

BANKS:

State chartered banks and trust companies prohibited under Section 7953 and Section 8033, R. S. Mo. 1939, from employing moneys in purchasing lease agreements, without recourse, unless the same are taken as collateral security for a loan.

May 31, 1950



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

Dear Sir:

The following opinion is rendered in compliance with your recent request which reads as follows:

"It has been found among the assets of state chartered banks and trust companies that they at times include lease agreements which cover the purchase of various types of heavy road equipment, etc. The machinery, of course, is in the possession of the county and it seems the county will eventually get title to the equipment after full payment is made.

"This Division and the Examiners have taken the stand that under such an agreement the bank has title to the machinery until all provisions of the lease agreement are made which are concluded at the time of final payment. We further consider that this method of handling is in direct violation of Section 7953, Banking Laws, Missouri, 1939.

"One such bank who has serviced these lease agreements has had their attorney pass on the bank's position. A copy of the attorney's letter is herewith enclosed."

Subsequent to the date this office received the opinion request quoted above, you have furnished us with copies of the lease agreement with option to purchase, blank bill of sale and assignment of lease contract, all of said instruments bearing directly on the commercial practice being engaged in by the state chartered

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bank. The question to be determined in this opinion is whether a state chartered bank or trust company may purchase the lease agreement, take an assignment thereof without recourse and accept a bill of sale to the property described therein in view of the provisions of Section 7953, R. S. Missouri, 1939, which provides:

"No corporation now existing, nor any hereafter organized under any law of this state, whether general or special, as a bank, or to carry on a banking business, shall employ its moneys, directly or indirectly, in trade or commerce by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants: Provided, that it may sell all kinds of property which may come into its possession as collateral security for loans, or in the ordinary collection of debts."

Appended to this opinion are copies of the lease agreement, assignment of the lease contract and bill of sale, all being necessary to complete the action being considered. Appropriate reference will be made to these instruments in the course of remarks made herein.

Section 7953, R. S. Missouri, 1939, is found in the special statutes applicable to state chartered banks. The statute has its counter-part in the law applicable to state chartered trust companies and is to be found at Section 8033, R. S. Missouri, 1939, which provides:

"No trust company shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants: Provided, that it may sell all kinds of property which may come into its possession as collateral security for loans, or in the ordinary collection of debts."

Due to the similarity of Section 7953 and Section 8033, R. S. Missouri, 1939, it is unnecessary to make separate reference hereinafter to limitations imposed by such statutes on banks and/or trust companies.

We first dispose of the proviso contained in the statutes being construed. The prohibitions contained in the statutes are not effective to prohibit the sale, by the banking corporation, of "all

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kinds of property which may come into its possession as collateral security for loans, or in the ordinary collection of debts." None of the facts disclosed in the opinion request, including its enclosure, intimate that the lease agreement, the assignment thereof and the bill of sale acquired by the banking corporation came into its possession in the course of ordinary collection of debts.

This being so, we at once eliminate the proviso in the statutes as a factor to be further considered in this opinion. By taking the instruments in question for valuable consideration, has the banking corporation employed its moneys, directly or indirectly, in trade or commerce by buying and selling ordinary goods, chattels, wares and merchandise in violation of the statutes being construed? The vital characteristics of the instruments giving life to the transaction must be considered. The lease agreement is entered into by E. A. Martin Machinery Company, a corporation, lessor, with the County Court of Greene County, Missouri, as lessee. By fulfilling the terms of the lease agreement, Greene County may exercise the option to purchase contained therein and acquire title to the property it is to use on a rental basis until option to purchase is exercised. As between the lessor and lessee, title to the equipment remains in the lessor under the lease agreement. In executing an assignment of the lease contract to the bank, without recourse, and executing the delivering to the bank a bill of sale affecting the property described in the lease agreement, the lessor has in effect transferred all its right, title and interest in the lease agreement to the bank for the valuable consideration stated in the bill of sale.

Under the facts we can certainly not say that the bank is acting as agent for the lessor of the equipment with authority limited to accepting rental payment from Greene County under the lease agreement. Nor, can we say that the bank's present interest in the property came by reason of the property being collateral security for any loan advanced to the lessor or lessee. Stated simply, the bank is employing its moneys in trade or commerce by taking title to ordinary chattels without the same being taken as collateral for loans.

CONCLUSION

It is the opinion of this office that state chartered bank or trust company violates the express provisions of Section 7953 and Section 8033, R. S. Missouri, 1939, when either employs its moneys in purchasing lease agreements containing options to purchase personal property described therein, such purchases being affected by taking an assignment of the lease agreement, without

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recourse, accompanied by a blank bill of sale from the lessor, without such assignment being taken as collateral security for a loan.

Respectfully submitted,

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APPROVED:

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