthorized manner, the commissioner shall, by an order direct the discontinuance of such illegal and unsafe or unauthorized practices, and strict conformity with the requirements of the law, and that it proceed with safety and security in its transactions, and he may order the delinquent to appear before him, at a time and place fixed in said order, to present any explanation in defense of the practices directed in said order to be discontinued."

The above quoted sub-section of said Section 7904 prescribes the only action to be taken by the Division of Finance in case such facts are brought to the knowledge of the Division as constitute any violation of said Sections 7951 or 8031. Said sub-section does not, nor does any section of our statutes, confer power upon the Division of Finance to compel a banking corporation violating said Sections 7951 or 8031, to dispose of the real estate unlawfully held by the corporation. In the case of State ex rel. Banister et al. vs. Cantley, Commissioner of Finance, et al., 52 S.W. (2d) 397, our Supreme Court had occasion to discuss and determine, among the issues in the case, the powers and the extent of the powers of the Commissioner of Finance. The Court, l.c. 398, very tersely, on the point, said:

"The functions of the finance commissioner, like any other official, are limited to the powers and duties imposed upon him by the statute which creates the office. 46 C.J. 1031; State ex rel. Bradshaw v. Hackmann, 276 Mo. 600, 208 S.W. 445; Lamar Township v. City of Lamar, 261 Mo. loc. cit. 189, 169 S.W. 12, Ann. Cas. 1916D, 740.

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"An official such as the finance commissioner has no implied powers except such as are necessary to the effective discharge of the powers expressly conferred. 46 C.J. 1032."

Of course, we may assume that there may be instances where a banking corporation or trust company will refuse to comply with the direction of the Division of Finance made under said sub-section (2) of said Section 7904, to cease and desist from the violation of either of said sections, as the case may be. Upon the discovery of facts and conditions showing the violation by a banking corporation or trust company of the terms of either of said sections and their refusal to obey the order to stop the practice it would be the duty of the Division of Finance to submit such facts to the Attorney General for his consideration for the filing of any proceeding against such corporation for such violation, as the facts and the law might warrant. The Attorney General is the legal advisor, under the terms of our statutes, of all state officers, both elective and appointive, and is required by law to file all civil suits and actions and other proceedings at law, or in equity, in any Court on behalf of the State. Section 12901, R.S. Mo. 1939, in that behalf, states:

"The attorney-general shall institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state's interests are involved."

The charter of a banking corporation or a trust company corporation doing a banking business is a contract between the corporation and the State. 14 C.J., page 161, so stating, has the following text:

"The charter of a corporation, whether it is created by a special act or formed under a general corporation law, is a contract between the

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corporation, or the corporators or members,  
and the state. \* \* \* ."

Our Supreme Court in the case of State ex rel. Wabash Railway Company vs. Roach, Secretary of State, 267 Mo. 300, one of the many decisions of our Supreme Court so holding, ruled the same way where the Court, l.c. 313, said:

"This valuable right of doing an intrastate railroad business was a grant which the State could make. In other words, it was a proper subject-matter of a contract between the State and corporation. The charter of a corporation is its contract with the State. Gantt, J., in Mathews v. Railroad, 121 Mo. l.c. 310, said:

"It is wholly unnecessary to review the decisions which sustain the view adopted in the Dartmouth College case (4 Wheat. 518), that defendant's charter is a contract between it and the State. It has been uniformly followed by this court."

The State alone may take advantage of the breach upon the part of a corporation of its said contract with the State. In a very early day in the history and jurisprudence of this State our Supreme Court in the case of Bank of the State of Missouri vs. Merchants Bank of Baltimore, 10 Mo. (123) reprint page 84, established as the rule then, and the rule today, in this State, that the State alone may proceed against a corporation for violation of its charter. The Court in that case (130) reprint page 88, said:

"\* \* \* A violation of the charter of the bank cannot be taken advantage of collaterally or incidentally, but must be brought up and enforced by a direct proceeding instituted for that purpose against the corporation. \* \* \* ."

The case of Hall, et al. vs. Bank, et al., was considered by the Supreme Court of Missouri in 145 Mo. 418. One of

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the questions before the Court was, whether a deed of real estate to the bank, admittedly ultra vires, was void or voidable. The Court on the point, l.c. 425, holding that the State only may question such a transaction, said:

"If a corporation takes land by grant, which by its charter it can not hold, its title is good against third persons and strangers; the State can only interfere.' 1 Perry on Trusts (4 Ed.), sec. 45. In National Bank v. Matthews, 98 U.S. loc. cit. 628, it is said: 'Where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable, and the sovereign alone can object. It is valid until assailed in a direct proceeding instituted for that purpose.' \* \* \* ."

The legal proceeding to be filed on behalf of the State would be an information in the nature of a quo warranto against a corporation violating the terms of either of said Sections, 7951 or 8031. This could only be done by the Attorney General. Our Supreme Court in the case of State ex inf. McAllister, Attorney General, ex rel. Greenwell, et al. vs. Albany Drainage District, 290 Mo. 33, so held, l.c. 56, where the Court said:

"\* \* \* That the Attorney General, without leave, has the right, at any time, to file in the Supreme Court an information in the nature of a quo warranto in any matter in which the public interest is involved, is too well established to admit of controversy."

Section 12901, R.S. Mo. 1939, is the same, enlarged in scope and language, as was Section 4943, R.S. Mo. 1899, defining the duties of the Attorney General. Our Supreme Court in the case of State ex rel. Mo. Pac. Ry. Co. et al. vs. Williams, Judge, 221 Mo. 227, had occasion to compare and distinguish the respective duties of the Attorney General and Circuit Attorney of St. Louis and Prosecuting Attorneys of the several Counties of the State. In the course of its opinion the Court emphasized its holding that all litigation on behalf of the State must be conducted by the Attorney General. The Court, l.c. 261, said:

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"The duties of the Attorney-General are defined by statute \* \* \* and a careful reading of section \* 4943, Revised Statutes 1899, will, we think, demonstrate that the law-making power charged the Attorney-General with the duty of conducting all litigation on behalf of the State, \* \* \* ."

The above authorities, we believe, conclusively show that the Division of Finance has no recourse in enforcing the requirement that real estate be disposed of by a banking corporation or a trust company holding such real estate in violation of either Section 7951 or Section 8031, other than the advisory steps permitted to be taken by the Division under sub-section (2) of said Section 7904, but that the remedy for such violations, if any, belongs exclusively to the State and must be enforced for the State by the Attorney General. This would be true, we believe, "whether that real estate has been taken in settlement of a debt due it or as a result of consolidation with another institution which resulted in its moving from the previously occupied quarters," or under any other circumstances which would constitute a violation of either of said sections.

CONCLUSION.

It is, therefore, considering the above authorities, the opinion of this Department that:

1) The Division of Finance of the Department of Business and Administration of the State of Missouri has no power to enforce the requirement that real estate unlawfully held by a banking corporation or a trust company corporation doing a banking business be disposed of, other than the advisory measures to be taken under said sub-section (2) of said Section 7904.

2) That the remedy to be pursued against any such corporation belongs exclusively to the State and may only be instituted and prosecuted for the State by the Attorney General.

Respectfully submitted,

APPROVED:

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GWC:lr