

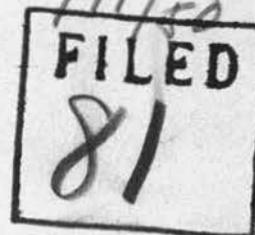
BANKS

TRUST COMPANIES

-) A trust company operating under Article 3, Chapter 39,
-) R. S. Mo., 1939, may qualify as executor of an estate.
-) Such trust company not required to make deposit of
-) securities with Commissioner of Finance under Section
-) 8068, Article 3, Chapter 39, R. S. Missouri, 1939,
-) if it elects to qualify as such executor by giving
-) bond as required by law for appointment of individuals
-) as executors.

August 3, 1950

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



Dear Mr. Shaffner:

The following opinion is rendered in reply to your recent request which reads as follows:

"Under date of May 16 a request was made for an opinion regarding operations in which the Guaranty Trust Company of Missouri, Clayton, Missouri was interested.

"In this connection there are attached the original Articles of Agreement of the trust company referred to. It is asked that an opinion be rendered on the basis of whether or not the trust company may serve as a corporate executor in a small estate, also do the Statutes provide a trust company must deposit bonds in the amount of \$200,000 with this Division in order to qualify with a Probate Court."

The Guaranty Trust Company of Missouri is a corporation formed under the provisions of Article 3, Chapter 39, Revised Statutes of Missouri 1939, said article being entitled "Trust Companies." Powers and purposes of corporations organized under the aforesaid article are set forth in Section 8024, R. S. Mo. 1939, as repealed and reenacted by House Bill 2086, passed by the 65th General Assembly. Among the several powers granted in said section we find the following:

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"To act as executor and trustee under last will, or as administrator with or without the will annexed, of the estate of any deceased person, or as guardian or curator of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary, under the appointment of any court of record having jurisdiction of the person or estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict."

In taking unto itself the powers enumerated from Section 8024, as quoted above, the Guaranty Trust Company of Missouri incorporated the quoted provision in its Articles of Agreement, and shown at paragraph seven thereof. The quoted portion of Section 8024, supra, clearly disposes of the first question posed in the opinion request. The statute definitely conveys a power to the trust company to act as executor.

The second question presented in the opinion request calls for a ruling as to whether a trust company may qualify as executor in the probate court without first having deposited securities in the amount of two hundred thousand dollars with the Commissioner of the Division of Finance. Section 8068, Article 3, Chapter 39, R. S. Mo. 1939, provides, in part, as follows:

"Any company now doing business in this state or which may hereafter be organized under the provisions of this article to do business in this state, which shall make with the finance commissioner a deposit of two hundred thousand dollars, * * * * *, and which shall satisfy said commissioner of its solvency, and shall have received the certificate of said commissioner that such company has made said deposit and has satisfied

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him of its solvency, it being hereby made the duty of said commissioner to issue such certificate in accordance with the facts, shall be permitted to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee, or in any other fiduciary capacity, by appointment of any court, or under will, or depository of money in court, without giving bond as such, and become sole guarantor or surety in or upon any bond required by law to be given in any proceeding in law or equity in any of the courts of this state or other states or of the United States, any other statute to the contrary notwithstanding; and whenever such company shall exhibit to the court, judge, clerk or other officer, making such appointment, or whose duty it is to approve such bond, the certificate of the finance commissioner of the state of Missouri that such company has complied with the provisions of this section with respect to said deposit and proof of solvency, the court, or officer making such appointment, or whose duty it is to approve such bond, may appoint such company to such office or trust, and permit it to qualify as such without giving any bond, and permit such company to become sole guarantor or surety upon such bond, without requiring any other surety therefor. The fund so deposited with the commissioner shall be primarily liable for the obligations of such company as guardian, curator, executor, administrator, assignee, receiver, trustee or any other fiduciary capacity,

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by appointment of a court or under will, depository of money in court, guarantor or surety in or upon any such bond, and shall not be liable for any other debt or obligation of the company until all trust liabilities as aforesaid of such company have been discharged; * * * Provided, that any person doing the business specified in this section, shall enjoy the privileges conferred by this section by complying with the provisions thereof: Provided, that before any company shall be permitted to comply with the provisions of this section, such company shall have at the time of making said deposit, in addition to said deposit of two hundred thousand dollars a paid up capital of at least fifty thousand dollars, if located in a city of less than 10,000 population; one hundred thousand, if located in a city of 10,000 population or over and less than 50,000; two hundred thousand dollars, if located in a city of 50,000 population or over." (Emphasis ours.)

Section 8068, supra, clearly discloses that a trust company may qualify to serve as an executor or administrator under the order of a probate court without giving bond as such executor or administrator only when full compliance is had with the provisions of this statute. The statute does not contain a mandatory provision directing that trust companies desiring to act as executors or administrators place the deposit of securities with the Commissioner of the Division of Finance. The deposit is to be made in the event the trust company desires to act as executor or administrator without giving bond.

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CONCLUSION

It is the opinion of this office that (1) a trust company operating pursuant to the provisions of Article 3, Chapter 39, R. S. Mo. 1939, may serve as executor of an estate, and (2) that such trust company is not obligated, under Section 8068, Article 3, Chapter 39, R. S. Mo. 1939, to make a deposit of securities with the Commissioner of the Division of Finance before it qualifies to serve as an executor if it is willing to give bond in the manner now provided by law for appointment of individuals as executors.

Respectfully submitted,

JULIAN L. O'MALLEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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